

Telairity Terms and Conditions

As of March 1, 2011

1. **BINDING, EXCLUSIVE AGREEMENT.** Unless otherwise agreed in writing, these standard terms and conditions of sale (“**Agreement**”) apply to any sale or transfer of Product(s) by Telairity (or an authorized Reseller) to Customer. By placing any order or accepting any Product, Customer accepts and agrees to be bound by this Agreement. Telairity objects to and rejects any additional or different terms or conditions in any form tendered by Customer.

2. **DEFINITIONS.**

(a) **Customer** – the party named on the order confirmation, invoice or other form of purchase document for the Product(s).

(b) **Claim** – any and all claims, demands, causes of action, damages, injuries or liabilities, whether arising, at law or in equity, including those with respect to or arising under breach of contract, tort, negligence, delay in or failure of delivery, nonperformance, infringement, misappropriation, product or strict liability.

(c) **Intellectual Property** – all intellectual property, including without limitation patents, patent applications, copyrights, mask works, designs, utility models, moral rights, licenses, confidential or proprietary information, trade secrets, trade indicia (including trademarks, trade names, logos, product names and slogans), and all legal rights to inventions, know-how, methods, processes, Software, protocols, schematics, specifications, websites, works of authorship, and databases, whether arising under the laws of the United States of America, or any other state, country or jurisdiction.

(d) **Product(s)** – the product(s) delivered to and accepted by Customer pursuant to this Agreement, whether standard or custom, and any accompanying Services, excluding the Software.

(e) **Services** – Software modifications, board-level designs, and reviews of Customer’s products or designs, whether provided in connection with the sale of Products, or separately delivered.

(f) **Software** – all programs, algorithms, source, object, machine readable or executable code, and all operating, processing or other instructions, for computers, devices or Products that are provided, stored, used or delivered in any medium, and all related documentation.

3. **ORDERS AND DELIVERY.**

(a) All orders and requested changes to orders are subject to acceptance by Telairity, which acceptance will be (i) through Telairity’s written order acceptance sent to Customer (via electronic or physical means), or (ii) by delivery of a Product. Telairity reserves the right in its sole discretion to reject any order given by Customer, even if a price quote has been delivered to Customer.

(b) Delivery of Products will be EX WORKS Telairity’s Plant (INCOTERMS 2000). Scheduled delivery dates are estimates and subject to change. Actual delivery dates are not of the essence. Telairity will have no liability to Customer or any third party with regard to any delay in delivery, regardless of reason.

(c) Customer may only cancel an order for standard Products, in whole or in part, by delivery of written notice to Telairity at least thirty (30) days before the original

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scheduled delivery date. For a partial cancellation of an order that satisfies these notice requirements, prices will be adjusted based on remaining quantities in the order. Customer may request a one time rescheduling for up to thirty (30) days of the scheduled delivery date for Products, by a written notice received at least thirty (30) days before the original scheduled delivery date. Order for custom Products may not be canceled once an initial payment has been made by Customer, as described below.

(d) Telairity shall have the right to cancel an order at any time if Customer becomes insolvent or if voluntary or involuntary proceedings are commenced as to Customer under any bankruptcy or insolvency law, upon default or breach by Customer of the Agreement or applicable law, or after receipt of a Claim relating to any Products.

4. **PAYMENT TERMS.**

(a) Except as described below, Telairity shall receive full payment for a Product prior to Telairity's acceptance and shipment of an order. All payments shall be made by Customer to Telairity in the form of wire transfer or check in U.S. dollars.

(b) For orders of custom Products, fifty percent (50%) of the purchase price will be due and payable with acceptance of the order and shall be non-refundable, and the balance of the purchase price will be due and payable prior to shipment of the order. Telairity reserves the right to postpone manufacture of a custom Product prior to receipt of the initial fifty percent (50%) deposit.

(c) All taxes, assessments, fees, and charges applied by any governmental entity, authority, agency, official, or department on any Product or its sale, delivery, shipment or use will be added to the purchase price of the Product and will be paid by Customer, except to the extent that Customer provides Telairity with an acceptable tax exemption certificate.

5. **PROPRIETARY RIGHTS.** All right, title and interest in the Intellectual Property embodied in the Products (whether such Products are standard or custom) shall belong solely and exclusively to Telairity, and other than the Software license described below, Telairity does not grant, convey or confer any ownership, interest, right or license, express or implied, in or to any Intellectual Property to Customer. The Products and Software are protected pursuant to copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Telairity additionally licenses or owns and retains all interest in, title to and possession of all tooling of any kind (including masks and pattern generator tapes) and related Intellectual Property used in development, manufacturing and production of the Products.

6. **LIMITED WARRANTY; EXCLUSIONS.**

(a) Telairity warrants to Customer that the Products are, at the time of delivery, free from material defects in materials and workmanship, and will, for a period of one (1) year following delivery ("**Warranty Period**"), materially conform to any applicable written specifications. During the Warranty Period, Telairity, at its option, will repair any Product that proves to be defective in materials or workmanship, or replace it with a comparable Product that is new or refurbished, or refund Customer's purchase price paid. This shall be Customer's sole and exclusive remedy for defective Products, and such remedy shall extend only to the original Customer and no other users, third parties or transferees of the Product. These warranty obligations of Telairity are the sole and exclusive obligations of Telairity for all Claims.

(b) Customer is solely responsible for complete and thorough testing of

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Customer's hardware, software and equipment (collectively, "**Equipment**") interaction with the Products, even if Telairity has advised or assisted Customer with such testing. Telairity is not liable for any defect in or compatibility with Customer's Equipment, including but not limited to any defects or issues that would have been detected if Customer had adequately tested the Equipment. Telairity's warranty and support obligations do not include repair of any system or system component that has been damaged as a result of (i) accident, misuse, alteration, adjustment, repair or abuse of the system or component (such as use of incorrect line voltages or fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Telairity or its representatives; (ii) the moving of the system from one geographic location or entity to another; or (iii) an act of nature such as lightning, flooding, tornado, earthquake or hurricane.

(c) EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, TELAIRITY EXPRESSLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE PRODUCTS AND/OR SERVICES DELIVERED PURSUANT TO THIS AGREEMENT, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. TELAIRITY DISCLAIMS ANY WARRANTY THAT THE FUNCTIONS CONTAINED IN THE PRODUCTS, SERVICES OR SOFTWARE WILL MEET CUSTOMER'S NEEDS. NO OTHER ORAL OR WRITTEN INFORMATION PROVIDED BY TELAIRITY SHALL CREATE A WARRANTY OR INCREASE THE SCOPE OF ANY WARRANTY DESCRIBED HEREIN. THE SOFTWARE IS WITHOUT WARRANTY OF ANY KIND, AS FURTHER DESCRIBED BELOW.

(d) The limited hardware warranty on all Products begins on the date of delivery, as evidenced by a receipt or proof of delivery. The Warranty Period shall not be extended if Telairity repairs or replaces a warranted product or any parts. At its discretion, Telairity may change the availability or scope of the limited warranty, which shall be posted on its website, but any changes will not apply retroactively.

7. **HIGH-RISK DISCLAIMER.** The Products are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines or any other application in which the failure of the Products or Software could lead directly to death, personal injury or severe physical or property damage (collectively, "**High-Risk Activities**"). Telairity expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

8. **LIMITATIONS OF LIABILITY.**

(a) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE ENTIRE CUMULATIVE LIABILITY OF TELAIRITY AND ITS AFFILIATES (INCLUDING TELAIRITY'S RESELLERS), FOR ALL MATTERS OR CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE FEES PAID BY CUSTOMER TO TELAIRITY UNDER THIS AGREEMENT.

(b) TO THE MAXIMUM EXTENT PERMITTED BY LAW, TELAIRITY AND ITS AFFILIATES (INCLUDING TELAIRITY'S RESELLERS)

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SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CONNECTED IN ANY WAY WITH THE PRODUCTS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF TELAIRITY OR ITS AFFILIATES (INCLUDING RESELLERS) HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN TELAIRITY AND CUSTOMER, AND TELAIRITY WOULD NOT HAVE PROVIDED THE PRODUCTS WITHOUT SUCH LIMITATIONS.

9. SOFTWARE LICENSE.

(a) With respect to Software provided or otherwise made available to Customer by Telairity in connection with the Products, subject to Customer's compliance with the terms set forth in this Agreement, Telairity hereby grants Customer a personal, non-exclusive license to access and use such Software only in connection with the Products.

(b) Customer may not copy, modify, or create a derivative work, collective work, or compilation of the Software, and may not reverse engineer, decompile or otherwise attempt to extract the code of the Software or any part thereof. Customer may not license, sell, assign, sublicense, or otherwise transfer or encumber the Software. In addition, Customer may not access the Software to monitor its availability, performance or functionality, or for any other benchmarking or competitive purpose.

(c) Customer is further prohibited from (i) attempting to use or gain unauthorized access to Telairity or to any third party's networks or equipment; (ii) permitting other individuals or entities to use or copy the Software; (iii) attempting to probe, scan, or test the vulnerability of the Software or a system, account, or network of Telairity or any of its customers or suppliers; (iv) engaging in fraudulent activity of any nature; (v) restricting, inhibiting, or otherwise interfering with the ability of any other person, regardless of intent, purpose, or knowledge, to use or enjoy the Software; or (vi) restricting, inhibiting, interfering with, or otherwise disrupting or causing a performance degradation to any Telairity facility.

(d) Telairity shall have the right to perform an audit of Customer's use of the Software during normal business hours to verify compliance with the terms of this Agreement.

(e) A portion of the Software may contain or consist of open source software, which Customer may use under the terms and conditions of the specific license under which the open source software is distributed. THIS OPEN SOURCE SOFTWARE IS DISTRIBUTED IN THE HOPE THAT IT WILL BE USEFUL, BUT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY REGARDING TITLE OR AGAINST INFRINGEMENT. IN NO EVENT SHALL TELAIRITY, THE COPYRIGHT HOLDERS, OR THE CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE

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POSSIBILITY OF SUCH DAMAGE.

(f) At its discretion, Telairity may periodically provide software updates at no additional cost to Customer for the duration of the Warranty Period. Such updates may include modifications, program enhancements, bug fixes and new features. However, nothing shall require Telairity to develop and release updates or to customize the updates to satisfy Customer's particular requirements. The updates will not include any new products or services which Telairity makes generally available as separately priced products, services or features.

10. SERVICE AND SUPPORT.

(a) If Customer experiences performance problems with any Product covered under the limited warranty during the Warranty Period, Customer shall notify Telairity's Support department through one of the following methods:

VIA E-MAIL

- Customers within Asia: asiastupport@telairity.com
- All other Customers: support@telairity.com

VIA TELEPHONE

- Customers within Asia: Telephone number +86.10.85900061
 - Hours: 9:00 a.m. to 5:00 p.m. China standard time, Monday through Friday, excluding holidays
- All other Customers: Telephone number (408) 764-0270, extension 518
 - Hours: 9:00 a.m. to 5:00 p.m. Pacific standard time, Monday through Friday, excluding holidays

(b) For service and verification of the Product and related issues, Customer shall return the Product to Telairity's facility, postage prepaid and insured, at: **Telairity, Inc., 3375 Scott Blvd., Suite 300, Santa Clara, CA 95054-3110**. Customer shall be responsible for round trip shipping and insurance costs. At Telairity's option, however, Telairity may ship replacement parts and installation instructions at Telairity's cost to Customer's site.

11. OPTION TO PURCHASE EXTENDED WARRANTY AND SUPPORT. At any time before the end of the standard one (1) year limited hardware warranty, Customer may elect to purchase an extended hardware warranty with accompanying support for an additional one (1) year period ("**Extended Warranty**"). The Extended Warranty shall be charged on an annual basis at an additional fee of 20% of the original sales price of the Product (exclusive of any applicable taxes), due in full before the expiration of the initial Warranty Period. Customers who choose not to purchase an Extended Warranty are advised to buy and maintain an active spare unit for backup purposes. Out-of-warranty non-working units may be returned to Telairity's facility for repair to be charged on a time and materials basis; quotes shall be provided upon request. Prices for the Extended Warranty and repair services are subject to revision by Telairity in its discretion, but will not apply retroactively.

12. INDEMNIFICATION.

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(a) By Telairity. Telairity shall defend and indemnify Customer and its directors, officers, employees and agents against any third-party claim or action that the Products prepared or produced by Telairity and delivered pursuant to this Agreement infringe or misappropriate that third party's U.S. patent, copyright, trade secret, or other Intellectual Property rights (an "**Indemnified Claim**"). Telairity will defend and reimburse Customer for the portion of the damages directly attributable to an Indemnified Claim, as finally awarded by a court of competent jurisdiction. This indemnification is conditioned upon Customer providing Telairity: (i) prompt notification of the Indemnified Claim, (ii) all information and assistance reasonably helpful in defending the Indemnified Claim, and (iii) the sole and full authority to defend or settle the Indemnified Claim and any related proceedings. Notwithstanding the foregoing, Telairity shall have no obligation under this section for any claim resulting or arising from (A) modifications of the Products that were not performed by or on behalf of Telairity, or (B) the combination, operation or use of the Products with any third-party product, software, or service not provided by Telairity, where the infringement, misappropriation, or violation would not have occurred but for such modification or combination. This section states Customer's exclusive remedies for any third-party Intellectual Property claim or action, and nothing in this Agreement or elsewhere will obligate Telairity to provide any greater indemnity to Customer.

(b) By Customer. Customer shall defend and indemnify Telairity and its directors, officers, employees and agents against any third-party claim or action arising out of (i) Customer's breach of Telairity's proprietary rights as stated in this Agreement; (ii) any inaccurate representation regarding the existence of an export license or any allegation made against Telairity due to Customer's violation or alleged violation of applicable export laws, regulations, or orders; and (iii) any inadequacy or invalidity of any tax exemption certificate submitted by Customer.

(c) Each party shall defend and indemnify the other party against any third-party claim or action for personal bodily injury, including death, to the extent directly caused by the indemnifying party's gross negligence or willful misconduct in the course of performing its obligations under this Agreement.

13. CONFIDENTIALITY. In connection with this Agreement, each party may have access to or be exposed to information of the other party that is not generally known to the public, such as Intellectual Property, technical information, technology, samples, evaluation boards, designs, concepts, drawings, pattern generator tapes, manufacturing processes, research, development, product roadmaps or plans, marketing and sales information, costs or pricing, any of which may be designated as confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "**Confidential Information**"). Confidential Information may not be shared with third parties unless such disclosure is to the receiving party's personnel and representatives, including employees, agents, and subcontractors, on a "need-to-know" basis in connection with this Agreement, so long as such personnel are obligated to treat such Confidential Information under terms at least as restrictive as those herein. Each party agrees to take the necessary precautions to maintain the confidentiality of the other party's Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing shall not apply to information that (i) was known by one party prior to its receipt from the other or is or becomes public knowledge through no fault of the recipient; or (ii) is rightfully received by

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the recipient from a third party without a duty of confidentiality. If a recipient is required by a court or government agency to disclose Confidential Information, the recipient shall provide advance notice to other party before making such a disclosure. The obligations with respect to Confidential Information shall continue for five (5) years from the date of disclosure.

14. LEGAL COMPLIANCE; EXPORT RESTRICTIONS. Customer will comply with all applicable laws and regulations. Customer acknowledges that the Products may be subject to United States export control regulations and international trade controls, and Customer warrants and certifies that it will comply with all such applicable regulations.

15. DISPUTE RESOLUTION. Customer and Telairity will attempt to resolve any disputes between them through negotiation with persons fully authorized to resolve the dispute or through mediation utilizing a mediator agreed to by the parties, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a state or federal court in Santa Clara County, California, a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the dispute within thirty (30) days of notice of the dispute to the other party, the parties shall be free to pursue all remedies available at law or in equity. The English version of any documents shall control and all proceedings shall be in English.

16. FORCE MAJEURE. Neither party shall be liable to the other for any failure to perform any of its obligations (except payment obligations) under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control, such as weather, fire, flood, war, epidemics, embargoes, strikes, lockouts, riots, supply shortages, inability to obtain necessary labor, materials, or manufacturing facilities or services at commercially reasonable costs, factory or port conditions, the intervention of any governmental authority, civil or other disobedience, insurrection, rebellion or acts of a terrorist or other enemy (a “**Force Majeure**”). If a delay or failure of performance is due to Force Majeure, then a party’s performance will be excused for the period of delay caused by the Force Majeure. If non-delivery or impracticability of delivery of any or all of the Products results, in whole or in part, from any Force Majeure, Telairity’s failure to deliver will not be a breach, and Telairity may elect to terminate any order with respect to the affected Products without liability.

17. NOTICES. All notices to Telairity which are due or required under the Agreement shall be given and delivered to: Chief Executive Officer, Telairity, Inc., 3375 Scott Blvd., Suite 300, Santa Clara, CA 95054-3110. All notices to Customer may be given and delivered to Customer’s address as listed in Telairity’s records.

18. MISCELLANEOUS.

(a) This Agreement constitutes the entire agreement between Telairity and Customer with respect to the Products; supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter; and sets forth the entire liability

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of Telairity and its affiliates and Customer's exclusive remedies with respect to the Products and their use. Paragraph headings contained in the Agreement are for assistance only and shall not be deemed to be part of the Agreement or construed to vary, modify or alter the terms or conditions hereof.

(b) If any provision of the Agreement is invalid or unenforceable under applicable law, then it shall be interpreted to accomplish the objectives of such provision to the fullest extent possible under applicable law, and the remaining provisions will continue in full force and effect.

(c) This Agreement may not be assigned by Customer without the prior written approval of Telairity. Any assignment in violation of this section will be void.

(d) This Agreement will be governed by laws of the state of California, without regard to conflicts of laws principles, and applicable federal law. The parties hereby consent to the exclusive jurisdiction and venue in the state and federal courts in Santa Clara County, California, USA.

(e) The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.