

# CellFuel

## Terms and Conditions

5-13-20

CellFuel provides a simple inexpensive means to purchase fuel around the world. This is possible by bypassing traditional ground-based hard-wired equipment and transacting business in the cloud.

This requires data be accurate and funds available in customer's designated bank account when they purchase fuel. Inaccurate data or insufficient funds will cause interruption in the data stream and require intervention to resolve the problem. Customers causing problems will be charged a fee per transaction and possibly terminated.

CellFuel is a Joint Venture between FuelCloud OPCO, LLC Hillsboro, OR and U-Fuel, Inc. (NV) Las Vegas, NV.

CellFuel is a service allowing Customers to purchase Fuel at Participating Merchants using Mobile Applications.

CellFuel provides a website that may be accessed by Customers to (i) apply for CellFuel Service (ii) modify Customer information (iii) Terminate service; at [mycellfuel.com](http://mycellfuel.com). ("Site")

FuelCloud provides: (i) a website that may be accessed by Customers and Merchants at [fuelcloud.com](http://fuelcloud.com) ("Site"); (ii) services to Merchants accessible through the Site ("Web Applications"); (iii) downloadable software to Customer portable device ("Mobile Applications"); (iv) subscription services, including services that can be accessed using the Web Applications and Mobile Applications ("Subscription Services"); all for use in conjunction with FuelCloud hardware products ("Products") and in other ways that CellFuel provides. Some CellFuel products and Services can be utilized together with products and services from third parties. The term "Services" means Site, Web Applications, Mobile Applications and Subscription Services.

**Please read the following terms and conditions ("Terms and Conditions") relating to your use of these Services carefully. By accessing, browsing or otherwise using these Services you, the Merchant, Customer and user have read, understood and agree to be legally bound by these Terms and Conditions, and to comply with all applicable laws and regulations, without limitation or qualification, and further acknowledge that you have the authority and do hereby legally bind the business entity, if any, to which you serve as agent, independent contractor or employee thereof to the same terms, without limitation or qualification. These terms shall take effect immediately on your first use of any Services. If you do not agree to be bound by these Terms and Conditions, do not proceed further and do not use any CellFuel or FuelCloud Services.**

We reserve the right to modify these Terms and Conditions at any time. You should check these Terms and Conditions periodically for changes. By using this Site after we post any changes to these Terms and Conditions, you agree to accept those changes, whether or not you have reviewed them. If at any time you choose not to accept these Terms and Conditions of use, please do not utilize this Site. These Terms and Conditions do not apply to any Site owned and/or operated by or on behalf of any third party even if we provide a link to such website on our Site. Please refer to the terms of use of any such third-party websites for information regarding the terms and conditions of your use of such websites.

Please note that you may only access these Services if you have the legal capacity to enter into a contract, you are compliant with these Terms and Conditions, and all applicable international,

federal, state, local and municipal or similar laws, rules and regulations are met. Any use or access of Services under the age of 18 is not only prohibited, but is also a violation of these Terms and Conditions.

## DEFINITIONS

Account - a depository account at a financial institution participating with the U.S. Federal Reserve Banking System accepting ACH Transactions.

App - The CellFuel Mobile Application downloaded to a Customer's Mobile Phone.

CellFuel - a Joint Venture between FuelCloud OPCO, LLC, FuelCloud, Inc. (collectively FuelCloud") and U-Fuel, Inc (NV) to sell fuel using mobile phone Applications at Participating Merchants.

Customer - any person or company applying for participation in CellFuel, which has submitted the required Application and been accepted.

License Fee - Fee charged Merchant for monitoring Merchant's inventory, transactions and use of FuelCloud Site.

Merchant - any company Licensed by CellFuel and FuelCloud with the appropriate equipment and authorized by the Authorities Having Jurisdiction to sell fuel.

Participating Merchant - a Merchant that has agreed to the published discounts available to CellFuel Customers.

Processing Fee - fee charged Merchants to process Transactions.

Returned Transaction - The amount of money for purchase of fuel using CellFuel App transmitted to Customer's bank Account returned due to insufficient funds.

Return Fee - a fee charged to Customer's Account to cover cost of collecting insufficient funds.

Termination - Disabling Customer's CellFuel App.

Transaction - The purchase of fuel using CellFuel Application.

Transaction Limit - A limit established for each Transaction for security reasons.

## CUSTOMER RULES:

1. Customer shall not lend their cell phones to others to purchase fuel.
2. Customer is responsible for all Transactions using their CellFuel "App".
3. Customer shall advise CellFuel upon loss of Mobile Phone, change of bank account, change of address or other issues at [customerservice@mycellfuel.com](mailto:customerservice@mycellfuel.com).
4. Customer agrees to pay CellFuel a **Return Fee of Twenty-Five dollars (\$25.00)** for each Returned Transaction due to insignificant funds in your bank Account.
5. Customer agrees to pay CellFuel for the amount of all Returned Transactions and Return Fees within 10 days of notice to Customer's email account, and if not paid, agrees to pay any and all collection charges.

6. After two occasions of Returned Transactions, CellFuel in its sole discretion may Terminate Customer participation by disabling Customer's App. Failure of CellFuel to disable Customer's App after two Returned Transactions shall not limit any rights of CellFuel to recover funds from Customer. Disabling Customer App shall not relieve Customer from any financial obligation to CellFuel for purchasing fuel and Return Fees.

## **Merchant Rules:**

1. Merchant shall complete a Merchant Application advising location, type of fuel sold, prices, CellFuel Discounts and contact information to be posted on [mycellfuel.com](http://mycellfuel.com).

1. Merchant shall advise CellFuel of any changes in its location, type of fuel sold and prices, at [merchant@mycellfuel.com](mailto:merchant@mycellfuel.com) in order to update website.

2. Merchant shall display CellFuel Signs advising service is available.

3. Merchant shall maintain sufficient inventory, fuel dispensing and CellFuel communication equipment in good order and notify CellFuel of any interruption in service so that information can be displayed on website.

4. Merchant shall provide CellFuel bank account information to which sales proceeds will be deposited. Any questions regarding Merchant's account shall be directed to [merchant@mycellfuel.com](mailto:merchant@mycellfuel.com).

5. Merchant agrees that CellFuel shall deduct Processing and Licensing Fees from Merchant's bank Account.

## **Participation**

### **1. USE**

You are hereby granted a non-exclusive; non-transferable, limited right to access [mycellfuel.com](http://mycellfuel.com) and [fuelcloud.com](http://fuelcloud.com). Such grant does not include, without limitation: (a) any resale or commercial use of these Sites; (b) modification, adaptation, translation, reverse engineering, decompilation, disassembly or conversion into human readable form any of the information on these Sites not intended to be so read, including use of or directly viewing the underlying HTML or other code from these Sites except as interpreted and displayed in a web browser; (c) copying, imitating, mirroring, reproducing, distributing, publishing, downloading, displaying, performing, posting or transmitting any Site information (including any CellFuel or FuelCloud trademarks) in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording or otherwise; (d) the collection and use of any product listings or descriptions; (e) making derivative uses of these Sites and any information on the Sites; or (f) use of any data mining, bots, spiders, automated tools or similar data gathering and extraction methods, directly or indirectly, on the Sites or to collect any information from the Sites or any other user of the Sites. Except as noted above, you are not conveyed any right or license by implication, estoppel, or otherwise in or under a patent, trademark, copyright, or proprietary right of CellFuel, FuelCloud or any third party. You may not use any meta tags or any other "hidden text" utilizing CellFuel or FuelCloud's name, trademark, or product name without our express written consent. "Site information" means all materials on the Sites, including, without limitation, trademarks, design, product description, HTML text, graphics, other files, photographs, codes, software layout, designs forms and the selection and arrangement thereof.

From time to time, CellFuel or FuelCloud may develop patches, updates, upgrades and other changes/modifications to improve the performance of the Services and/or software associated

with use of the Services (collectively “Upgrades”). These may be automatically installed without providing you any further notice or requesting further consent from you. You hereby consent to such Upgrades. If you do not wish to receive Upgrades, your sole recourse is to terminate your Account and to stop using CellFuel or FuelCloud Services. You acknowledge that you may be required to install Upgrades to use the Services and you agree to promptly do so.

CellFuel or FuelCloud cannot ensure that unauthorized third parties will always be prevented from penetrating FuelCloud security measures or access your personal data for unauthorized use. You acknowledge that you provide your personal information at your own risk.

CellFuel and FuelCloud have the unilateral right at any point in time to modify, suspend or discontinue the Services or any part thereof with or without notice. You agree that CellFuel and FuelCloud will not be liable to you or to any third party for any such modification, suspension or discontinuance of the Services or any part thereof.

## **2. REGISTRATION OF ACCOUNT**

To use the Services, you must register for a CellFuel Customer account (“Account”) and provide certain requested information about yourself. You agree to provide accurate and current information about yourself so that CellFuel and FuelCloud are able to provide superior service to you. You agree to notify CellFuel and FuelCloud whenever any of your previously submitted information changes at [help@mycellfuel.com](mailto:help@mycellfuel.com). CellFuel or FuelCloud shall not be held liable or responsible for Services, which you do not receive as a result of your inability to provide updated information. Should you provide false or misleading information, or if CellFuel or FuelCloud perceives that you have provided false or misleading information, CellFuel and FuelCloud reserves the right to suspend or terminate your Account.

## **3. PERSONAL INFORMATION AND PRIVACY PROTECTION**

Some information about you, your employees and/or business associates may be necessary in order to use certain CellFuel or FuelCloud Services, such as name, email address, physical locations and financial information. (“Personal Information”). Personal Information encompasses all of the personally identifying information you may provide to CellFuel or FuelCloud through accessing its Site. CellFuel and FuelCloud will limit the distribution of Personal Information to what is necessary to provide the Services to you. To that end, CellFuel and FuelCloud will only share or utilize your Personal Information if necessary and allowed by law to administer CellFuel and FuelCloud’s business to you as a Merchant or Customer. Cell Fuel and FuelCloud further limits the access to your Personal Information by CellFuel and FuelCloud employees only to those necessary to process any order or request by you. Unless required by law, outlined in these Terms and Conditions or you expressly grant permission to us, CellFuel and FuelCloud will not share Personal Information with any third parties for their own use.

## **4. COOKIE POLICY**

By using or accessing the Website, you are consenting to CellFuel and FuelCloud’s use of Cookies as follows:

This policy helps to explain the occasions when and why cookies may be sent to visitors to the Site. “Cookies” are text-only pieces of information that a web site transfers to an individual’s hard drive or other web site-browsing equipment for record-keeping purposes. Cookies allow the Site to remember information that will make your use of the Site more convenient. A cookie will typically contain the name of the domain from which the cookie has come, the “lifetime” of the cookie, and a randomly generated unique number or other value. Like most web sites, CellFuel and FuelCloud uses cookies for a variety of purposes in order to improve your online experience,

for analytics and for marketing, but specifically we use Cookies on the Website for the following purposes:

1. **Analytical Purposes:** We use Cookies to analyze user activity in order to improve the Site. For example, using Cookies we can look at aggregate patterns and can use such analysis to gain insights about how to improve the functionality and user experience of the Site.
2. **Your Preferences:** We use Cookies to store certain user preferences on our Site. For example, we may store the recent searches you have performed in a Cookie so that we can allow you to easily repeat those searches when you return to our Site.
3. **Marketing:** We use Cookies from third-party partners for marketing purposes. These Cookies allow us to display CellFuel and FuelCloud promotional material to you on other sites you visit across the Internet.
4. **Referral Tracking:** We use Cookies to associate user activity with the third party web site that referred the user to our Site. We do not share any personal information or information about individual user activities with these partner entities.
5. **Session Cookies** are temporary cookies that remain in the cookie file of your browser until you leave the Website.

## **5. LIMITATIONS OF CELLFUEL AND FUELCLLOUD SERVICES**

- (a) CellFuel and FuelCloud relies on or works with third party products and services. These third party products and services are beyond CellFuel and FuelCloud's control, but their operation may impact or be impacted by the use and reliability of CellFuel and FuelCloud Sites. You acknowledge and agree that: (i) the use and availability of the Services is dependent on third party product vendors and service providers; (ii) these third party products and services may not operate in a reliable manner all of the time, and they may impact the way that CellFuel or FuelCloud Services operate; and (iii) CellFuel or FuelCloud are not responsible for damages and losses due to the operation of these third party products and services.
- (b) You acknowledge that the availability of certain Services is dependent on: (i) your computer, mobile device, home wiring, home Wi-Fi network, Bluetooth connection, and other related equipment ("Equipment"); (ii) your Internet service provider ("ISP"); and (iii) your mobile device carrier ("Carrier"). You acknowledge that you are responsible for all fees charged by your ISP and Carrier in connection with your use of the Services. You also acknowledge that you are responsible for compliance with all applicable agreements, terms of use/service, and other policies of your ISP and Carrier.
- (c) Some CellFuel and FuelCloud Services may provide the opportunity for you to interface with products and services created, owned and operated by third parties ("Third Party Products"). You acknowledge that Third Party Products that you connect to your account or interface with are not owned, or operated by CellFuel or FuelCloud, and you acknowledge and agree that CellFuel or FuelCloud do not control, and that these Terms and Conditions do not apply to, any Third Party Products. Use of any Third Party Products may be governed by separate terms and conditions provided by the operator(s) of the applicable Third Party Products. You acknowledge and agree that CellFuel or FuelCloud makes no representation or warranty about the safety of any Third Party Products. Accordingly, CellFuel and FuelCloud are not responsible for your use of any Third Party Products or any personal injury, death, property damage (including, without limitation, to your home), or other harm or losses arising from or relating to your use of any Third Party Products. Questions about Third Party Products should be directed to such third parties.
- (d) The Sites may contain links to other web sites operated by third parties ("Third Party Sites") and referrals to third party vendors ("Referred Vendors"). Such Third Party Sites and Referred Vendors are not under CellFuel or FuelCloud's control. CellFuel and FuelCloud provide these links and referrals only as a convenience and do not review,

approve, monitor, endorse, warrant, or make any representations with respect to such Third Party Sites or Referred Vendors. Your use of these Third Party Sites is at your own risk.

- (e) CellFuel and FuelCloud are not responsible for third parties or their products and services, including, without limitation: Third Party Products and Services, Third Party Sites, Referred Vendors, Equipment, ISPs, and Carriers. CellFuel and FuelCloud hereby disclaim and you hereby discharge, waive and release CellFuel and FuelCloud and its licensors and suppliers from any past, present, and future claims, liabilities, and damages, known or unknown, arising out of or relating to your interactions with such third parties and their products and services.
- Certain CellFuel and FuelCloud Services provide tools intended to assist Merchants business operations, including, but not limited to, the FuelCloud Tax Forms tool (the "Tax Tool") located on the FuelCloud Site. The Tax Tool, and the forms found within, are for informational purposes and do not constitute, or serve as a substitute to, professional tax advice. The Tax Tool should be used only as a supplement to the advice of licensed tax professionals, and in no instance shall FuelCloud be held responsible for any tax-specific liabilities.

## **6. LIMITATIONS OF FUELCLLOUD SERVICES DUE TO THIRD PARTIES**

- (a) CellFuel and FuelCloud rely upon or interfaces with third party products and services. These third party products and services are beyond CellFuel or FuelCloud's control, but their operation may impact or be impacted by the use and reliability of CellFuel or FuelCloud Services. You acknowledge and agree that: (i) the use and availability of the Services is dependent on third party product vendors and service providers; (ii) these third party products and services may not operate in a reliable manner all the time, and they may impact the way that the CellFuel or FuelCloud Services operate, and (iii) CellFuel and FuelCloud are not responsible for damages and losses due to the operation of these third party products and services.
- (b) You acknowledge that CellFuel and FuelCloud uses third party service providers to enable some aspects of the Services – such as, for example, data storage, synchronization, and communication.
- (c) You acknowledge that the availability of the Services is dependent on: (i) your computer, mobile device, home wiring, home Wi-Fi network, Bluetooth connection, and other related equipment ("Equipment"); (ii) your Internet service provider ("ISP"); and (iii) your mobile device carrier ("Carrier"). You acknowledge that you are responsible for all fees charged by your ISP and Carrier in connection with your use of the Services. You also acknowledge that you are responsible for compliance with all applicable agreements, terms of use/service, and other policies of your ISP and Carrier.
- (d) The CellFuel and FuelCloud Products are hardware that relies on existing infrastructure to function as intended. CellFuel and FuelCloud recommends the use of industry-standard equipment in order to achieve the intended results of the Products but you acknowledge that CellFuel and FuelCloud makes no representations regarding the compatibility of the Products with any particular existing infrastructure.

## **7. PRICE, INVENTORY AND PRODUCT AVAILABILITY**

CELLFUEL AND FUELCLLOUD DO NOT ENSURE PRICE OR QUANTITY OF ANY PARTICULAR ITEM LISTED ON THIS SITE. ALL ORDERS ARE ACCEPTED, ACKNOWLEDGED AND SHIPPED UNDER FUELCLLOUD STANDARD TERMS AND CONDITIONS. IF YOU HAVE A QUESTION CONCERNING CELLFUEL OR FUELCLLOUD STANDARD TERMS AND CONDITIONS, PLEASE CONTACT CELLFUEL OR FUELCLLOUD.

CELLFUEL AND FUELCLLOUD CANNOT ENSURE THE LISTED QUANTITY OF ANY ITEMS. THERE ARE A MULTITUDE OF CIRCUMSTANCES THAT MAY AFFECT ITEM AVAILABILITY.

SUCH FACTORS INCLUDE THE NUMBER OF ORDERS RECENTLY RECEIVED FOR SUCH ITEM AND THE DATE AND TIME YOUR ORDER IS PLACED. FOR SUCH REASONS CELLFUEL AND FUELCLLOUD CANNOT GUARANTEE THE PRICES OF ANY LISTED ITEM. CERTAIN ITEMS MAY BE DISCONTINUED WITHOUT NOTICE.

## **8. COPYRIGHTS, TRADEMARKS AND OTHER INTELLECTUAL PROPERTY NOTICES**

The materials on this CellFuel and FuelCloud Sites are protected by copyright, trademark, patent, and/or other intellectual property laws, and any unauthorized use of the materials may violate such laws and the Terms and Conditions. Except as expressly provided herein, CellFuel and FuelCloud do not grant any express or implied rights to use such materials. You agree not to copy, publish, frame, download, transmit, modify, rent, lease, loan, sell, assign, distribute, license, sublicense, reverse engineer, or create derivative works based on the Site, or its materials.

The software and accompanying documentation that is from time to time made available to download from this Site is the copyrighted and/or patented work of CellFuel and FuelCloud. Use of the software is governed by the terms of the license agreement that is included with such software. Such terms are available for review in the software and are incorporated herein by this reference. If you do not agree to such terms, you will not be able to use the software. Absent a license agreement that accompanies the software, use of the software will be governed by the Terms and Conditions. You agree that you will not decompile, reverse engineer, or otherwise attempt to discover the source code of the software available on the Site.

The trademarks, logos, and service marks ("Marks") displayed on this Site are the property of CellFuel, FuelCloud or third parties. You are not permitted to use the Marks without the prior written consent of CellFuel, FuelCloud or such third party that may own the Marks.

References to other companies and their products use trademarks owned by the respective companies and are for reference purposes only.

## **9. LIMITATION OF LIABILITY**

The material on this Site may contain inaccuracies and typographical or other errors. CellFuel and FuelCloud make no representations about the accuracy, reliability, completeness, or timeliness of the material or about the results to be obtained from using the Site and/or the material therein. Use of the Site and any information contained therein is at your own risk. The material and other content on this Site may or may not be periodically updated or revised at any time. These Terms and Conditions shall apply with equal force to any and all such updates or revisions.

CELLFUEL AND FUELCLLOUD DO NOT WARRANT THAT THEIR SITES WILL OPERATE ERROR-FREE OR THAT THEIR SITES AND THEIR SERVERS ARE FREE OF COMPUTER VIRUSES AND OTHER HARMFUL GOODS OR COMPUTER CODE THAT MAY BE TRANSFERRED TO YOUR COMPUTER WHEN DOWNLOADED. IF YOUR USE OF THE SITES AND OF THE MATERIAL RESULTS IN THE NEED FOR SERVICING OR REPLACEMENT OF EQUIPMENT OR DATA, CELLFUEL OR FUELCLLOUD ARE NOT RESPONSIBLE FOR THOSE COSTS.

YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT CELLFUEL AND FUELCLLOUD ARE NOT LIABLE FOR ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY USER. IF YOU ARE DISSATISFIED WITH ANY OF CELLFUEL OR FUELCLLOUD'S MATERIAL, OR WITH ANY OF THE CONTENT LOCATED ON THEIR SITES, OR WITH ANY OF THESE TERMS AND CONDITIONS, YOUR SOLE REMEDY IS TO DISCONTINUE USING THEIR WEBSITES.

## 10. WARRANTY DISCLAIMERS

- (a) THE SERVICES ARE PROVIDED FOR YOUR CONVENIENCE “AS IS” AND “AS AVAILABLE” AND CELLFUEL, FUEL CLOUD AND OUR LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY AND NON-INFRINGEMENT.
- (b) CELLFUEL, FUEL CLOUD AND OUR LICENSORS AND SUPPLIERS MAKE NO WARRANTY THAT DEFECTS WILL BE CORRECTED OR THAT THE SERVICES: (I) WILL SATISFY YOUR NEEDS; (II) WILL BE COMPATIBLE WITH YOUR HOME NETWORK, COMPUTER OR MOBILE DEVICE; (III) WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; OR (IV) WILL BE ACCURATE OR RELIABLE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM CELLFUEL, FUEL CLOUD OR THROUGH THEIR SERVICES SHALL CREATE ANY WARRANTY.
- (c) WHEN YOU INSTALL, SETUP OR USE PRODUCTS AND SERVICES LIKE THOSE PROVIDED BY CELLFUEL AND FUEL CLOUD YOU ARE GIVEN THE CHANCE TO ALTER DEFAULTS OR CHOOSE PARTICULAR SETTINGS. THE CHOICES SELECTED CAN RESULT IN DAMAGE OR LEAD TO NON-RECOMMENDED OPERATION OF YOUR CONNECTED EQUIPMENT OR SYSTEMS. YOU ASSUME ALL LIABILITY FOR SUCH DAMAGE WHEN YOU CHOOSE PARTICULAR SETTINGS OR ADJUST DEFAULTS.
- (d) CELLFUEL AND FUEL CLOUD MAKE NO REPRESENTATIONS CONCERNING ANY CONTENT CONTAINED IN OR ACCESSED THROUGH THE SERVICES, AND CELLFUEL AND FUEL CLOUD WILL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY, COPYRIGHT COMPLIANCE, LEGALITY OR DECENCY OF MATERIAL CONTAINED IN OR ACCESSED THROUGH THE SERVICES. CELLFUEL AND FUEL CLOUD MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING SUGGESTIONS OR RECOMMENDATIONS OF SERVICES OR PRODUCTS OFFERED OR PURCHASED THROUGH THE SERVICES.
- (e) CELLFUEL AND FUEL CLOUD CANNOT BE HELD LIABLE FOR THE ACTIONS OR INACTIONS OF THIRD PARTIES, AND THE DEFICIENCIES OF EXISTING INFRASTRUCTURE OR OTHER EQUIPMENT, INCLUDING BUT NOT LIMITED TO, THEFT, FUEL LEAKAGE, INACCURATE RESULTS, OR OTHER UNINTENDED CONSEQUENCES.

## 11. DISCLAIMER OF DAMAGES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT IN NO EVENT SHALL CELLFUEL OR FUEL CLOUD, ITS OFFICERS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, AGENTS, AFFILIATES, SUBSIDIARIES, SUCCESSORS OR ASSIGNS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES RESULTING FROM: (I) THE USE OR INABILITY TO USE THE SITE; (II) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS, DATA, HARD-DRIVE OR SERVER; (III) STATEMENTS OR CONDUCT OF ANY THIRD PARTIES ON THE SITE; OR ANY OTHER MATTER RELATING TO THE SITES, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY, AND WHETHER OR NOT CELLFUEL OR FUEL CLOUD ARE OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



## **12. LINKS TO THIS SITE AND OTHER SITES**

You may provide links to the CellFuel FuelCloud Sites provided that: (i) you link only to the front page of the website, mycellfuel.com or fuelcloud.com (ii) you do not remove, alter, obscure or in any fashion eliminate the copyright notice, or other notices on the Sites; and (iii) you discontinue providing a link to the Sites if instructed to do so by CellFuel or FuelCloud or one of their representatives. Further, their Sites may contain links to websites of CellFuel or FuelCloud business partners. CellFuel and FuelCloud are not responsible for the content of their websites or the actions of the owners/operators of the websites. CellFuel and FuelCloud do not make any representations regarding the content or accuracy of materials on such third-party websites. CellFuel and FuelCloud shall not, however, be a party to any contract entered by you, the user, and any third-party as a result of contract with the websites linked from this Site, and thereby does not in any fashion, guarantee the performance of any third-party under any contract. You hereby release CellFuel and FuelCloud and its affiliates from any damages that you incur, and agree not to assert any claims against CellFuel or FuelCloud, arising from your use of these third party products or services, or the breach of any third party contract.

## **13. DISPUTES AND ARBITRATION**

- (a) If a dispute (the “Dispute”) arises between you and CellFuel and/or FuelCloud, CellFuel and FuelCloud deems it paramount to learn and resolve your concerns. You agree you will contact CellFuel and FuelCloud concerning any dispute you have with CellFuel or FuelCloud regarding these Terms and Conditions or CellFuel or FuelCloud’s Products and/or Services by contacting CellFuel at 715-879-4000 and FuelCloud at 503-538-2513.
- (b) You, CellFuel and FuelCloud agree to submit any claim, dispute, action, cause of action, issue, or request for relief arising out of or relating to these Terms and Conditions or your use of the Services to binding arbitration rather than by filing any lawsuit in any forum other than set forth in this section. Further, you agree arbitration is final and binding and subject to only very limited review by a court. You also waive your right to any form of appeal, review or recourse to any court or other judicial authority, insofar as such waiver may be validly made. This provision is to be interpreted broadly to encompass all disputes or claims arising out of or relating to your use of the Services will be resolved by binding arbitration except that you may take all claims to small claims court if they qualify for hearing by such a court.
- (c) No party may initially institute any civil action in the federal or state court system concerning any Dispute under this Terms of Service. If you, CellFuel and FuelCloud are unable to agree on the resolution of a Dispute within 60 days after you first present such claim to CellFuel or FuelCloud, then either party may initiate the dispute resolution procedure described in this section by giving the other party written notice, describing with reasonable specificity the Dispute, stating the party’s proposed resolution of the Dispute, and referring to this Agreement. If the parties are unable to negotiate an acceptable resolution of the Dispute within thirty (30) days of the date of the notice, then any party may file suit against FuelCloud in Washington County Circuit Court for the sole purpose of referring the Dispute to a referee as provided in Oregon Rule of Civil Procedure 65 or against CellFuel in Cook County Circuit Court for sole purpose of referring the Dispute to a referee as provided in Nevada Rule of Civil Procedure. If a Dispute is referred to a referee, you agree that the presiding judge of the Circuit Court may appoint a referee by selecting a referee from the reference judge panel maintained by that Court. Within twenty (20) days after receiving notification of the selection of the referee, either party may file with the presiding judge a written objection to the referee

selected and request that the presiding judge select another referee. Each party will be allowed three objections and no more. The decision of the referee will be final and binding on the parties, and may not be appealed to any forum. The referee's findings resulting from the proceeding may be confirmed, relief in accordance therewith obtained, and a final judgment entered in the appropriate Circuit Court.

- (d) There shall be no right or authority for any claims subject to this arbitration clause to be arbitrated on a class action or consolidated basis or on bases involving claims brought in a purported representative capacity on behalf of the general public (including, but not limited to, as a private attorney general).
- (e) All administrative fees and expenses of arbitration will be divided equally between you, CellFuel and FuelCloud. Each party will bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence at the arbitration hearing.

#### **14. DIGITAL MILLENNIUM COPYRIGHT ACT**

CellFuel and FuelCloud are committed to complying with copyright and related laws, and requires all users of the Site to comply with these laws. You may not store, post, modify, distribute, reproduce in any way, use or disseminate any material or content through the Site in any manner that constitutes an infringement of third party intellectual property rights, including rights granted by copyright law.

Owners of copyrighted works who believe that their rights under copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act (the "DMCA") to report alleged infringements. CellFuel and FuelCloud do not, and will not, make any legal decisions about the validity of your claim of infringement or the possible defenses to a claim. Upon our receipt of a proper notice of claimed infringement under the DMCA, FuelCloud will respond expeditiously to remove, or disable access to, the material claimed to be infringing and will follow the procedures specified in the DMCA to resolve the claim between the notifying party and the alleged infringer who provided the content in issue. CellFuel and FuelCloud may contact the notice provider to request additional information. CellFuel and FuelCloud reserve the right to disregard a notice that is not in compliance with the DMCA. Under the DMCA, CellFuel and FuelCloud are required to take reasonable steps to notify the user who posted the allegedly infringing content. If you believe in good faith that a notice of copyright infringement has been wrongly filed against you, the DMCA permits you to send CellFuel and/or FuelCloud a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA. Notices and counter-notices with respect to the FuelCloud Site should be sent to **Kevin A. Bretthauer, 453 SW Washington Street, Hillsboro, OR 97123, ([kevin@fuelcloud.com](mailto:kevin@fuelcloud.com) 503-538-2513) or to CellFuel, P.O. Box 1511, Eau Claire, WI 54702-1511 [help@mycellfeul.com](mailto:help@mycellfeul.com).**

If you are uncertain whether particular material infringes a copyright held by you or a third party, you should contact an attorney. Anyone making a false or fraudulent notice or counter-notice may be liable for damages under the DMCA, including costs and attorneys' fees.

To be effective, your Notification of Claimed Infringement must be in writing, sent to CellFuel or FuelCloud's designated agent listed below and contain the following information:

1. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
2. A description of the copyrighted work or other intellectual property that you claim has been infringed;
3. A description of where the material that you claim is infringing is located to permit us to locate the material;

4. Your contact information, including your name, address, telephone number, and email address;
5. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law; and
6. A statement by you, made under penalty of perjury, that the information contained in your report is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

## **15. USE OF IMAGES**

Images of people or places displayed on the Sites are either the property of, or used with the permission or under license by CellFuel and/or FuelCloud. The use of these images by you, or anyone else authorized by you, is prohibited. Any unauthorized use of the images may violate copyright laws, trademark laws, the laws of privacy or publicity, and communications regulations and statutes.

## **16. CONTROLLING LAW**

These Terms and Conditions shall be governed and interpreted in accordance with the laws of the state of Nevada without giving effect to any conflict of laws principles that may provide the application of law of another jurisdiction. You irrevocably commit to the personal jurisdiction and venue of the state and federal courts in or for Cook County, Nevada, for the purpose of resolving all such claims or disputes, and you hereby waive any objection thereto. The parties further agree that these Terms and Conditions shall be deemed to have been entered into, executed and performed for all purposes within the state of Nevada.

## **17. TERM AND TERMINATION**

These Terms and Conditions will remain in full force and effect so long as you continue to access or use the Services, or until terminated in accordance with the provisions of these Terms and Conditions. At any point in time CellFuel or FuelCloud may choose to: (i) disable to terminate your rights to access or utilize the Services; or (ii) terminate these Terms and Conditions with respect to you if CellFuel or FuelCloud in good faith perceives you have used the Services in violation of these Terms and Conditions. Upon termination of these Terms and Conditions, your Account and your right to use the Services will automatically terminate.

## **18. MISCELLANEOUS**

- (a) Notwithstanding the foregoing, CellFuel and FuelCloud may seek injunctive relief or other equitable relief to protect its confidential information and intellectual property rights or to prevent loss of data or damage to its servers in any court of competent jurisdiction.
- (b) These Terms and Conditions constitute the entire agreement between you, CellFuel and FuelCloud regarding the use of the Services. Any failure by CellFuel or FuelCloud to exercise or enforce any right or provision of these Terms and Conditions shall not operate as a waiver of such right or provision. The section titles in these Terms and Conditions are for convenience only and have no legal or contractual effect. If any provision of these Terms and Conditions is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms and Conditions will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent allowable by law.
- (c) These Terms and Conditions, and any associated rights or obligations, may not be assigned or otherwise transferred by you without CellFuel or FuelCloud's prior written consent. These Terms and Conditions may be assigned by CellFuel or FuelCloud without restriction. These Terms and Conditions are binding upon any permitted assignee.

- (d) CellFuel or FuelCloud may provide notifications to you as required by law or for marketing or other purposes via (at its option) email to the primary email associated with your account. CellFuel and FuelCloud are not responsible for any automatic filtering you or your network provider may apply to e-mail notifications. CellFuel and FuelCloud advise that you add [mycellfuel.com](http://mycellfuel.com) and [fuelcloud.com](http://fuelcloud.com) addresses to your e-mail address book to ensure you receive e-mail notifications from CellFuel and FuelCloud.

## **19. FUEL CLOUD SUBSCRIPTION AND PREPAYMENT**

Merchant subscriptions to ("CellFuel Subscription") will be billed in advance on a recurring basis, and will automatically renew at the end of each billing period until you disable your Products and cancel your CellFuel and FuelCloud Service through your billing management page. Prepayment to CellFuel ("Prepayment") are funds that are billed in advance, then used by CellFuel to pay your FuelCloud Subscription. You may cancel your CellFuel Subscription at any time. If you cancel your CellFuel Subscription, your CellFuel and FuelCloud Services will terminate immediately. There will be no refunds or credits for remaining time on your CellFuel or FuelCloud Subscription or for any remaining funds you have paid to CellFuel or FuelCloud with Prepayment.