

Echelon Corporation Seller Terms and Conditions  
("SOA")

- 1. Purchase of the Products.** ECHELON agrees to sell to CUSTOMER the hardware products ("Hardware Products") and license to CUSTOMER the software products ("Software Products") listed in this Sales Acknowledgment (collectively "Products"). Any Software Products in this Sales Acknowledgment are licensed subject to the applicable software license agreement governing such Products, as provided via shrinkwrap, break the seal, click through, mutually signed agreement, or as noticed on ECHELON's corporate website, as the case may be for each such Product.
- 2. Support Services.** ECHELON agrees to use all reasonable efforts to provide to CUSTOMER the support, design review, training and other services listed in this Sales Acknowledgment ("Services"), all under the terms and conditions governing such Services and in accordance with the specifications therefor. Except as provided in Section 7, Services are provided only for the then current-version of a Software Product.
- 3. Prices, License Fees, Service Fees and Taxes.**

  - a. The prices for Hardware Products, the license fees for Software Products, and the service fees for Services are set forth on the reverse and are exclusive of all taxes, including foreign, federal, state, municipal, or other government taxes (except taxes paid on ECHELON's net income) and duties. Any such tax or duty shall be paid by CUSTOMER. All prices are quoted and to be paid in United States Dollars.
  - b. All payments by CUSTOMER shall be made free and clear of, and without reduction for, any withholding taxes. Any such taxes which are otherwise imposed on payments to ECHELON shall be the sole responsibility of CUSTOMER. CUSTOMER shall provide ECHELON with official receipts issued by the appropriate taxing authority or such other evidence as is reasonably requested by ECHELON to establish that such taxes have been paid.
- 4. Terms of Payment.** CUSTOMER agrees to pay ECHELON's invoices within thirty (30) days of the shipment of Products or within thirty (30) days of the invoice date for Services; provided, however, that ECHELON reserves the right to require payment in advance or by letter of credit. If payment of any amount due to ECHELON becomes overdue, ECHELON may, without prejudice to any other right or remedy (i) charge interest on a day to day basis from the invoice date until payment in full on the outstanding amount at the rate of one and one-half percent (1 1/2%) per month or, if less, such other rate as may be the maximum permitted by law, (ii) require payment in advance of delivery of undelivered Products or (iii) suspend delivery of any orders. All payments are to be made in United States Dollars.
- 5. Delivery.**

  - a. Unless otherwise expressly agreed in writing and signed by ECHELON, all products are sold FCA Shipping Point (where "Shipping Point" means ECHELON's designated shipping facility). Freight and duty, as applicable, will be charged from this shipping point and shall be paid by CUSTOMER. Title, and risk of loss of or damage to the Products is transferred from ECHELON to CUSTOMER when ECHELON delivers the Products to the carrier. Insurance charges (if insurance is requested by CUSTOMER in writing) will be collect or, if prepaid, will be invoiced to and paid by CUSTOMER. Scheduled shipment dates for delivery to carrier are estimates only.
  - b. CUSTOMER shall provide ECHELON with written shipment instructions to within twenty (20) days of the scheduled carrier ship date. ECHELON will use its reasonable efforts to accommodate these instructions. In the absence of specific instructions, ECHELON will ship the Products by the method it deems most advantageous, in its sole discretion.
  - c. Unless otherwise agreed to in writing and signed by ECHELON, ECHELON shall use standard commercial packaging. When special packaging is requested or in the opinion of ECHELON, required, the costs of the same, if not set forth on the invoice, will be separately invoiced to and paid by CUSTOMER. Products held or stored for CUSTOMER after an agreed upon carrier delivery date shall be held or stored at CUSTOMER's sole expense and risk.
- 6. Cancellation or Delay of Orders.**

  - a. CUSTOMER may cancel any order (or part thereof) or postpone delivery dates for any Products without charge by giving ECHELON written notice not less than ninety (90) days ("Freeze Date") prior to ECHELON's scheduled carrier delivery date for those Products. If CUSTOMER requests a postponement of over six (6) months, the order for such Products shall be considered canceled.
  - b. If CUSTOMER cancels any order (or part thereof) or requests delay in delivery after the Freeze Date of products with an aggregate sales price greater than \$2,500, CUSTOMER will pay a fifteen percent (15%) restocking charge. Cancellation or delay of orders with an aggregate sales price equal to or less than \$2,500 is not subject to the restocking charge. CUSTOMER will have no rights in partially completed goods from canceled orders.
  - c. If CUSTOMER requests and is granted a delay in delivery, and if ECHELON has, prior to such request, notified CUSTOMER of price changes that are effective at the time of the new scheduled carrier delivery date, then ECHELON's price to CUSTOMER on Products for which delivery was delayed and any penalties due to ECHELON hereunder shall be based upon ECHELON's new list prices.
- 7. Substitutions and Modifications; Discontinuances.** ECHELON reserves the right to make substitutions or modifications to the specifications or implementations of the Products, provided that these substitutions and modifications do not materially reduce overall system performance. ECHELON may from time to time discontinue Products or versions thereof, and stop supporting these Products and versions thereof within a reasonable time after discontinuance, or discontinue offering any or all Services.
- 8. Security Interest.** To the extent permitted by applicable law, (i) ECHELON hereby reserves a purchase money security interest in all Products sold or licensed hereunder and the proceeds thereof in the amount of their purchase price until all such Products have been paid for in full. CUSTOMER hereby agrees to perform all acts necessary or appropriate to assist ECHELON in perfecting and maintaining such security interest. In the event of a default by CUSTOMER of any of its obligations to ECHELON, ECHELON will have the right, without liability to CUSTOMER, to repossess the Products sold or licensed hereunder, or (ii) ownership, legal or beneficial, of the Products will not pass to the CUSTOMER until ECHELON has received full payment in cleared funds for all sums owing to ECHELON on any account. Until ownership passes to the CUSTOMER, the Products shall be held by the CUSTOMER as ECHELON's fiduciary agent and bailee, the CUSTOMER shall keep the Products identified as ECHELON's property, and at the CUSTOMER's expense, on request by ECHELON, immediately return the Products or permit ECHELON's representatives to enter the CUSTOMER's premises and repossess such Products.
- 9. Installation.** For applicable Products, CUSTOMER will be provided with telephone support for Product installation in accordance with ECHELON's standard practices.

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**10. Limited Warranty.** Unless otherwise expressly described and published in a particular product specification, data sheet or otherwise agreed to in a writing signed by ECHELON, ECHELON warrants the Hardware Products only against defects in materials and workmanship for a period of one (1) year after shipment to CUSTOMER. ECHELON's sole and exclusive liability and CUSTOMER's sole remedy under this warranty shall be, at ECHELON's option, to provide repaired or replacement Hardware Products for such defective Hardware Products. The Products which CUSTOMER considers defective shall be returned per ECHELON's standard Return Material Authorization procedures. This warranty shall be void if, in ECHELON's reasonable opinion, such defective condition was caused in whole or in part by CUSTOMER's misuse, neglect, testing, attempts to repair, or any other cause beyond normal usage in accordance with Echelon's written specifications, or by accident, fire, or other hazard. Repair or replacement does not extend the warranty period for such Product. The limited warranty, if any, for Software Products will be as set forth in the software license agreement accompanying the Products. ECHELON makes no warranty for Services. The warranty contained herein is made and valid to the original CUSTOMER only, and not to any subsequent purchaser.

THE WARRANTY SET FORTH ABOVE IS IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTELLECTUAL PROPERTY OWNERSHIP OR SATISFACTORY QUALITY. WITH RESPECT TO SERVICES, ECHELON SPECIFICALLY DOES NOT GUARANTEE THAT ALL PROBLEMS WILL BE SOLVED OR THAT ANY RESPONSE WILL BE ERROR-FREE. Without limiting the generality of the foregoing, and unless ECHELON expressly agrees otherwise in writing signed by an authorized signatory, design review services will be based on ECHELON's preliminary review of the CUSTOMER'S assembly under examination and reliant on CUSTOMER'S information and representations, and are not intended to represent, nor may be considered or relied upon as a thorough engineering analysis of the design. It is the responsibility of the CUSTOMER thoroughly to review the architecture and engineering of its design, assembly and components used therein using the latest revision of the pertinent User's Guides and manuals for all parts, including, without limitation, the Neuron® Chip. Without limiting the generality of the foregoing, no claim is made regarding the suitability of the assembly under test with regard to a particular application, regulatory compliance, or safety agency compliance.

**11. Limitation of Liability.** IN NO EVENT SHALL ECHELON OR ITS SUPPLIERS BE LIABLE FOR LOSS OF OR CORRUPTION TO DATA, LOST PROFITS OR LOSS OF CONTRACTS, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR OTHER SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OF PRODUCTS BY CUSTOMER OR ANY THIRD PARTY, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), INTELLECTUAL PROPERTY, INDEMNITY, PRODUCT LIABILITY OR OTHERWISE. THIS LIMITATION WILL APPLY EVEN IF ECHELON OR AN AUTHORIZED DISTRIBUTOR HAS BEEN ADVISED OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EXCLUDING CASES WHERE LIABILITY CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW, ECHELON'S TOTAL LIABILITY UNDER OR ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, NEGLIGENCE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LIABILITY UNDER SECTION 13, SHALL NOT EXCEED IN AGGREGATE THE LESSER OF U.S. \$100,000 OR ONE HUNDRED AND TEN PERCENT (110%) OF THE PURCHASE PRICE PAID FOR PRODUCTS AND SERVICES UNDER THIS AGREEMENT THAT GIVE RISE TO SUCH LIABILITY.

**12. Ownership.** As between the parties, ECHELON owns all work ECHELON does and all information ECHELON provides as part of the Services, including all copy rights and other intellectual property rights. ECHELON grants to CUSTOMER a non-exclusive license to use that work and information only to the extent such use is permitted under the Software License Agreement governing the Software Products to which this work and information pertains. Unless otherwise set forth in a separate confidentiality agreement between the parties, ECHELON has the right to use and treat as non-confidential any information provided by CUSTOMER in connection with the Services.

**13. Indemnification.** ECHELON agrees to defend CUSTOMER in any action for infringement of any third party United States or European Union patent by Hardware Products, and to pay any liabilities, damages and costs awarded against CUSTOMER to such third party in any such action by a court of competent jurisdiction or agreed by ECHELON in settlement of any such action, provided that CUSTOMER notifies ECHELON promptly in writing of such suit or proceeding, does not make any prejudicial admission or statement, gives ECHELON all reasonable assistance at CUSTOMER's expense and gives ECHELON sole control of the defense and all negotiations for the settlement or compromise thereof. This indemnity shall not apply if normally non-infringing Hardware Products are rendered infringing by reason of CUSTOMER's particular use of such Hardware Products, combination of the Hardware Products with other non-ECHELON products, or the modification of the Hardware Products by anyone other than ECHELON. At its option, ECHELON may at any time replace, modify, or procure for the CUSTOMER the right to continue using any Hardware Products to avoid any infringement. The indemnification for Software Products, if any, is as set forth in the Software License Agreement accompanying the Products.

ECHELON'S LIABILITY UNDER THIS PARAGRAPH 13 SHALL NOT EXCEED ONE HUNDRED AND TEN PERCENT (110%) OF THE TOTAL AMOUNT PAID BY CUSTOMER TO ECHELON WITH RESPECT TO THE HARDWARE PRODUCTS GIVING RISE TO SUCH LIABILITY. THE FOREGOING STATES THE ENTIRE LIABILITY AND OBLIGATION OF ECHELON WITH RESPECT TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHT BY THE PRODUCTS OR ANY PART THEREOF.

**14. Safe Operation.** CUSTOMER ASSUMES RESPONSIBILITY FOR, AND HEREBY AGREES TO USE CUSTOMER'S BEST EFFORTS IN, DESIGNING, MANUFACTURING, COMMISSIONING AND MONITORING DEVICES AND SYSTEMS THAT INCORPORATE THE PRODUCTS SOLD HEREUNDER TO PROVIDE FOR SAFE OPERATION THEREOF, INCLUDING, BUT NOT LIMITED TO, COMPLIANCE OR QUALIFICATION WITH RESPECT TO ALL SAFETY LAWS, REGULATIONS AND AGENCY APPROVALS, AS APPLICABLE. CUSTOMER ACKNOWLEDGES THAT THE HARDWARE AND LICENSED SOFTWARE PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE SMART TRANSCEIVERS, NEURON® CHIPS, THE LONTALK® PROTOCOL, NEURON CHIP FIRMWARE, CUSTOMER DEVICES, CUSTOMER DEVICE PLUG-INS AND LONWORKS NETWORK INTERFACES ARE NOT DESIGNED OR INTENDED FOR USE AS COMPONENTS IN EQUIPMENT INTENDED FOR SURGICAL IMPLANT INTO THE BODY, OR OTHER APPLICATIONS INTENDED TO SUPPORT OR SUSTAIN LIFE, FOR USE IN FLIGHT CONTROL OR ENGINE CONTROL EQUIPMENT WITHIN AN AIRCRAFT, OR FOR ANY OTHER APPLICATION IN WHICH THE

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FAILURE THEREOF COULD CREATE A SITUATION IN WHICH PERSONAL INJURY OR DEATH MAY OCCUR, AND CUSTOMER SHALL HAVE NO RIGHTS HEREUNDER FOR ANY SUCH APPLICATIONS.

**15. Export Controls.** CUSTOMER shall comply with any United States export controls governing export of any technical data or technology provided by ECHELON. If CUSTOMER is other than a U.S. entity or is located outside the U.S., CUSTOMER, as a prior condition to exercising its rights hereunder, CUSTOMER shall execute any letter of written assurances required for the export of technical data or technology by ECHELON and shall comply with such other requirements of the U.S. Department of Commerce or other applicable agency for the export of technical data or technology by ECHELON and shall comply with such other requirements of the U.S. Department of Commerce or other applicable agency for the export of technical data or technology by ECHELON to CUSTOMER. CUSTOMER SHALL INDEMNIFY AND HOLD ECHELON FULLY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND DAMAGES RESULTING FROM CUSTOMER'S FAILURE TO COMPLY WITH ANY LAWS, RULES AND REGULATIONS IN CONTRAVENTION OF THIS SECTION.

**16. Partial Invalidity.** If any provision in this Agreement shall be held to be in valid or unenforceable, the remainder of this Agreement shall remain valid and enforceable.

**17. Acceptance.** CUSTOMER will accept Products if such Products conform to all material specifications of ECHELON. CUSTOMER will provide ECHELON with notice of any material nonconformity within ten (10) days of CUSTOMER's receipt of Products ("Initial Acceptance Period"). After resolution or correction, ECHELON will provide CUSTOMER with notice that such nonconformities have been resolved or corrected, and a new ten (10) day acceptance period ("Subsequent Acceptance Period") will commence. If ECHELON is not provided with notice of any such nonconformities during any Initial or Subsequent Acceptance Period, then CUSTOMER agrees that the Products shall be deemed accepted.

**18. Termination.** In the event that (i) CUSTOMER defaults in the performance of any material provision of this Agreement, (ii) any proceeding, voluntary or involuntary, in bankruptcy, insolvency or any other analogous event in any jurisdiction is initiated by or against CUSTOMER, or (iii) any assignment of CUSTOMER's assets for the benefit of creditors is made, this Agreement shall, if such condition is not corrected within thirty (30) days after written notice thereof from ECHELON, at ECHELON's option, terminate, and ECHELON may elect to cancel any unfilled orders hereunder. Within two (2) weeks after any such termination, CUSTOMER shall return to ECHELON the original and all copies, in whole or in part, including partial copies and modifications, of the Software Products, or, if permitted by ECHELON, destroy such items and deliver certification thereof to ECHELON. In addition, ECHELON reserves the right to terminate Services to anyone who abuses any support or other program including, but not limited to, sharing PIN numbers, account numbers or passwords with others. Notwithstanding the foregoing, the provisions of Sections 4, 8, 10, 11, 12, 13, 14, 15 and 19 hereof shall survive any termination of this Agreement.

**19. General Provisions.** ECHELON and CUSTOMER agree that (i) this Agreement shall be governed by the Laws of the State of California, U.S.A. including its Uniform Commercial Code, but excluding the body of California law concerning conflicts of law and excluding the U.N. Convention on the International Sale of Goods, (ii) CUSTOMER consents to jurisdiction of and venue in the State and federal courts located in Santa Clara County, California, USA, (iii) CUSTOMER shall not assign this Agreement without the prior written consent of ECHELON, but ECHELON may assign this Agreement to an entity that succeeds to all or substantially all of the business assets of ECHELON, (iv) no modification to this Agreement, or any waiver of any rights, shall be effective unless assented to in writing and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default, (v) the prevailing party in any legal action hereunder shall be entitled to reimbursement of its expenses including without limitation reasonable attorneys' fees, (vi) any required notices hereunder shall be given in writing at the address of each party set forth on the reverse side of this page, and shall be deemed served when delivered or, if delivery is not accomplished by reason or some fault of the addressee, when tendered, and (vii) this Agreement and any software license agreement accompanying the Products constitute the entire and exclusive agreement between the parties hereto with respect to the subject matter hereof.