

## Wireless Services Terms of Service

This document contains the terms and conditions (“Terms of Service”) that apply to Customer’s purchase and use of Opengear Wireless Services with Opengear products. Opengear’s acceptance of Customer’s order for Opengear Wireless Services is based on these terms and conditions applying to Customer’s use of Opengear Wireless Services. By using Opengear Wireless Services, Customer agrees to be bound and to accept these Terms of Service. These Terms of Service shall apply unless Customer and Opengear have signed a separate purchase agreement with different terms and conditions which expressly control.

Opengear reserves the right, in its sole discretion, at any time and from time to time, to replace, modify, add to or retract/delete all or any portion of these Terms of Service. It is Customer’s obligation to review the most recent version of these Terms of Service from time to time, posted at <http://www.digi.com/legal/opengear-wireless-terms>, to ensure its continued acceptance hereof. Any revisions to these Terms of Service will become effective twenty (20) business days after such revisions are posted, unless Customer expressly accepts the revised Terms of Service as of an earlier date. Customer’s continued use of the Opengear Wireless Services after the applicable effective date of such revisions will conclusively establish Customer’s acceptance to be bound by the revised Terms of Service. Any terms and conditions contained on a purchase order or other Customer documents will not apply to the extent said terms are inconsistent with or in addition to these Terms of Service.

### 1. DEFINITIONS

In these Terms of Service the following terms will have the following meanings:

- A. **“Carrier”** means a designated, regulated, network operator that (1) has been licensed to establish and operate a wireless communications network in a respective regulated market and (2) Opengear, through its parent company Digi International Inc. (“Digi”), has contracted with to enable the provisioning of the Wireless Services to end user customers (such as Customer).
- B. **“Device”** means any mobile radio apparatus or telecommunications equipment (including accessories enabling the transmission of data or voice) which is approved under applicable regulation and is technically and operationally compatible with the Network and the Wireless Services.
- C. **“Network”** means the wireless communications network provided by the Carrier.
- D. **“SIM”** means the Subscriber Identity Module for which Customer has purchased Wireless Services, to be used with a Device to enable use of the Wireless Service.
- E. **“Wireless Service(s)”** means the wireless telecommunication services made available through the Network to Customer by Opengear under these Terms of Service.

### 2. PROVISION OF SERVICE

- A. **Term:** The term of these Terms of Service for the SIMs begins on the date of shipment stated in Opengear’s order acknowledgment to Customer and will continue thereafter for either one (1) year or three (3) years, depending on the Wireless Service ordered by Customer (“Term”). Customer may renew for additional one or three year terms by contacting Opengear directly or through an Opengear distributor or reseller. If Customer does not renew at the end of the Term, Opengear may stop providing Wireless Services to the SIMs.

- B. **Wireless Services.** During the Term, provided Customer remains in compliance with these Terms of Service, Opengear will provide Wireless Services for SIMs within the coverage areas served by the Network (whether by the applicable Carrier's wireless service network or through roaming agreements), subject to the availability of such service in the such areas. Opengear does not control the availability of service in the coverage areas.
- C. **SIM Cards.** Opengear will supply Customer with standard SIMs at no charge. All SIMs will be shipped with cellular data services enabled. If a SIM card becomes damaged or unserviceable, Opengear will replace the SIM card. There will be no swap fee, however shipping costs may be applied as appropriate.
- D. **Wireless Service Plans.**
  - i. Each Opengear Wireless Service plan includes a certain amount of data per SIM per month, as confirmed in Opengear's order acknowledgment to Customer.
  - ii. Customer is responsible for selecting the correct plan for Customer's expected usage.
  - iii. Customer's total monthly available data for the SIMs is calculated by multiplying the number of SIMs by the available data per SIM ("the Pool"). For example, if Customer has twenty SIMs and selected a plan for those devices of 250MB per device per month, Customer's Pool for those SIMs is 5,000 MB.
  - iv. If the total data usage for all SIMs is below the Pool, no data overage fee will be assessed.
  - v. If the total data usage exceeds the Pool for two consecutive months, Opengear reserves the right to move Customer to a larger data plan for all new lines of service and all renewals as appropriate. If Customer opts to not upgrade to a larger plan, Opengear, at its discretion, may charge an overage fee of \$0.25 per MB.

### 3. CUSTOMER OBLIGATIONS

- A. Customer acknowledges and agrees:
  - i. to maintain the necessary services not otherwise provided by Opengear under these Terms of Service as required to receive the Wireless Services from Opengear and to use the Network;
  - ii. to comply with any law, regulation, directive, ordinance and decision of any regulatory authority applicable to Customer or to the business operated by Customer, including preserving the confidentiality and privacy of protected information;
  - iii. to be responsible for ensuring that any Device not provided by Opengear used on the Network is approved and certified for use on the Network according to the guidelines of Opengear and/or the applicable Carrier, and that the Device complies with the rules and regulations of CE, GCF, PTCRB, FCC, Industry Canada, or its designees or other governing agencies or divisions that may apply in the intended country of use. Neither Opengear nor the Carrier is responsible for any test or accreditation requirements on behalf of Customer for Devices not provided by Opengear; and
  - iv. that Opengear or Carrier may interrupt the Wireless Services at any time and for any period of time, without any liability, when Customer fails to comply with any of its

obligations under these Terms of Service, or where necessary to prevent the improper or unlawful use of the Network;

- v. that Customer is acquiring Wireless Services from Opengear for its own internal use as part of a complete wireless application system, and will not use the Wireless Services or Network for any other purpose or in connection with any re-licensing, resale or redistribution to others without the prior written consent of Opengear;
  - vi. that neither Opengear nor Carrier is responsible for the selection, supply, installation, operation, or maintenance of any Devices or other equipment or software owned or licensed by the Customer and used in connection with the Wireless Services;
  - vii. that Customer is responsible for the security of Customer authorization codes, passwords and similar means of access to Customer equipment and telecommunications systems relating to the Devices, Wireless Services or Network; and
  - viii. that Carrier reserves the right, in its sole discretion and without any obligation, to make improvements to, or correct any error or omissions in any portion of the Network or the Wireless Services, which may or may not affect Customer's access to the Network.
- B. Customer will not, directly or indirectly:
- i. use the Wireless Services or any provided software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or
  - ii. remove any proprietary notices or labels with respect to the Wireless Services or associated software or hardware.
- C. Although Opengear has no obligation to monitor Customer's use of the Wireless Services, it may do so and may remove any such content or prohibit any use of the Wireless Services it believes may be (or alleged to be) in violation of applicable laws or standard policies.
- D. Customer shall be responsible for maintaining the security of the Devices, Customer account, passwords (including but not limited to administrative and user passwords) and files, and Customer shall be fully responsible for all uses of the Wireless Services (and all associated Service Fees) with or without Customer's knowledge or consent and whether or not authorized by Customer.
- E. Notwithstanding anything in these Terms of Service to the contrary, Opengear may, without liability to Customer, suspend or terminate any or all Wireless Services if: (a) the Customer is using a device or equipment which is defective, or illegal; (b) the Customer is causing any technical or other problems on the Network; (c) the Customer is engaging in suspected fraudulent or unauthorized use; or (d) Customer has breached any terms of these Terms of Service or any other contract it may have with Opengear relating to the Wireless Services.
- F. Customer hereby agrees to indemnify and hold harmless Opengear, its officers, directors, carrier network partners, suppliers, representatives, employees and agents against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of any term of these Terms of Service or otherwise from Customer's use of the Wireless Services.
- 4. SERVICE FEES AND BILLING**
- A. Service Fees.**
- i. Wireless Service fees must be paid in full when ordering Wireless Services.

- ii. Any overage fees or fees associated with larger data pools will be invoiced as necessary. All invoiced amounts are due in full 30 days after receipt of invoice (“Due Date”). If Customer has provided credit card authorization for payment of invoices, Customer’s credit card shall be charged 5 days after the date of the invoice. If any undisputed amount is not paid by the Due Date, interest will be charged for such undisputed amount at the lower of 1.5% per month (18% per annum) or the highest rate allowed by law.
  - iii. Unless otherwise expressly agreed in writing by the parties in writing, Customer shall pay all customs, duties, and all sales, excise, license, occupation and other mandated taxes of any kind whatsoever, if any, including regulatory and other like charges that may be imposed by the FCC or other telecommunications regulatory agency, which may become payable to any authority by reason of the provision of the Wireless Services.
  - iv. Customer is responsible for all of its account charges, including but not limited to all usage-based charges, irrespective of, non-payment on the part of any Customer affiliates or other Users pursuant to these Terms of Service, or for any other reason except as expressly provided herein.
  - v. Customer shall be liable to Opengear for all costs and/or expenses incurred directly or indirectly, including legal fees, in the collection or attempted collection of any unpaid charges owed by Customer. In addition, Opengear will charge Customer for any bank charges associated with NSF checks.
- B. Disputed Amounts**
- i. In the event Customer disputes any charges, Customer shall notify Opengear within 90 days, in writing, of any disputed amounts and the reason for the dispute. Failure to notify Opengear of any disputed amounts within this period shall be deemed to be Customer’s acceptance of the invoiced amounts.
  - ii. Customer is required to remit all undisputed amounts, whether or not contained on the same invoice as the disputed amounts, by the Due Date, or risk incurring interest charges or service suspension.
  - iii. For the purposes of disputed charges, the evidenced records of network usage as provided by the Carrier shall be deemed to be accurate. In the event of any dispute, Opengear will provide Customer with access to such records. Opengear shall promptly review any amounts in dispute and notify Customer in writing within 10 days of the receipt of Customer’s notice of the results of any Opengear review. For any disputed amount agreed to by Opengear, Opengear shall provide a credit to Customer for this amount and/or may apply such credit against amounts otherwise owing by Customer.
  - iv. If Customer remains in default for undisputed invoiced amounts, after Opengear has provided appropriate usage records, then Opengear shall have the right to either suspend Customer’s Wireless Services or terminate these Terms of Service in accordance with section 5.A., below.
- C. Credit Review.** Opengear reserves the right to review Customer’s credit worthiness at any time during the term of these Terms of Service, and to require a prepayment, deposit, or credit card authorization if Customer has not already provided one, before providing, continuing, or reinstating Wireless Services.
- D. Suspension of Wireless Services.** If Customer does not renew the service after expiration of the Term or not pay any undisputed invoice amounts by the Due Date, Opengear

reserves the right to suspend Wireless Services if Customer does not renew or pay within a cure period of ten (10) business days from expiration of the term or receipt of written notice of the overdue amount. Reconnection of Wireless Services will be at Opegear discretion, shall be subject to confirmed receipt of all overdue amounts, and may be subject to an administration fee to be charged at Opegear discretion, or Opegear may terminate these Terms of Service in accordance with section 5.A., below.

## 5. TERMINATION

- A. **Termination or Suspension by Opegear.** Without incurring liability, Opegear may terminate these Terms of Service, or suspend, restrict or terminate any or all Wireless Services, upon written notice and failure to cure within the period (if any) set out in parentheses after a ground for termination:
  - i. If Customer fails to pay any undisputed Charges by the Due Date (30 days);
  - ii. If Customer violates any of the material provisions of the TSA (30 days);
  - iii. If Customer becomes bankrupt or insolvent, make an assignment for the benefit of creditors, or a receiver or trustee is appointed for a substantial part of Customer's assets (5 business days);
  - iv. Where any law, order, or commercially reasonable impediment prohibits Opegear from furnishing the Wireless Services.
- B. **Termination by Customer.** Without incurring liability, Customer may terminate these Terms of Service upon written notice and failure to cure within the period (if any) set out in parentheses after a ground for termination:
  - i. if Opegear violates any of the material provisions of these Terms of Service (15 business days);
  - ii. if Opegear becomes bankrupt or insolvent, makes an assignment for the benefit of creditors or a receiver or trustee is appointed for a substantial part of Opegear assets (30 days);
  - iii. if Opegear or its parent company Digi fails to maintain its agreement with the Carrier such that Opegear is unable to provide Wireless Services to Customer (5 days).
- C. **Post-Termination Obligations.**
  - i. Within 30 days after termination, Customer will remit all amounts due and owing as of the date of termination.
  - ii. As of the date of termination, Opegear will have no further obligation to provide any Wireless Services or support to Customer.
- D. **Survival.** All sections of these Terms of Service which by their nature reasonably should survive termination will survive termination, including, without limitation, accrued rights to payment, warranty disclaimers, and limitations of liability. However, upon any such termination, Customer's right to use the Wireless Services shall promptly terminate.

## 6. DISCLAIMER AND LIMITS OF LIABILITY

- A. To the extent possible, Opegear will make the benefits of any warranty it obtains from Carrier available to Customer for the Wireless Services and any SIM cards it provides to the Customer.
- B. Opegear makes no representation, covenant, or warranty, either express or implied, written or oral, arising by operation of statute, law, usage of trade, course of dealing or otherwise with respect to the Wireless Services, Network, or other products or services provided hereunder or in connection herewith. OPENGear DOES NOT WARRANT THAT

THE WIRELESS SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. OPENGear MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE WIRELESS SERVICES. THE WIRELESS SERVICES ARE PROVIDED "AS IS" AND OPENGear DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE QUALITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. Without limiting the generality of the foregoing, Opengear makes no representations, warranties, covenants or guarantees relating to (1) network transmission capacity; (2) whether Customer data will be transmitted in an uncorrupted form; (3) the security of any transaction, communication, facility or service; (4) the fault tolerance of the Network or Wireless Services or the suitability of same for high risk activities; (5) the compatibility of the Wireless Services or the facilities (including SIMs/Devices and associated firmware and software) with Customer's use, including Customer's content, data, programs or transmissions; or (6) Devices, telephone numbers or any third party supplied components. Any warranty relating to Devices shall be that of the manufacturer or supplier of such items to Customer or its users.

- C. Customer is responsible for ensuring that the access and use of the Wireless Services and Network within the applicable jurisdiction in which Customer and its users are operating is in compliance with applicable laws and Opengear makes no representations or warranties with respect thereto.
- D. Opengear obligations under these Terms of Service do not extend to any maintenance, repair, rearrangement, alteration, modification or adjustment which becomes necessary due to, resulting from or in any way related to, damage, misuse or failure on Customer's part. In addition, in the event of the interruption, failure or breakdown of the Wireless Services or Network, or the loss or spoiling of Customer's programs or data, Opengear makes no warranty that any of them will be restored. Customer assumes full responsibility for backing up Customer's own files and preserving Customer's own data.
- E. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, FOR ANY AMOUNTS REPRESENTING THEIR RESPECTIVE LOSS OF PROFITS; LOSS OF BUSINESS; INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES (EVEN IF PREVIOUSLY APPRISED OF THE POSSIBILITY THEREOF) ARISING FROM THE PERFORMANCE OR NONPERFORMANCE UNDER THESE TERMS OF SERVICE, OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH OR RELATED TO THE USE OF ANY PRODUCTS OR SERVICES FURNISHED BY OPENGear, WHETHER THE BASIS OF THE LIABILITY IS BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), STATUTES, OR ANY OTHER LEGAL THEORY.
- F. Opengear disclaims any warranties and responsibility for coverage associated with the Wireless Services. Coverage locator maps depict predicted and approximate wireless coverage. The coverage areas shown do not guarantee service availability, and may include locations with limited or no coverage. Even within a coverage area, there are many factors, including customer's equipment, terrain, proximity to buildings, foliage, and weather that may impact service. Customer is responsible for determining whether the Wireless Services are available in its intended location and of a quality sufficient to meet Customer's requirements.
- G. Wireless Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by third-party providers, or by other causes beyond Opengear's reasonable control.

- H. OPENGEAR (AND ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES) SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THESE TERMS OF SERVICE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY MATTER BEYOND OPENGEAR'S REASONABLE CONTROL, EVEN IF OPENGEAR HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES; (C) FOR PHYSICAL ATTACKS OR CYBER-ATTACKS UPON THE WIRELESS INFRASTRUCTURE OR NETWORK, OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE SERVICE FEES PAID BY CUSTOMER TO OPENGEAR FOR THE WIRELESS SERVICES IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

**7. CONFIDENTIALITY**

- A. "Confidential Information" includes all non-public information provided by one party to the other, or obtained by one party from the other whether or not marked or identified as confidential at the time of disclosure. All Confidential Information shall remain the sole property of the disclosing party. Information will not be considered to be Confidential Information if (i) it is available to the public other than by a breach of these Terms of Service; (ii) it is rightly received from a third party not in breach of any obligation of confidentiality; (iii) it is independently developed by a party without use of Confidential Information of the other as established by written documentation; or (iv) it is known to the recipient at the time of disclosure, provided that the recipient has no reasonable basis for concluding that such information was made available in violation of a confidentiality agreement with another party.
- B. Each party agrees that it will not disclose any of the other party's Confidential Information to any third party, or use any Confidential Information disclosed to it by the other party except for the sole purpose of performing its obligations under these Terms of Service, and that it will take all reasonable measures to maintain the confidentiality of the Confidential Information of the other party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance.
- C. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information (i) on a "need- to-know" basis to its employees, or (ii) to its financial advisors, lawyers, or other advisors, who are obligated to maintain the confidentiality of such information, or (iii) to its third party consultants, contractors or other agents solely in connection with the exercise of its rights or the performance of its obligations under these Terms of Service, and provided that such disclosure is pursuant to a non-disclosure agreement containing terms at least as restrictive as those set forth herein that restrict the further disclosure of the other party's Confidential Information. Furthermore, a party may disclose Confidential Information pursuant to the order of a court or administrative body of competent jurisdiction, or to law enforcement agencies to prevent or investigate criminal activity. Upon termination or expiration of these Terms of Service, or at the request of the disclosing party, the receiving party shall return the Confidential Information to the disclosing party, or if requested by the disclosing party, destroy it and certify to the disclosing party that it has taken such action provided that one copy may be kept for record keeping purposes.

## 8. **PRIVACY**

- A. Opendgear and Carrier (and/or their agents and affiliates) may collect Customer Personal Information for purposes reasonably related to the provision of the Wireless Services (including keeping Customer informed about features of available services or conducting analysis in order to provide a better service). It may be necessary for Opendgear or Carrier to transfer, process and store billing and utilization data and other data necessary for provision of the Wireless Services. The transfer, processing and storing of such data may be to or from the United States, and Customer hereby agrees that Opendgear and Carrier may (i) transfer, store and process such data in the United States; and (ii) use such data for its own internal purposes and as allowed by law.
- B. Opendgear will comply with applicable privacy legislation in connection with any such Customer Personal Information it collects. Opendgear may receive or disclose such information or documents about Customer to or from (1) law enforcement agencies to assist them in the prevention or investigation of criminal activity; or (2) Carrier for purposes related to the provision of the Wireless Services. Except with Customer consent, Opendgear will not otherwise disclose Customer Personal Information to third parties, other than those which (3) have contracted with Opendgear to keep the information confidential; or (4) are subject to legal obligations to protect their personal information.
- C. Customer acknowledges that any calls made to Opendgear customer support centers may be recorded for quality assessment or training purposes. Any such recordings will be subject to the confidentiality and privacy provisions of these Terms of Service.
- D. For the purposes of this section, "Customer Personal Information" will include personal information of Customer's employees, contractors, representatives and customers.
- E. Upon any termination of these Terms of Service, Opendgear and Carrier may, but are not obligated, to delete any Customer Personal Information in their control.

## 9. **OWNERSHIP AND USE OF SIMS**

- A. Carrier retains full title to SIMs provided to Customer.
- B. Customer may not (and may not authorize any third party to): (1) decompile, disassemble, reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms or file formats or programming or interoperability interfaces of the SIMs; (2) remove any product identification, copyright, or other notices; (3) modify, incorporate into, or with other software create a derivative work of any part of the SIMs; (4) modify or otherwise alter the operation of the SIMs, or program, reprogram, or tamper with the SIMs in any manner; (5) rent, lease, lend or provide commercial hosting services with the SIMs; (6) insert the SIMs into devices bearing a Carrier mark, or that are purchased from Carrier that have been packaged with an Carrier SIM; or (7) provide SIMs, whether separately or together with an approved Device, to any individual or entity other than the expected subscriber of that SIM and device.
- C. Various components, functions, routines and/or portions of the SIMs may be protected by intellectual property rights including, but not limited to, designs, copyrights, trade secrets and one or more patents or pending patent applications ("IPR"). Customer is licensed to use such IPR, if any, only to the extent that such a license is required by Customer to install the SIMs on Customer's Devices per instructions provided by Opendgear. No other rights are granted under such IPR and no right to repair or replace



the SIMs is intended or provided and specifically, no right of reconstruction or repair is granted.

#### 10. FLOW-DOWN REQUIREMENTS

Customer expressly acknowledges that Opengear, through its parent company, Digi International Inc., has entered into long-term agreements with Carrier in its primary markets. Customer agrees to be bound by the following terms that arise from Opengear's obligation to flow provisions down to its customers for the Wireless Services:

- A. These Terms of Service do not create a contractual relationship between Customer and Carrier and the Customer is not a third party beneficiary of any agreement between Opengear or Digi International Inc. and Carrier. In any event, regardless of the form of the action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise and except for confidentiality obligations in these Terms of Service, Customer's exclusive remedy for claims arising in any way in connection with the provision of Wireless Services under these Terms of Service, for any cause whatsoever, including but not limited to any failure or disruption of Service provided hereunder, is limited to payment of damages in an amount not to exceed the amount paid by the Customer to Opengear for the Wireless Services during the twelve (12) month period preceding the date the claim arose.
- B. Customer expressly acknowledges and agrees that the use of any information available through the Wireless Services is at Customer's own risk and responsibility.
- C. Customer has no property interest in any number assigned to it, and understands that any such number can be changed from time to time.
- D. Customer understands that neither Opengear nor Carrier guaranty the security of wireless transmissions, and will not be liable for any lack of security relating to the use of the Wireless Services.
- E. Unless caused by the negligence of the Indemnified Party, Customer shall indemnify and hold harmless Opengear and the Carrier and their respective officers, employees, and agents (each an "Indemnified Party") against any and all claims, including without limitation claims for libel, slander, infringement of copyright, or personal injury or death, arising in any way directly or indirectly in connection with the Wireless Services or the use, failure to use, or inability to use the access telephone number or access the Device through the Wireless Service. This indemnity shall survive the termination of these Terms of Service.
- F. Carrier is a third party beneficiary of these Terms of Service, and may take any equitable or legal action required to enforce its provisions of these Terms of Service.

#### 11. GENERAL PROVISIONS

- A. **Entire Agreement; Amendment.** These Terms of Service set out the entire agreement between the parties concerning the matters described above and supersede all prior written or oral agreements, or understandings.
- B. **Assignment.** Customer shall not assign Customer's rights and obligations under these Terms of Service without the prior written consent of Opengear, which consent shall not be unreasonably withheld.
- C. **Non-exclusivity:** Nothing in these Terms of Service shall limit either party from pursuing alternative supplier and supply relationships.

- D. **Waiver.** A failure by either party to enforce any right under these Terms of Service shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under these Terms of Service. If any provision of these Terms of Service is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such a provision shall be deemed severed from the TSA and the other provisions shall remain in full force and effect.
- E. **Force Majeure.** Other than for obligations of payment arising hereunder, neither party will be liable for delays in its performance hereunder due to causes beyond its reasonable control, including but not limited to, acts of God, public enemy, government, regulatory authorities, or courts of law or equity, or caused by civil war, insurrection or riots, fires, floods, explosions, earthquakes or other casualties, strikes or other labor troubles, or failure of third party service providers or telecommunications networks or devices, provided that the party so relieved of its obligations hereunder provides notice to the other party and takes all reasonable and necessary steps to resume performance of its obligations as soon as possible. In the event a party invokes this clause for more than a cumulative period of 60 days, the other party may terminate this agreement.
- F. **Notice.** Any notice to a party required or permitted hereunder shall be sufficiently given only when provided in writing, and either personally delivered to a responsible officer of the addressee, or sent via certified or registered mail (return receipt required) or facsimile (with proof of transmission) to the party's address indicated herein and shall be deemed to have been received when such notice should have reached the addressee in the ordinary course.
- G. **Applicable Laws; Venue.** The interpretation, validity and enforcement of these Terms of Service shall be governed by the laws of the state of Minnesota (except that any conflicts-of-law principles of such state that would result in the application of the law of another jurisdiction shall be disregarded). Any legal action under or in connection with the subject matter of these Terms of Service shall be brought only in a United States District Court in Hennepin County, Minnesota. Each Party submits to the exclusive jurisdiction of these courts and agrees not to commence any legal action under or in connection with the subject matter of these Terms of Service in any other court or forum.
- H. **Sub-Contracting.** Opengear reserves the right to sub-contract any part of a Wireless Service, provided such third party agrees to be bound by these Terms of Service and Opengear retains responsibility for any such sub-contracted Wireless Services.
- I. **No Agency.** No agency, partnership, joint venture, or employment is created as a result of these Terms of Service and Customer does not have any authority of any kind to bind Opengear in any respect whatsoever.
- J. **Announcements.** Opengear may, in its own marketing and sales materials, including but not limited to on its websites, refer by names and logos to the Customer, unless Customer specifically advises Opengear otherwise. Each party may publicly disclose the existence of these Terms of Service (but not any specific material terms hereof).