

# Customer Service Agreement and Terms of Use

## Mission Communications Business Performance Guarantees

### Service Price Stability Guarantee

For as long as the customer chooses to use the Mission service the annual price will not increase from the initial term price by more than the amount equal to the annual compounded inflation rate as determined by the US Bureau of Labor as measured year-to-year from the start of the initial service term for the unit or as measured year-to-year from the mutually agreed annual service renewal date. This date must be mutually agreed upon by Mission and the customer.

### Replacement Hardware Price Stability Guarantee

Replacement components for the originally purchased M800 series unit will be no higher than \$250 for the radio module and \$250 for the unit's main printed circuit board (PCB). Replacement components for the M110 series units will be no higher than \$250 for the main PCB and \$250 for the radio module. Replacement costs for the M80 will be no higher than \$450 for the entire M80 electronic assembly. Due to conformal coating of the M80 unit there will be no sub-assembly replacements.

### Technology Guarantee

Mission guarantees to the customer that the radio telemetry technology will be available for use by the customer as long as the customer wishes to utilize Mission's services. If the original installed radio telemetry technology becomes unavailable or unusable for any customer unit, then Mission will at its sole expense, provide to the customer hardware for the customer to swap out and replace the non-performing unit's radio telemetry module hardware. The new radio module technology will be equal to or better than the original radio telemetry technology. Such equivalency is to be approved by the customer and such approval is not to be unreasonably withheld by the customer. If Mission cannot make such equivalent radio telemetry technology available to the customer within 120 days of the original radio telemetry cessation, then Mission may be required by the customer to refund any prepaid service fees paid by the customer, minus any used service fees while the radio telemetry performed to the above standard for Service Performance, plus the sum of \$500.

### Obsolescence Guarantee

From time-to-time Mission intends to introduce hardware and service improvements to existing hardware models and to introduce new hardware/ service offerings. Customers utilizing Mission's managed service offerings (standard monitoring service) may wish to upgrade previously installed equipment to the newest model offering. Customers may trade in and/ or upgrade equipment for a price equal to the new model price minus the current trade in value for the existing field equipment. The trade in value is defined as being 100% of the original purchase price in the first year (from date of purchase), 80% of purchase price in the second year, 60% in the third year, 40% in the fourth year, 20% in the fifth year and no trade in value thereafter. Additionally, if the new equipment has a higher annual service fee associated with it, the new fee will be applied to the customer's annual service at the time of field commissioning going forward.

This Agreement (hereinafter referred to as the "Agreement") is entered between MISSION COMMUNICATIONS, LLC, a Georgia limited liability company (hereinafter referred to as "Mission") and the entity and individuals utilizing Mission's products and services, including its web site and database information (hereinafter collectively referred to as the "Customer") and is effective upon activation and use by Customer of Mission's products and services.

**The Parties:** Mission is engaged in the business of providing wireless communications and database systems for managing and monitoring remote equipment in a supervisory manner, including such industrial applications as water and wastewater systems. The Customer desires to use and benefit from Mission's communications and database system, which is to be installed by the Customer on-site at the Customer's premises.

**Customer acknowledges and understands that by activating and utilizing Mission's products, services, web site and/or data-based information, Customer is agreeing to be bound by the following terms contained in this Agreement. ACCEPTANCE OF HARDWARE AND/OR THE PROVISION OF SERVICES FROM MISSION SHALL BE DEEMED TO CONSTITUTE AN AGREEMENT ON CUSTOMER'S PART TO THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT.**

**Privacy Policy:** <https://www.123mc.com/en/privacy-policy/>

The Terms: In consideration of the above recitals, the mutual promises contained herein, and other good and valuable consideration, including Customer's use of Mission's products and services, the parties hereby agree as follows:

1. **Mission's Services.** Mission agrees to use commercially reasonable efforts to provide Customer with monitoring and notification services by utilizing automated calling, paging, e-mailing, faxing, or TCP/IP transfer of data to an OPC compliant database to Customer's designated destinations as set forth in the Mission web site database.
2. **Customer Responsibilities.**
  - a. Customer understands that Mission will not respond to or take action related to those events about which Mission provides monitoring and notification. Customer further understands that it is solely responsible for the final entries and schedules set forth in the Mission database notwithstanding the fact that Mission may have initially entered the monitoring and notification information in that database on the Customer's behalf.
  - b. Customer also understands that the information residing in Mission's database, including, without limitation, notification lists, schedules and alarm points, can be changed by the Customer. Customer further understands and agrees that it bears the sole risk of loss or damage that may result from changes to the Mission database made by or on behalf of the Customer, and that such changes may prevent or impair the ability of the Mission monitoring and notification system from providing timely and successful notifications of detected events to Customer's designated destinations. Customer agrees to test the system(s) on a regular basis to ensure that they are working properly.
  - c. Customer must provide its own on-site installation and maintenance services. Customer agrees to test all analog and digital input alarms on a regular basis (no less than every six months) and ensure that each alarm point successfully sends alarm transmissions to Mission and that the Mission notification services accurately and completely notify all the Customer's intended recipients. If any real or perceived failures occur, the Customer shall notify Mission immediately in writing of such failures. Mission shall use commercially reasonable efforts to resolve the failures noted in the writing delivered to Mission by Customer, but in no case will Mission be obligated to travel to the Customer's premises to perform diagnostic or corrective actions.
3. **Carrier Services.**
  - a. Customer understands and agrees that Mission makes no representations, promises, warranties, or guarantees that there will be no interruptions in service or delays in performing service, or as to the quality, usefulness, completeness and reliability of such service, and further that Mission provides no assurances that such service will be free of errors. Customer acknowledges that Mission utilizes wireless data services that may be provided by ATT, Verizon, Sprint-Nextel, Rogers Communications, T-Mobile and various participating carriers, and that such providers disclaim any and all liability arising from the Customer's use of Mission's products and services. Customer further understands that Mission has no control of, or responsibility for, the paging, cellular, radio, telephone, internet or other communication medium which the Customer may rely upon for delivery of alarm or other messages sent by Mission.
  - b. Customer understands and agrees that it has no contractual relationship with the underlying wireless service carrier and Customer is not a third party beneficiary of any agreement between Mission and underlying carrier. Customer understands and agrees that the underlying carrier shall have no legal, equitable, or other liability of any kind to Customer. In any event, regardless of the form of the action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, Customer's exclusive remedy against Mission for claims arising in any way in connection with this Agreement, for any cause whatsoever, including but not limited to any failure or disruption of service provided hereunder, is limited to payment of damages as described in 4.c.
  - c. Customer shall indemnify and hold harmless the underlying wireless service carrier and its officers, employees, and agents against any and all claims, including without limitation claims for libel, slander, or any property damage, personal injury or death, arising in any way, directly or indirectly, in connection with this Agreement or the use, failure to use, or inability to use the number except where the claims result from the underlying carrier's gross negligence or willful misconduct. This indemnity shall survive the termination of the Agreement.



- d. Customer has no property right in any number assigned to it, and understands that any such number can be changed from time to time.
- e. Customer understands and agrees that Mission and the underlying carrier cannot guaranty the security of wireless transmissions, and will not be liable for any lack of security relating to the use of the services.
- f. The service is for Customer's use only and Customer may not resell the service to any other party.
- 4. Customer Indemnification; Limitation of Liability.** Customer agrees that in further consideration of being granted the right to utilize Mission's monitoring and notification service, the Customer, on behalf of itself, and any employees and agents agrees:
- a. To indemnify, defend and hold Mission, its members, managers, directors, officers, employees, agents, suppliers or affiliated companies harmless against any and all claims, demands or actions based upon any losses, liabilities, obligations, damages or costs, whether direct or indirect, special or consequential, including without limitation, attorneys' fees and court costs, that may result from the operation of Mission's products and services, or from the failure of the Mission system to report a given event or condition.
- b. To release, waive, discharge and covenant not to sue Mission, its members, managers directors, officers, employees, agents, suppliers or affiliated companies harmless from any and all liabilities arising from any claim, demand or action based upon any losses, liabilities, obligations, damages or costs, whether direct or indirect, special or consequential, including without limitation, attorneys' fees and court costs, that may result from operation of Mission's products and services, or from the failure of the Mission system to report a given event or condition.
- c. That in the event Mission is found to be liable for any loss or damage arising out of negligence, mistakes, omissions, interruptions, delays, errors or defects in Mission's products or services, such liability shall not exceed the total amount paid by the Customer to Mission for Mission's services for the previous six (6) months or \$250.00, whichever is greater.
- d. That neither Mission nor its members, managers, directors, officers, employees, or agents is an insurer and that the Customer is to maintain its own insurance coverage sufficient to provide compensation for any loss, damage, or expense that may arise in connection with the use of Mission's products or services.
- e. Customer understands that the Mission system records notification phone calls, and tracks originating IP address of site access.
- 5. Limited Warranty.** Mission warrants that its products are free from defects in material and workmanship for the periods set forth in the respective product sales information. Mission's sole obligation under this limited warranty is to repair or replace the product, at Mission's option, unless the product has been misused or improperly repaired or serviced by any party other than authorized Mission personnel, in which case the limited warranty is voided. Other than this limited warranty, Mission's products and services are provided with no other warranties, express or implied, including any WARRANTIES OF MERCHANTABILITY or fitness for a particular purpose.
- 6. No Life Safety Use.** Mission's products and services are intended to monitor and notify Customer of events relating only to Customer's noncritical mechanical and electrical equipment, and are not intended to be used for life-safety, burglary or fire detection and reporting or control system and Customer hereby expressly agrees that under no circumstances shall it use Mission's products and services for any lifesafety, burglary or fire detection and reporting or control system uses whatsoever. Customer hereby indemnifies, defends and agrees to hold Mission, its members, managers, directors, officers, employees, agents, suppliers or affiliated companies harmless against any and all claims, demands or actions based upon any losses, liabilities, obligations, damages or costs, whether direct or indirect, special or consequential, including, without limitation, attorneys' fees and court costs that may result from Customer's breach of this Paragraph 6.
- 7. Relay or Output Control.** In the case that Customer chooses to utilize the Mission system to perform manual or automatic (as may be provided by Mission at the time) relay or output control for pump, well, valve or any related application, Customer agrees that Mission performs this service on a best efforts basis only. Mission recommends that Customer not rely on Mission solely for the control of remote relay activated devices and that Customer should make provision for alternate means of remotely or locally operating said controls. Mission strongly recommends that Customer make electrical or mechanical provisions at the remotely controlled site equipment that will properly control said remote relay control functions. Customer understands and acknowledges that there are other providers of such remote control technologies.
- 8. Hardware and Monitoring Fees.** Customer agrees to pay Mission for hardware and a monitoring fee, which fee is to be prepaid on an annual basis, as indicated in Customer's invoice. The first annual service fee and hardware costs are to be paid within 30 days from the date of shipment of the Mission hardware. Annual service activation will commence on the 30th day after purchase. If the Customer has not installed units at this time, it may request reasonable additional time to install units prior to annual service commencement. This extension is totally at the discretion of Mission. Units ordered that will not be installed immediately should be ordered as inactive so as to avoid unnecessary loss of service on the Customer's part. After the expiration of the initial one-year term, this Agreement shall automatically renew for additional one-year periods, unless canceled by written notice to Mission at least sixty (60) days prior to expiration date of the then current term. Units added in subsequent years will be initially billed at the then current annual service price as published in the current Mission price list or at the price initially invoiced the Customer, whichever is greater. Once a field RTU is in service, Mission shall not increase that device's annual monitoring fee by more than an amount equal to the annual percentage increase in the United States Bureau of Labor Statistics "Consumer Price Index." Mission shall have the right to increase the annual monitoring fee annually or, in the event it does not do so annually, it may at any time increase the annual monitoring fee by the cumulative percentage increase in the Consumer Price Index from either the initial service date or the last date that Mission so increased the annual monitoring fee, in either case to the then date of adjustment. This annual service pricing policy shall apply to all makes and models of Mission hardware and services.
- 9. Use of Mission's Products.** The Customer understands the intended uses of Mission's products and services and will ensure that they are used in the intended and safe manner. In the event of a malfunctioning unit and after notification to Customer and attempting to rectify the situation, Mission shall have the right to take the unit out of service and keep it out of service until such time as the malfunction has been remedied. In addition, it is agreed that the Customer shall contact Mission personnel if the Customer does not know how to install or operate Mission's products and services.
- 10. Consent to Jurisdiction.** Regardless of the place of contracting or performance, this Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of Georgia, and that any suit, action or other legal proceeding involving this Agreement shall be brought exclusively within the State or Federal Courts situated in Atlanta, Georgia. Customer hereby irrevocably consents to and submits to the personal jurisdiction of such courts and irrevocably waives any and all defenses inconsistent with this Paragraph.
- 11. Entire Agreement.** The parties hereto acknowledge and agree that this Agreement, together with the Mission Business Performance Guarantees set forth in that certain "Managed SCADA document, Literature Code 1-4", as amended from time to time and which by this reference is made an integral part hereof, contain the entire agreement between Mission and the Customer, and that there are no other representations, inducements, promises, or agreements, oral or otherwise, which are not embodied herein or therein. The conditions set forth in this Agreement shall take precedence over any other conditions, and no contrary, additional or different provisions or conditions shall be binding on Mission unless accepted by Mission in writing. It is a condition of this transaction between Mission and Customer that any provisions printed or otherwise contained in any purchase order issued by Customer, or any acknowledgment, acceptance, objection, or confirmation of this Agreement issued by Customer, inconsistent with or in addition to the terms and conditions herein stated, and any alteration in this Agreement made by Customer, shall have no force or effect. The terms contained herein shall be controlling in the event of any inconsistency with the Customer's purchase order or other communications of Customer.
- 12. Severability.** In the event that any one or more of the provisions or portion thereof contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the same shall not invalidate or otherwise affect any other provisions of this Agreement, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision or portion thereof had never been contained herein.
- 13. Binding Effect; No Assignment by Customer.** This Agreement shall be binding upon each of the parties hereto, together with their respective heirs, successors and permitted assigns. Customer shall have no right to assign any or all of its rights under this Agreement without the prior written consent of Mission.



**Web**  
123mc.com

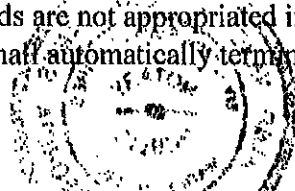
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(877) 993-1911 option 2  
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setupforms@123mc.com

**Sales**  
sales@123mc.com  
(877) 993-1911 option 4

**ADDENDUM TO MISSION COMMUNICATIONS  
CUSTOMER SERVICE AGREEMENT AND TERMS OF USE**

The undersigned agree to amend the Customer Service Agreement and Terms of Use ("Agreement"), attached hereto and incorporated by reference, between Mission Communications, LLC ("Mission") and City of Columbia, Missouri ("City" or "Customer," and together with Mission, the "Parties") as follows:

1. The Parties agree that Mission is not permitted to unilaterally modify this Agreement, provided that Mission shall have the right to unilaterally adjust hardware prices and annual monitoring fees in accordance with the provisions of the Agreement. Subject to the foregoing, all amendments to this Agreement must be in writing and signed by both Parties.
2. No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such person or entity a third-party beneficiary under the Agreement.
3. The Parties agree that notwithstanding anything stated elsewhere in this Agreement, nothing shall be construed to constitute a waiver by City of the defense of sovereign immunity and that to the extent prohibited by Missouri law, City will not indemnify Vendor or any other third party.
4. The Parties shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the Agreement and its performance thereunder.
5. Notwithstanding anything stated elsewhere in this Agreement, City is not precluded from compliance with the provisions of Chapter 610 RSMo. ("The Sunshine Law").
6. The phrase "To the extent not prohibited under Missouri law," shall be added to the beginning of the first sentence of Paragraph 4 of the Agreement.
7. The Parties agree that notwithstanding anything stated elsewhere in this Agreement that City will not pay for Mission's attorney fees in the event of litigation between the Parties arising out of or related to the Agreement.
8. This Agreement is subject to the appropriation of funds by the City Council of Columbia, Missouri for the purpose of this contract. If funds are not appropriated in any fiscal year into which the Agreement extends, the Agreement shall automatically terminate and be of no further force and effect.



[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the Parties hereto have executed this Amendment by their duly authorized representatives as of the date of the last signatory hereto.

**CITY OF COLUMBIA, MISSOURI**

By: \_\_\_\_\_ *JAS*  
De'Carlton Seewood  
City Manager  
Date: \_\_\_\_\_

ATTESTED BY:

\_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Nancy Thompson, City Counselor

CERTIFICATION: I hereby certify that the above expenditure is within the purpose of the appropriation to which it is charged, Account Numbers 55506323 506641 and 55506323 504801, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

By: \_\_\_\_\_  
Director of Finance

MISSION COMMUNICATIONS, LLC

Signed By:  
James Scott Vandiver

Signature Date

*June 6th 2023*



By: \_\_\_\_\_ *FR*  
Name: *Forrest Robinson*  
Title: *Exec Addison*  
Date: *6/6/23*

ATTEST:

By: \_\_\_\_\_ *James Scott Vandiver*  
Name: JAMES Scott Vandiver