

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Airvine Scientific, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



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## 2) Software

a) Trial Evaluation and License. Upon Licensee's request for a trial period to evaluate the Software, Airvine will provide Licensee with instructions to download and use the Software, solely for

evaluation and demonstration purposes and contingent upon Licensee's acceptance of the terms of this Agreement. Upon Licensee initially accessing the Software, the Evaluation Term shall commence. If an Order has not yet been placed by or for

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b) Software Activation and License. At any time during, upon or following expiration of the Evaluation Term, Licensee may submit an Order to activate the Software and initiate a Service Term; provided, that if Airvine has terminated the Evaluation Term or this agreement for cause then Licensee shall not be eligible to submit an Order or otherwise continue using the Software. During the Service Term, subject to Licensee's compliance with the terms and conditions of this agreement, including the payment of any applicable subscription license fees, Airvine grants Licensee a non-exclusive, non-transferable, non-sublicenseable right to access and use the Software in accordance with the Documentation and any limitations or restrictions set forth in the applicable Order or trial request. Only the employees, contractors and agents of Licensee acting on Licensee's behalf may exercise the licenses granted to Licensee in this paragraph. Licensee is solely responsible for acquiring, separately from this agreement, any wireless client endpoints or other devices for use in conjunction with its use of the Software.

c) Scope of Use. Licenses to the Software may limit: (a) the number of users; or (b) the number of wireless client end-points or devices, that may be supported by the Software depending on the part number requested in the Order (the "Scope of Use"). When so licensed, each part number and/or the description of the part number stated in the Order will specify the applicable Scope of Use. At no time may Licensee use the Software in a manner that could, directly or indirectly, through one or more controllers, gateways or other devices, manage, collect data from, or otherwise interact with more users or wireless client end-points than authorized by the Scope of Use. If Licensee wishes to exceed the Scope of Use, Licensee may place an Order to increase the Scope of Use. Upon written acceptance by Airvine or its Airvine Channel Partner, Licensee may then use the Software in accordance with the new Scope of Use.

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### 3) Fees & Payment

a) Fees for Direct Airvine and Airvine Channel Partner Purchases. In the event that Licensee is purchasing the Software licenses from a Airvine Channel Partner, then the payment terms shall be exclusively as defined between such Airvine Channel Partner and Licensee. In the event that Licensee is purchasing access to the Software directly from Airvine, then Licensee shall pay the fees stated in the Order within thirty (30) days of the receipt date of the applicable Airvine invoice. Delinquent invoices are also subject to at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. Airvine shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-



4(k).

b) Audit. Airvine may audit Licensee's use of the Software upon reasonable notice and such audit is subject to Government security requirements. If an audit reveals that Licensee has underpaid fees based on the Scope of Use and its use of the Software, Licensee shall be invoiced for such fees. The audit shall be at Airvine's expense. Licensee agrees to retain all relevant business records to justify compliance with this agreement for a period of one (1) year from the date of any expiration or termination.

4) Support and Services. Technical support services during the Service Term are included in the license fees for the Software (as set forth in an Order) and shall be provided in accordance with the Technical Support Information Guide made available by Airvine with the Software. Any additional services, including consulting or training, shall be provided on an as-quoted basis and subject to a separate Order.

#### 5) Term & Termination

a) Term. This agreement commences as of the date the parties execute the initial Order and continues until the end of the Evaluation Term or Service Term as applicable, unless otherwise terminated earlier as provided for in this agreement. Upon expiration of a Service Term, the Service Term may be renewed for an additional period equal in duration to the expiring Service Term or 12 months, whichever is shorter (each a renewal Service Term) by executing a written order for the relevant renewal Service Term. Any Service Term renewal shall be subject to the pricing then in effect.

b) Termination for Cause. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Airvine shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

c) Effect of Termination. Termination will not relieve Licensee of the obligation to pay any fees due or payable to Airvine (or a Airvine Channel Partner, as applicable) prior to the effective date of termination, including any other fees or payments that Licensee has committed to under this agreement. All rights granted hereunder shall immediately terminate and Licensee shall return or destroy all Software in its possession no less than thirty days from the termination date. The provisions of this agreement that by their nature extend beyond the expiration or other termination of this agreement will survive and remain in effect until all obligations are satisfied.

6) Warranties a) Warranty. During the ninety (90) day period following Licensee's activation of the Software, Airvine warrants that when the Software is used in accordance with the Documentation and in unmodified form, the Software will operate in all material respects substantially as set forth in the Documentation. If the Software fails to so operate, Airvine's only obligation and Licensee's exclusive remedy shall be for Airvine to, at its option, (a) provide an error correction or update to the Software to remedy the failure; or (b) terminate the applicable Software license and provide a

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7) Intellectual Property Infringement. Airvine agrees to have the right to intervene to defend Licensee and pay any damages finally awarded or, at its option settle and pay any settlement agreed to by Airvine, with respect to any claim made or brought against Licensee by an entity unaffiliated with Licensee alleging that Licensee's use of the unaltered Software infringes or misappropriates any patent, copyright or trademark of such entity, provided that Licensee (a) provides prompt written notice of such claim to Airvine, (b) grants Airvine the right to control and defend such claim, and (c) provides Airvine, at Airvine's expense, with all information and assistance reasonably requested by Airvine in the defense of such claim. In the event of such a claim or threatened claim, Airvine may, at its option, (i) provide Licensee with revised Software that is substantially equivalent to the accused Software in functionality in material respects but is noninfringing, (ii) obtain the right for Licensee to continue using the Software, or (iii) terminate this agreement upon 30 days' notice and refund any license fees previously paid for the Software that is the subject of a claim on a pro-rata basis over a five (5) year period. Notwithstanding the foregoing, Airvine shall have no obligation or liability with respect to (a) use of other than the current version of the Software, if the infringement would be avoided by use of the current version, (b) use of the Software in combination with any materials not provided by Airvine, if the infringement would be avoided by use of the Software without such combination, (c) any alleged patent infringement related to the implementation of a standard; (d) any modification of the Software by any party other than Airvine, (e) any open source code contained within the Software, (f) damages based on the value of product, services or business methods not provided by or performed by Airvine, (g) any use of the Software outside the scope of the license or (h) any use of the Software after Airvine has terminated the license as set forth above. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. THIS PARAGRAPH REPRESENTS THE SOLE AND EXCLUSIVE LIABILITY OF AIRVINE AND THE EXCLUSIVE REMEDY OF LICENSEE FOR INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY RIGHTS.

8) Limitation of Liability. AIRVINE AND ITS SUPPLIERS SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, ANY LOSS OF PROFITS, DATA OR REVENUES, OR THE COSTS OF REPLACEMENT OR SUBSTITUTE PRODUCTS, ARISING FROM THE PURCHASE, USE OR INABILITY TO USE THE SOFTWARE, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), EVEN IF AIRVINE HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. AIRVINE'S TOTAL AGGREGATE LIABILITY FOR DAMAGES OF ANY NATURE, REGARDLESS OF THE FORM OF ACTION, IS LIMITED TO THE PURCHASE PRICE PAID BY THE LICENSEE FOR THE SOFTWARE UPON WHICH LIABILITY IS BASED. THE FOREGOING

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#### 9) General Provisions

a) Governing Law; Venue. The Federal laws of the United States.

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c) Miscellaneous. Notices will be deemed given on the day actually received by the party to whom the notice is addressed. The relationship of Airvine and Licensee is that of independent contractors. Neither party has any authority to act on behalf of the other party or to bind it, and in no event will the parties be construed to be partners, employer/employee or agents of each other. Headings in this agreement are for reference purposes only and will not affect the interpretation or meaning of this agreement. If any provision of this agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this agreement will remain in full force and effect. No delay or omission by either party to exercise any right or power it has under this agreement will be construed as a waiver of such right or power. A waiver by either party of any breach by the other party will not be construed to be a waiver of any succeeding breach or any other covenant by the other party. All waivers must be in writing and signed by the party waiving its rights. This agreement may not be assigned by Licensee by operation of law or otherwise, without the prior written consent of Airvine, which consent will not be unreasonably withheld. This agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which together constitute one and the same agreement. The parties agree that electronic signatures are valid signatures for enforcement of this agreement. This agreement constitutes the entire agreement between Airvine and Licensee with respect to the subject matter hereof. This agreement supersedes all prior negotiations, agreements and undertakings between the parties with respect to such subject matter. As a matter of clarity, the preceding two sentences do not affect either party's obligations regarding confidential information under any other agreement between the parties. No modification of this agreement will be effective unless contained in writing and signed by an authorized representative of each party. Notwithstanding applicable law, electronic communications will not be deemed signed writings. Any additional orders for licenses hereunder shall be governed by the terms of this agreement. No term or condition contained in Licensee's purchase order or similar document will apply unless specifically agreed to by Airvine in writing, even if Airvine has accepted the order set forth in such purchase order, and all such terms or conditions are otherwise hereby expressly rejected by Airvine. In the

event of a conflict between this agreement and any other applicable agreement, this agreement shall govern.