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## BAYCOM OPERATING TERMS & CONDITIONS

THIS SET OF TERMS AND CONDITIONS (the “Agreement”) governs all goods and services BAYCOM, Inc. (“BAYCOM”) provides to a customer of BAYCOM (“Customer”) pursuant to the terms of an Acknowledgment of Order (the “Acknowledgment”) which BAYCOM and the Customer have executed for equipment, systems or services.

### SECTION 1 – DEFINITIONS

“Agreement” means this Agreement and each Acknowledgment which BAYCOM and Customer execute, together with any attachments (collectively the “Attachments”) affixed to each Acknowledgment. “Equipment” means the equipment that is specified in any Acknowledgment or that is subsequently added to any Acknowledgment. “Service(s)” means those installations, maintenance, repair, support, training, and other services referred to in each Acknowledgment.

### SECTION 2 – ACCEPTANCE

Customer agrees to accept the terms of this Agreement and to pay the prices set forth in each Acknowledgment. The terms and conditions set forth in this Agreement and each Acknowledgment will become binding only when accepted in writing by BAYCOM. The term of this Agreement will commence on the date specified in each Acknowledgment, including any Attachment to the Acknowledgment (“Start Date”). BAYCOM shall not be bound by terms and conditions in Customer’s purchase order or elsewhere unless expressly agreed to in writing.

### SECTION 3 – SCOPE OF SERVICES

1. BAYCOM will provide the Services generally described in each Acknowledgment. Certain Services may require more particular description or definition or may require a detailed Statement(s) of Work (“SOW”) attached to each Acknowledgment. If particular descriptions or detailed SOWs are required and are therefore attached to an Acknowledgment, Customer hereby agrees to be bound by any additional terms included in those Attachments, which are fully incorporated in each Acknowledgment.
2. BAYCOM may also provide additional services (“Additional Services”) at Customer’s request, which shall be specified in either an Acknowledgment or SOW. Such Additional Services will be billed at BAYCOM’s then-applicable rates for such services and documented in the form of an Acknowledgment or SOW.
3. If BAYCOM is providing Services for Equipment: (i) manufacturers parts or parts of equal quality will be used; (ii) the equipment will be serviced at levels set forth in manufacturers product manuals; and, (iii) routine service procedures that are prescribed from time to time by manufacturer for its products will be followed.
4. Any Equipment purchased by Customer from BAYCOM that is or becomes part of the same system as the Equipment covered under an Acknowledgment or SOW (“Additional Equipment”) will be automatically added to this Agreement and will be billed at the applicable rates.
5. All Equipment must be in good working order on the Start Date or at the time the Equipment is added to an Acknowledgment or SOW. Customer must provide a complete serial number and model number list either prior to the Start Date or prior to the time that the Equipment is added to an Acknowledgment or SOW.

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6. Customer must specifically identify any Equipment that is labeled intrinsically unsafe for use in hazardous environments.
7. Customer must promptly notify BAYCOM in writing when any equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay service fees for such Equipment will terminate at the end of the month in which BAYCOM receives such written notice.
8. If Equipment cannot, in BAYCOM's opinion, be properly or economically serviced for any reason including excessive wear, unavailability of parts, the state of technology, or the practical feasibility of the scope of Services as specified in an Acknowledgement or SOW, BAYCOM, may; (1) modify the scope of Services related to such Equipment; (2) remove such Equipment from the applicable Acknowledgement or SOW; and/or (3) increase the price to Service such Equipment.
9. Customer must promptly notify BAYCOM directly of any Equipment failure. BAYCOM will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in the applicable Acknowledgement or SOW.

### SECTION 4 – EXCLUDED SERVICES

1. Service does not include the repair or replacement of Equipment that has become defective or damaged due to physical or chemical misuse or abuse from third party causes, including, without limitation, lightning, power surges, liquids, or Force Majeure, as outlined in Section 14.
2. Unless specifically included in an Acknowledgement or SOW, Service does not include repair or maintenance of any transmission line, antenna, tower or tower lighting, generators, equipment shelters, duplexer, combiner, or multicoupler. BAYCOM has no obligation or responsibility for any transmission medium, including, without limitation, telephone lines, computer networks, the internet or the world wide web, or for Equipment malfunction caused by such transmission media.
3. Unless specifically included in an Acknowledgement or SOW, Service does not include items that are consumed in the course of normal operation of the Equipment, such as, but not limited to, batteries, magnetic tapes, etc.
4. Unless specifically set forth in an Acknowledgement or SOW, Service does not include upgrading or reprogramming of Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software.

### SECTION 5 – ASSIGNMENT/SUBCONTRACTING

Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Baycom may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Baycom separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Baycom may, without the



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prior written consent of the other Party and at no additional cost to Baycom, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Baycom and its affiliates, to the extent applicable) following the Separation Event.

Baycom may subcontract any of the work in this Agreement, but subcontracting will not relieve Baycom of its duties under this Agreement.

#### **SECTION 6 – TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in the Acknowledgement or SOW. When BAYCOM performs service at Customer's location, Customer agrees to provide BAYCOM, at no charge, a non-hazardous work environment with shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from BAYCOM and/or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the equipment is interfacing that enables BAYCOM to perform its obligations under the Acknowledgement or SOW. Unless otherwise specified in an Acknowledgement or SOW, the hours of Service Monday through Friday will be 8:30 a.m. to 4:30 p.m. local time, excluding weekends and holidays. Unless otherwise stated in the Acknowledgment or SOW, the price for Services exclude any charges or expenses associated with tower crews or other unusual access requirements; if these charges or expenses are reasonably incurred by BAYCOM in rendering the Services, Customer agrees to reimburse BAYCOM for those charges and expenses.

#### **SECTION 7 – CONTACT**

Customer will provide BAYCOM with designated points of contact (list of names and phone numbers) that will be manned twenty-four (24) hours per day, seven (7) days per week and an escalation procedure to enable Customer to maintain contact with BAYCOM, as needed.

#### **SECTION 8 – PAYMENT**

Unless alternative payment terms are specifically set forth in an Acknowledgement or SOW, BAYCOM will invoice Customer at completion of work. Customer must pay each invoice in U.S. dollars within thirty (30) days of the invoice date.

In the case of Service Agreements, Customer affirms that a purchase order or notice to proceed is not required for the duration of this service contract and will appropriate funds each year through the contract end date. Unless alternative payment terms are stated in this Agreement, Baycom will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (30) days of the invoice date.

Customer will reimburse Baycom for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Baycom) by any governmental entity. The Customer will pay all invoices as received from Baycom. At the time of execution of the Acknowledgement or SOW, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.



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## **SECTION 9 – WARRANTY**

BAYCOM warrants that its Services under each Acknowledgement and SOW will be performed in good faith and be substantially free of defects in materials and workmanship based on an industry standard for a period of ninety (90) days following completion of those Services. In the event of a breach of this warranty, Customer's sole remedy is to require BAYCOM to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. BAYCOM DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PRODUCT. The foregoing warranty shall not apply to and BAYCOM shall not be liable for any damage or loss relating to (i) any parts or other material supplied by Customer or other third persons, or (ii) Equipment that shall have been subjected to unauthorized alteration or modification, negligence, accident, damage by circumstances beyond BAYCOM's control, improper operation, maintenance or storage, or that were in any way modified by any party other than BAYCOM or an authorized representative thereof. In no event shall BAYCOM have any liability for any damages, whether incidental, consequential, punitive or otherwise (even if BAYCOM has been advised of the possibility of such damages), for any breach of warranty or any other act, omission, default or breach, including, but not limited to, any liability for lost profits, product recall costs or any loss of business or goodwill. Customer shall inspect all Equipment and Service promptly upon receipt and shall give written notice to BAYCOM of any claims based on the aforementioned warranty as soon as practicable, but in any event within 90 days after delivery to Customer of such Service. If Customer fails to give written notice to BAYCOM of a claim with respect to any Service within 90 days after delivery thereof as provided above, such Service shall be deemed to conform to BAYCOM's warranty and Customer shall be deemed to have irrevocably accepted such Service and shall be obligated to pay for it in accordance with the applicable Acknowledgement or SOW. THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SERVICE CONDITION, SERVICE OVER ANY PERIOD OF TIME, OR NONINFRINGEMENT, EACH OF WHICH BAYCOM HEREBY EXPRESSLY DISCLAIMS IN ITS ENTIRETY.

## **SECTION 10 – CERTIFICATION DISCLAIMER**

BAYCOM specifically disclaims all certifications regarding the manner in which BAYCOM conducts its business or performs its obligations under each an Acknowledgement or SOW, unless such certifications have been expressly accepted and signed by a BAYCOM authorized signatory.

## **SECTION 11 – DEFAULT/TERMINATION**

1. In the event that any sum of money owed by Customer is not paid when due and remains unpaid for a period of thirty (30) days after receipt by Customer of written notice of such delinquency, BAYCOM may terminate any Acknowledgement or SOW effective upon seven (7) days written notice. If either party defaults in the performance of its obligations set forth in this Agreement, or in any Acknowledgement or SOW, and the default remains uncured for a period of thirty (30) days after receipt by such party of written notice from the other party detailing the specific contractual obligation and the nature of the default thereunder, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement and any Acknowledgement or SOW effective upon the giving of notice in writing to the defaulting party.
2. Any termination of this Agreement (or any Acknowledgement or SOW) will not relieve either party of obligations previously incurred pursuant to this Agreement (or any Acknowledgement or SOW), including but not limited to payments which may be due and owing at the time of termination. Upon the effective date of termination,



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BAYCOM will have no further obligation to provide Services. C. All sums owed by Customer of BAYCOM will become due and payable immediately upon termination of this Agreement or any Acknowledgement or SOW.

#### **SECTION 12 – LIMITATION OF LIABILITY**

Notwithstanding any other provision, except for personal injury or death, BAYCOM's total liability for losses, whether for breach of contract, negligence, warranty, or strict liability in tort is limited to the price of the previous twelve months of Services provided under this Agreement and each Acknowledgement or SOW during such time period. IN NO EVENT WILL BAYCOM BE LIABLE FOR LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LIQUIDATED DAMAGES, COMMERCIAL LOST PROFITS OF SAVINGS, OR OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO THE FULL EXTENT SUCH MAY BE AVAILABLE UNDER LAW. Customer agrees and acknowledges that BAYCOM shall have no liability to Customer should any services or goods BAYCOM furnishes to Customer cause any interruption or suspension in the operation of Customer's operating systems, software programs or network (collectively the "IT Systems"). Customer acknowledges that such disruptions and interruptions to the IT Systems represent an inherent business risk which Customer is agreeing to accept when it contracts with BAYCOM for services or goods.

#### **SECTION 13 – INSURANCE; INDEMNIFICATION**

Throughout the term of this Agreement and each Acknowledgement or SOW, BAYCOM will maintain the following insurance coverage:

1. Commercial General Liability insurance providing the customary coverage with policy limits of \$1,000,000 per occurrence for bodily injury and property damage combined;
2. Automobile Liability insurance applicable to all owned, non-owned, and hired vehicles operated in the course of BAYCOM's business activities and providing policy limits of \$1,000,000 per occurrence for bodily injury and property damage combined; and
3. Workers Compensation Insurance providing statutory benefits and Employers Liability coverage (\$500,000 Bodily Injury Each Accident, \$500,000 Bodily Injury by Disease-Policy Limit, and \$500,000 Bodily Injury by Disease-Each Employee) applicable to all employees of BAYCOM who perform Services for Customer under this Agreement or any Acknowledgement or SOW.

If requested by Customer, BAYCOM will provide Customer with a certificate of Insurance evidencing the above coverage. BAYCOM may use a combination of primary and excess insurance to achieve the coverage limits required above. Customer agrees to defend and indemnify BAYCOM and its affiliated companies, officers, directors and employees from any such liability, claim, loss, damage or expense caused by or attributable to the acts or omissions of Customer.

#### **SECTION 14 – FORCE MAJEURE**

BAYCOM shall not be liable to Customer or any other person for any delay in delivery or failure to deliver Services or Equipment, directly or indirectly caused by fire, explosion, accident, flood, labor difficulties, strike or stoppage, inadequate supplies of material, shortage, war, act of terrorism, act or regulation of any governmental body, act of God or any other circumstance or cause beyond the commercially reasonable control of BAYCOM.



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#### **SECTION 15 – EXCLUSIVE TERMS AND CONDITIONS**

1. Customer acknowledges that this Agreement and each Acknowledgement or SOW shall supersede all prior and concurrent agreements and understandings, whether written or oral related to the Services performed. Neither this Agreement nor any Acknowledgement or SOW may be altered, amended, or modified except by a written agreement signed by duly authorized representatives of both parties. Customer acknowledges and agrees that none of BAYCOM’s agents, employees or representatives have authority to make any promise, representation or warranty related to the Services and Equipment other than those contained in this Agreement or in any Acknowledgement or SOW.
2. In the event of a conflict between the main body of this Agreement and any Acknowledgement or SOW, the main body of this Agreement will take, precedence, unless the Acknowledgement or SOW specifically states otherwise.
3. Customer agrees to reference the terms of this Agreement on any purchase order(s) issued in furtherance of this Agreement or any Acknowledgement or SOW. Neither party shall be bound by any terms contained in Customer’s purchase order(s), acknowledgments or other writings unless:
  - i. such purchase order(s), acknowledgments or other writings terms specifically refer to this Agreement; and
  - ii. clearly indicate the intention of both parties to override and modify this Agreement; and
  - iii. such purchase order(s), acknowledgments or other writings are signed by duly authorized representatives of both parties.

#### **SECTION 16 – PROPRIETARY INFORMATION; CONFIDENTIALITY**

1. Any information or data including, without limitation, specifications, drawings, reprints, or technical information furnished to Customer under this Agreement or any Acknowledgement or SOW will remain BAYCOM’s property, will be deemed proprietary, will be kept confidential and will be promptly returned at BAYCOM’s request. Customer may not disclose, without BAYCOM’s written permission, or as required by law, any such information or data to any person, or use such information or data itself for any purpose other than performing its obligations under the Agreement or any Acknowledgement or SOW. The obligations set forth in this Section will survive the cancellation, termination, or completion of this Agreement or any Acknowledgement or SOW.
2. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Customer to BAYCOM will be deemed secret or confidential. BAYCOM will have no obligation to provide Customer with access to its confidential and proprietary Information, including, without limitation, cost and pricing data.
3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Baycom patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

#### **SECTION 17 – LICENSES AND OTHER AUTHORIZATIONS**

Although BAYCOM may assist in the preparation of the FCC license application, Customer is solely responsible for obtaining any licenses or other authorizations required by the Federal Communications Commission (“FCC”) or any other



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Federal, State or Local government agency. Customer is solely responsible for complying with applicable FCC rules and regulations and the applicable rules and regulations of any other Federal, State or Local government agency. Neither BAYCOM nor any of its employees is an agent of Customer in FCC or other governmental matters. BAYCOM, however, may assist in the preparation of the FCC license application at no charge to Customer.

#### **SECTION 18 – COVENANT NOT TO EMPLOY**

During the term of this Agreement and each Acknowledgement or SOW, and continuing for a period of two (2) years thereafter, Customer agrees not to solicit the employment of, nor to recommend employment to any third party of any BAYCOM employee or BAYCOM subcontractor with whom there is contact during the term of this Agreement or any Acknowledgement or SOW, without the prior, written authorization of BAYCOM. If, at any time, this provision is found to be overly broad under the laws of the applicable jurisdiction, this provision shall be modified as necessary to conform to such laws rather than be stricken therefrom.

#### **SECTION 19 – MATERIALS, TOOLS AND EQUIPMENT**

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by BAYCOM for the purpose of this Agreement and any Acknowledgement or SOW will be and remain the sole property of BAYCOM. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to such property, and return it to BAYCOM upon request. Such property will be held by Customer for BAYCOM's use without charge and may be removed from Customer's premises by BAYCOM at any time without restriction.

#### **SECTION 20 – GENERAL TERMS**

1. If any portion of this Agreement or any Acknowledgement or SOW is rendered unenforceable, illegal or invalid, the remaining terms will continue in full force and effect.
2. This Agreement and each Acknowledgement and SOW and the rights and duties of the parties will be governed and interpreted in accordance with the laws of the State of Wisconsin.
3. The sole and exclusive venue for any proceeding arising out of this Agreement or any Acknowledgement or SOW shall be a state or federal court having jurisdiction in Brown County, Wisconsin. Customer hereby waives, to the fullest extent permitted by law:
  - (i) any objection that Customer may now or hereafter have to venue of any suit, action or other proceeding brought in such court;
  - (ii) any claim that any proceeding brought in such court has been brought in an inconvenient forum; and
  - (iii) any defense Customer may now or hereafter have based on lack of personal jurisdiction in such forum.
4. Failure or delay on the part of BAYCOM or Customer to exercise any right, power or privilege under this Agreement shall not operate as a waiver of any right, power or privilege of this Agreement.
5. Except for money due upon an open account, no action may be brought for any breach of this Agreement more than one (1) year after the accrual of such cause of action.

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6. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.
7. Customer agrees to reimburse BAYCOM for all costs and expenses, including, without limitation, reasonable attorney's fees, incurred by BAYCOM in enforcing its rights under this Agreement or any Acknowledgement or SOW.
8. Customer acknowledges that it has read and understands the terms and conditions of the Agreement and agrees to be bound by them, that it is the complete and conclusive statement of the agreement between the parties and that this Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and all understanding and agreements, oral and written, heretofore made between BAYCOM and Customer, are merged in this Agreement which alone fully and completely expresses their agreement.
9. If Baycom provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Baycom's then effective hourly rates.
10. This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.