



## RESELLER AGREEMENT

PLEASE CAREFULLY READ THIS RESELLER AGREEMENT (“AGREEMENT”). BY CLICKING “SUBMIT”, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO PARTICIPATE IN THE RESELLER CHANNEL PARTNER PROGRAM AND ACT AS A RESELLER OF AIR802 PRODUCTS.

This agreement is entered into between AIR802, LLC (“AIR802”) and the entity (“You” or “Reseller”) identified in the application You submitted during the enrollment process for the Reseller Channel Partner Program (“Reseller Program”). This Agreement governs Your participation in the Reseller Program, including Your use of the products and Support listed on AIR802’s then-current price list (“Products”) that You have been authorized by AIR802 to purchase directly from AIR802 or an Authorized Distributor, based Your certification and specialization levels of any current or future under the Reseller Program. As used in this Agreement, “Products” includes the operating manuals, user instructions, technical literature and other materials, in paper or electronic format that AIR802 generally provides to End Users of the Products. All defined terms herein have the meaning set forth in this Agreement.

### 1. RESELLER PROGRAM

1.1 Requirements for Participation. In order to be considered for participation in the Reseller Program, You must complete the online enrollment process, including acceptance of the terms of this Agreement. All applications for enrollment in the Reseller Program are subject to AIR802’s approval in writing or via email notification (“Approval Notice”), and AIR802 reserves the right to reject any application at its sole discretion. In the Approval Notice, AIR802 will indicate the Products that You are authorized to resell under this Agreement, as well as applicable Territory, if applicable and any other requirements applicable to You. If You do not agree with the requirements and conditions in the Approval Notice, Your only recourse is to terminate this Agreement upon notice to AIR802. Upon AIR802’s approval of Your participation in the Reseller Program, AIR802 will change your login account (“ID”) from Standard to Reseller, which will apply automatic discounts to your future purchases. As conditions to Your participation in the Reseller Program, You covenant, represent and warrant that (y) the information provided by You in the enrollment process is accurate and complete and that You will promptly notify AIR802 of any changes in such information, and (z) You will (and You will cause Your employees and agents to) maintain at all times the confidentiality of the ID and otherwise will treat such ID as Confidential Information (as defined in Section 6.1 below) of AIR802. You agree to accept all responsibility for all activities that occur under Your ID.

1.2 Modifications. A description of the Partner Program is available from AIR802 (“Program Terms”), as may be updated and revised by AIR802 from time to time. If any Program Term conflicts with the terms of this Agreement, this Agreement will control. AIR802 may modify the terms and conditions of this Agreement or the Program Terms at any time and in its sole discretion, by sending you a notice of such modification. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED PARTICIPATION IN THE RESELLER PROGRAM AFTER AIR802’S NOTICE WILL CONSTITUTE YOUR BINDING ACCEPTANCE OF THE MODIFICATION.

### 2. APPOINTMENT AS RESELLER: CERTAIN RIGHTS AND OBLIGATIONS OF RESELLER

2.1 Appointment. Subject to the terms and conditions of this Agreement and subject to AIR802's approval of Your enrollment in the Reseller Program, AIR802 appoints You as a non-exclusive reseller of the Products directly to end user customers who purchase the Products for their own personal or business use and not for resale ("End Users"). Under no circumstances are You authorized to resell the Products to any reseller, agent or other intermediary in the chain of distribution. You acknowledge and agree that You may not resell the Products through telesales, catalog sales, or over the Internet unless the End User enters into the sales transaction as a direct result of face-to-face interaction between You and the End User; except that You may not resell the Products on auction websites on the Internet under any circumstances. AIR802 reserves the unrestricted right to, directly and/or indirectly, promote, market, sublicense, distribute and otherwise exploit the Products.

2.2 Public Sector Sales. You may not sell to the United States federal, state or local government, either directly or indirectly through a contractor or subcontractor, unless You have been expressly approved by AIR802 in a separate written agreement.

2.3 Partner Obligations.

2.3.1. You will, at Your own expense, at all times comply with the policies and criteria established by AIR802 for the Reseller Program, including, but not limited to, maintaining a sales organization, facilities and other resources sufficient to carry out Your obligations under this Agreement. The majority of Your business shall be conducted through on-site, face-to-face interactions with End Users for the sales of Products.

2.3.2. You will be responsible for all costs, liabilities and obligations, including, but not limited to, any and all commissions and other fees, incurred in connection with Your promotion, marketing and distribution of the Products. You will (i) fully comply with all applicable laws, rules and regulations in the exercise of Your rights and performance of Your duties and obligations under this Agreement and will not engage in any illegal or unethical business practices promoting, marketing or distributing the Products; (ii) You will limit your claims and representations concerning the Products to those made by AIR802 in its published product literature, and You will be responsible for any claims or representations concerning the Products to those made by AIR802 in its published product literature, and You will be responsible for any claims or representations concerning the Products in excess of or inconsistent with such claims of AIR802; and (iii) You will not purchase for resale Products from any source other than directly from AIR802 or distributors of Products authorized by AIR802 to distribute Products to resellers in the Reseller Program.

2.3.3. If AIR802 offers special pricing of Products for demonstration or evaluation purposes and You purchase under such special pricing, You shall use these units solely for demonstration or internal evaluation. You shall not distribute, sell, or sublicense to any third party any of these units without the prior written consent of AIR802.

2.3.4. You will be required to maintain a minimum purchase quantity of \$2500 annually. Failure to meet the minimum purchase quantity shall result in Your removal from the Reseller Program.

2.4 Trademark License. Subject to the terms and conditions of this Agreement, AIR802 grants You a non-exclusive, non-transferable, royalty-free, limited license during the term of this Agreement to use the logos and trademarks authorized by AIR802 to be used by You in connection with the Reseller Program ("Trademarks") to promote, market and distribute the Products to End Users as authorized in this Agreement. You will use the Trademarks in accordance with AIR802's trademark usage guidelines as may be revised by AIR802 from time to time and such other guidelines as AIR802 may communicate to You from time to time. You acknowledge and agree that AIR802 owns the Trademarks, that the goodwill derived from the use of the Trademarks inures solely to AIR802, that You will not register any mark similar to any Trademark, and that You will not challenge the validity of the Trademarks. All representation of a trademark that You intend to use shall first be submitted to, and approved in writing

or via email by, the appropriate AIR802 personnel; such approval shall not be unreasonably withheld. Upon any termination of this Agreement, You shall cease use of all Trademarks.

### 3. PROTECTION OF PROPRIETARY RIGHTS: PROHIBITIONS.

3.1 You acknowledge and agree that: (i) AIR802 and its licensors and suppliers are the owners of all intellectual and industrial property, including without limitation, industrial designs, patents, copyrights, mask works, trademarks, and trade names relating to the Products; (ii) You shall have no rights in respect of such intellectual or industrial property other than to act as a reseller of the Products in accordance with this Agreement, and (iii) You will secure and protect the Products consistent with maintenance of AIR802's proprietary rights.

3.2 You acknowledge and agree that, notwithstanding the use of the terms "purchase" and "sell" in the Agreement, title to any software, whether imbedded in the hardware products or otherwise provided to You as part of the products (collectively, "Software") does not pass to You or any third party, and Your rights and the rights of the End Users with respect to any such Software shall only be those of a licensee and subject to the terms and conditions set forth in the license agreement accompanying such Software.

3.3 You will not, nor will You permit any End User or other third party to, (i) produce, manufacture, electronically distribute or otherwise copy the products; (ii) reverse engineer, disassemble, or decompile the Products in whole or in part or otherwise attempt to determine or discern source code for any part or all of the Products; or (iii) alter or modify the Products. You agree to promptly notify AIR802 of, and to assist AIR802 at AIR802's expense, with respect to, any infringement or unauthorized use of AIR802's proprietary rights of which You are aware or reasonably suspect. You shall not remove, alter, cover, or obscure any copyright, trademark or other proprietary rights notice placed by AIR802 on the Products or any portion thereof.

### 4. TERMS AND CONDITIONS FOR SUPPLY OF PRODUCTS

4.1 Purchase. You will purchase the Products from AIR802 or from Authorized Distributors, which AIR802 reserves the right to modify from time-to-time where specific products may be obtained. AIR802 may provide the Authorized Distributors with special pricing, rebates, discounts, promotions and other special incentive programs for such Authorized Distributors to provide to You in whole or in part. AIR802 will notify You of such programs from time to time by email notice.

### 5. LIMITED WARRANTY AND DISCLAIMER

5.1 Limited Warranty. You will pass on to End Users AIR802's standard limited warranty as included by AIR802 in the End User.

5.2 No Other Warranty. AIR802 MAKES NO WARRANTIES TO YOU. AIR802 PROVIDES THE PRODUCTS TO YOU "AS-IS" AND EXPRESSLY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, REGARDING THE PRODUCTS, THEIR FITNESS FOR ANY PURPOSE, THEIR QUALITY, THEIR MERCHANTABILITY, AGAINST INFRINGEMENT OF THIRD PARTY RIGHTS OR OTHERWISE ARISING UNDER RELATED TO THIS AGREEMENT. You shall be solely responsible from any and all representations, warranties or other commitments provided to End Users with respect to the Products.

5.3 In-Warranty Defective Returns. You shall be solely responsible for returning in-warranty defective Products to AIR802 or the Authorized Distributor from whom You purchased the Products. If purchased from the Authorized Distributor, You may be directed by the Authorized Distributor to return the defective Products to AIR802, in which case, You shall contact AIR802 directly to obtain a Return Merchandise Authorization ("RMA"), prior to returning the Products to AIR802.

### 6. CONFIDENTIALITY.

6.1 Confidentiality Required. During the term of this Agreement, each party (the "Receiving Party") may be provided with or otherwise learn confidential and/or proprietary information of the other party (the "Disclosing Party") (including, without limitation, certain information and materials

concerning the Disclosing Party's business, plans, technology, and products) that is of substantial value to the Disclosing Party, which is identified as confidential at the time of disclosure or which ought in good faith to be considered confidential based on the nature of the information or the circumstances surrounding disclosure ("Confidential Information"). All Confidential Information remains the property of the Disclosing Party. The Receiving Party may disclose the Confidential Information of the Disclosing Party only to its employees and/or contractors who need to know the Confidential Information for purposes permitted under this Agreement and who are bound by written confidentiality agreements with terms at least as restrictive as those provided in this Agreement. The Receiving Party will not sue the Confidential Information without the Disclosing Party's prior written consent except in exercising its rights or performing its obligations under this Agreement. The Receiving Party will take measures to maintain the confidentiality of the Confidential Information similar to those measures the Receiving Party uses to maintain the confidentiality of its own confidential information of like importance, but in no event less than reasonable measures. You will not publish any technical description of the Products beyond the description published by AIR802 for general dissemination. The Receiving Party will give immediate notice to the Disclosing Party of any unauthorized use or disclosure of the Confidential Information and agrees to assist the Disclosing Party in remedying such unauthorized use or disclosure.

6.2 Exceptions to Confidentiality. The confidentiality obligations do not extend to Confidential Information which (i) becomes publically available without the fault of the Receiving Party; (ii) is rightfully obtained by the Receiving Party from a third party with the right to transfer such information without obligation of confidentiality; (iii) is independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information; or (iv) was lawfully in the possession of the Receiving Party at the time of the disclosure, without restriction on disclosure. The Receiving Party will have the burden of proving the existence of any condition in this section 6.2.

## 7. INDEMNITY.

### 7.1 AIR802's Indemnity Obligation.

7.1.1. AIR802 will, at its own expense, defend any suit or proceeding brought against You or End Users (each an "Indemnified Party"), to the extent based on a claim that the Products (excluding third party software and other materials) directly infringe any duly issued U.S. patent or copyright of a third party, and AIR802 will pay all damages finally awarded against the Indemnified Parties or through AIR802's settlement of such claim; provided that (i) the Indemnified Party promptly notifies AIR802 in writing of any such claim, (ii) the Indemnified Party gives AIR802 sole control of the defense and settlement thereof, and (iii) the Indemnified Party provides all reasonable assistance in connection therewith, at AIR802's request and expense. The indemnified Party can participate in, but not control, the defense or settlement of any such claim at its own expense.

7.1.2. If the Products become or in AIR802's opinion are likely to become, the subject of an infringement claim, AIR802 may, at its option, (i) procure for the Indemnified Party the right to continue using the Products as provided in this Agreement; (ii) modify or replace the Products so that there is no infringement; or (iii) if neither of the foregoing options are reasonably available to AIR802, require the return of the affected Products and refund to the Indemnified Party the amounts paid for such Products depreciated over a three year period on a straight line basis.

7.1.3. Notwithstanding the foregoing, AIR802 will have no liability regarding any claim arising out of or related to: (i) any Products or components not supplied by AIR802 to the Indemnified Party hereunder; (ii) the combination, operation or use of any Product with other products, components, process or material not obtained from AIR802, if the claim of infringement would not have occurred but for such combination, operation or use; (iii) any modification to the Products not made by AIR802, if the claim of infringement would not have occurred but for such modification; (iv) use of the Products in a manner other than for which they were designed or in a manner other than as specified by AIR802; (v)

AIR802's compliance with specifications provided by the Indemnified Party; or (vi) failure to use replacement or modified Products provided by AIR802 (collectively, the "Excluded Claims").

7.1.4. THIS SECTION 7.1 STATES THE INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDY, AND AIR802'S SOLE LIABILITY, WITH RESPECT TO CLAIMS OF INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS OF ANY KIND.

7.2 Your Indemnity Obligation. Other than as to claims for which AIR802 is obligated to indemnify You under Section 7.2, and only to the extent of such indemnity, You will, at your expense, defend, indemnify and hold AIR802 and its directors, officers, employees and agents harmless against any and all claims, actions, demands, suits, losses, liabilities, judgments, expenses and costs (including without limitation reasonable attorneys' fees) arising out of or related to (i) Your marketing, licensing or distribution of the Products, including, but not limited to, Your modification of the Products or You representation of the Products in a manner inconsistent with AIR802's Product descriptions and warranties or this Agreement; (ii) Your actions or omissions of End Users or their agents; (iii) the Excluded Claims; or (iv) any combination of the foregoing.

## 8. TERM AND TERMINATION.

8.1 Term. The term of the Agreement begins on the Effective Date and will continue for one (1) year, and will automatically renew for successive one (1) year periods, unless earlier terminated as provided in this Section 8.

8.2 Termination for Convenience. Either party may terminate this Agreement upon providing thirty (30) days written notice to the other party, except that AIR802 may, within the first thirty (30) days of this Agreement terminate the Agreement immediately upon notice to You.

8.3 Termination for Cause. Either party may terminate this Agreement immediately, upon written notice to the other party, upon the other party's material breach of any term of this Agreement no cured within thirty (30) days following receipt of written notice from the non-breaching party describing such breach, or immediately upon notice to the other party when the breach is not capable of cure. AIR802 may terminate this Agreement immediately upon notice to You: (i) upon institution by or against You of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of the other's debts, (iii) upon Your making an assignment for the benefit of creditors or (iv) upon Your dissolution or ceasing to conduct business in the normal course.

8.4 Effect of Termination. After any termination or expiration of this Agreement, neither party shall have any liability to the other for any claims arising out of a termination of this Agreement in accordance with its terms, including without limitation, for compensation, reimbursement or damages for the loss of prospective profits, anticipated sales or goodwill. However, termination shall not extinguish any liability of either party arising before termination of this Agreement. If You have an inventory of Products on the date of termination, unless AIR802 terminated this Agreement pursuant to Section 8.3 above, You may continue to resell the Products in accordance with the terms of this Agreement. All Confidential Information and sales and promotional materials will remain the property of AIR802 and will be returned to AIR802, upon the later of Your completion of resale of the Products as permitted in this Section or thirty (30) days after the effective date of termination.

## 9. LIMITATION OF LIABILITY.

9.1 AIR802's LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER UNDER CONTRACT, INDEMNITY, TORT, STATUTE, OR OTHER LEGAL THEORY, WILL NOT EXCEED THE AMOUNTS PAID OR PAYABLE BY YOU TO AIR802 OR AUTHORIZED DISTRIBUTOR FOR THE PRODUCTS IN THE THREE-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE. IN NO EVENT WILL AIR802 HAVE ANY LIABILITY FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING IN ANY WAY OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY CAUSE OF ACTION, WHETHER OR NOT AIR802 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE

LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9.2 High Risk Activities. YOU ACKNOWLEDGE AND AGREE THAT THE PRODUCTS HAVE NOT BEEN DESIGNED, TESTED, OR MANUFACTURED FOR USE OR RESALE IN APPLICATIONS WHERE THE FAILURE, MALFUNCTION, OR ANY INACCURACY OF THE PRODUCTS CARRIES A RISK OF DEATH OR SERIOUS PHYSICAL OR ENVIRONMENTAL HARM, INCLUDING, BUT NOT LIMITED TO, USE IN NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION, EMERGENCY SYSTEMS, LIFE SUPPORT SYSTEMS OR OTHER MEDICAL PURPOSES OR OTHER APPLICATIONS WITH A SIMILAR DEGREE OF POTENTIAL HAZARD.

#### 10. GENERAL PROVISIONS.

10.1 Notices. Notices under this Agreement must be in writing and will be deemed given when delivered personally, or by email or facsimile (with confirmation of receipt) or by conventional mail (registered or certified, postage prepaid with return receipt requested). Notices will be addressed, (a) if to You, at the address provided by You as part of the online enrollment process for the Reseller Program and (b) if to AIR802, at the address provided on the AIR802 site, but each party may change the address by written notice in accordance with this paragraph.

10.2 Assignment. This agreement will be binding upon and insure to the benefit of the parties, their successors and permitted assigns. You may not transfer, sublicense or otherwise assign this Agreement or any of its rights or obligations hereunder, by operation of law or otherwise, without AIR802's prior written consent. Any attempted assignment in violation of this Section will be void.

10.3 Force Majeure. AIR802 is not responsible for any delays, errors, failures to perform under this Agreement caused by or resulting from any act, omission, or condition beyond AIR802's reasonable control, whether or not foreseeable or identified, including without limitation acts of God, strikes, lockouts, riots, acts of war, governmental regulations, fire, power failure, earthquakes, severe weather, floods or other natural disaster or any third party's actions, hardware, software or communications equipment or facilities.

10.4 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois, U.S.A., exclusive of its conflict of law principles. Except for actions for injunctive relief for a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction, (a) if You are located in the United States, any and all claims, controversies or actions arising out of or relating to this Agreement shall be filed exclusively in the State or Federal courts located in the County of DuPage, Illinois; and (b) if You are located outside of the United States, then all claims, disputes or controversies arising out of or related to this Agreement shall be subject to binding arbitration in DuPage, Illinois, under the Commercial Arbitration Rules of the American Arbitration Associations ("AAA").

10.5 Entire Agreement. This Agreement, together with the Approval Notice and the Program Terms, constitutes the entire agreement of the parties, and supersedes any and all prior or contemporaneous agreements (whether oral or written) between the parties with respect to the subject matter of this Agreement. Any different or additional term on any correspondence provided by You will have no force or effect and are not binding on AIR802. Except as otherwise expressly provided herein, this Agreement may be modified only in writing and signed by an authorized representative of each party.

10.6 Export Regulations. You agree to comply with all applicable laws, rules and regulations, including applicable export laws, in its performance under this Agreement. You agree and warrant to AIR802 that You will strictly comply with all applicable requirements established under such export controls, including without limitation, obtaining and complying with any required written permission, approvals or licenses from the appropriate governmental authorities.

10.7 General Provisions. If any provision of this Agreement is held invalid, illegal or unenforceable, such provision will be reformed only to the extent necessary and in such a manner to

effect the original intention of the parties; all remaining provisions continue in full force and effect. Any failure by either party to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent default or breach of the same or a different kind. The parties are independent contractors. Nothing contained in this Agreement is intended or is to be construed to create a partnership, franchise, joint venture, agency or legal affiliate relationship between AIR802 and You or any relationship other than independent contractors.