



STANDARD DATA SERVICE TERMS AND CONDITIONS

THIS DOCUMENT contains the terms and conditions under which ORBCOMM sells Data Service (as defined below) to customers under purchase orders *where no Master Telematics Purchase Agreement or other form of master agreement as to terms and conditions of sale is in effect* between ORBCOMM and the customer accessing the ORBCOMM platform and/or data feed ("Customer"). These terms and conditions (the "Agreement") are incorporated by reference into the Sales Order Acknowledgement issued by ORBCOMM in response to a purchase order and govern over any terms or conditions stated in, referred to in, or attached to the purchase order or any acknowledgement issued by the customer.

1. **Definitions.** The following terms, when capitalized, carry the meanings assigned to them in this section when used in this document, unless the context clearly demonstrates a contrary intention, in which case they carry their ordinary meanings.

"Activation" means, with respect to a unit of Equipment, the configuration of the Equipment to start transmitting messages to and/or from an ORBCOMM website.

"Affiliate" means a company controlling, controlled by, or under common control with, a Party.

"Confidential Information" has the meaning assigned to it in Section 8.

"Customer" has the meaning assigned in the preamble.

"Data Service" means the provision to the Customer of processed data derived from ORBCOMM Equipment installed on relevant mobile or fixed assets using computer functionality of ORBCOMM's proprietary software, ORBCOMM's websites, and/or an optional (at extra cost) direct data feed from ORBCOMM's servers to Customer's servers, as more fully described herein.

"Data Service Order" means a written purchase order or other written offer to purchase specifying services, identified per an ORBCOMM quotation, and quantity of subscriptions to be purchased by the Customer at the price or prices defined in accordance with the price or prices contained in the written quotation from ORBCOMM to the Customer that is in effect as of the date of the offer. ORBCOMM may accept Customer's offer to purchase through issuance of a Sales Order Acknowledgement to the Customer.

"Equipment" "Device" and/or "Unit(s)" means ORBCOMM telematics units, other hardware manufactured by or for ORBCOMM and carrying the ORBCOMM brand.

"Party" or "Parties" means ORBCOMM (as defined in the applicable Sales Order Acknowledgement) and/or Customer as the context requires.

"Sales Order Acknowledgement" means a document issued by ORBCOMM after receipt of a Customer Purchase Order indicating its acceptance of Customer's

offer to purchase which incorporates by reference the terms and conditions of this Agreement.

"Sales Order Acknowledgement" means a document issued by ORBCOMM after receipt of a Customer Purchase Order indicating its acceptance of Customer's offer to purchase which incorporates by reference the terms and conditions of this Agreement.

2. **Nature of The Data Service**

a. ORBCOMM's Data Service gathers data from Equipment installed on Customer's assets, processes that data, and makes it available to the customer in useful form through proprietary software and computer hardware resources, ORBCOMM's websites, and/or, if ordered, optional direct feed to Customer's existing information systems. It also may permit the Customer to send data and/or commands to certain types of Customer asset on a machine-to-machine basis. The Data Service includes data query, mapping, and other analytic functionalities and is not offered as a raw data feed from the Equipment.

b. Although pricing for the Data Service is sometimes stated in terms of data or message volumes, the Data Service is not "airtime" or a simple telecommunications service. ORBCOMM consumes telecommunications service in order to collect the data from the Equipment so that ORBCOMM can provide the Data Service, but Customer is not a purchaser of that telecommunications service, which is entirely arranged and paid for by ORBCOMM as a part of its costs of service. Customer acknowledges that Customer has no contractual relationship or right with respect to the carrier providing the telecommunications service between its Equipment and ORBCOMM or to the telephone numbers assigned to facilitate that service, that the carrier is in no event liable to Customer with respect to the performance or nonperformance of such telecommunications services, and that ORBCOMM is not a provider of telecommunications services and does not control the network over which the data passes from the Equipment to ORBCOMM's computers. For international service, some countries will not recognize ORBCOMM as the consumer of the telecommunications service and may consider any provision of the Data Service by Customer to its local customers or end users to be a regulated resale of telecommunications

services. In such countries, Customer will be responsible at its sole expense to obtain and maintain or cause its local dealer or Affiliate to obtain and maintain, the necessary telecommunications license for provision of the Data Service to its local customers or end users.

c. Data Service is only provided for assets belonging to Customer or its affiliates and furnished with Equipment. It is not designed to be or offered as compatible with any other data source and any attempt to connect any other data source to the Data Service is a violation of these license terms and is cause for immediate termination of all Data Service to the Customer without refund of amounts previously paid.

d. All title and intellectual property rights in and to the Service are owned or licensed by ORBCOMM. Nothing in this Agreement grants Customer any rights in and to any such intellectual property rights except for the limited rights expressly granted herein. Customer will not reverse engineer, decompile, or disassemble the Data Service, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

3. Access to The Data Service

a. Subject to the terms of this Agreement, ORBCOMM will provide Customer with access to the Data Service on a limited, non-exclusive, revocable basis, for use solely for Customer's internal business purposes and those of Customer's affiliates under Customer's ownership or under common ownership or control with Customer.

b. ORBCOMM will provide Customer with unique access credentials to: (a) enable the Customer's application users to access the Data Service; and (b) provide Customer access to an administrative customer service site (collectively, "Access Credentials"). Customer will not make its Access Credentials available to any third party other than a third party authorized to act on its behalf and agrees to safeguard the secrecy of its Access Credentials including making password changes periodically or upon material personnel changes. Customer is fully and primarily responsible for all use of the Data Service through its Access Credentials.

c. Customer shall be solely responsible for providing, at its own cost and expense, all equipment and telecommunications service necessary to use the Data Service including computers, modems, and Internet access. Customer assumes the responsibility to make sure that its computers and related systems have the capacity to receive the Data Service through the ORBCOMM websites and to correct promptly any problems with such computers and related systems that interfere with or prevent the use of the same.

4. Use and Support of The Data Service

a. Customer does not have the right to resell the Data Service or act as a service bureau with respect to the Data Service or any component thereof. All rights, including rights of use, not specifically granted under this Agreement are reserved by ORBCOMM and its suppliers. Customer must clearly display the following message: "ORBCOMM Network Information Services" in a clearly visible location on any Customer derivative work, or application that uses ORBCOMM Data Service for content or information. The Customer shall not re-sell ORBCOMM Data Service data or information content, in any derivative work or application, accessible to anyone not directly employed by Customer or its affiliates.

b. Customer will not use the Data Service: (i) in connection with the transmission, sale, license or delivery of any infringing, defamatory, offensive, or illegal products, services or materials; (ii) in any manner that threatens the integrity, performance, or availability of the Service, including, without limitation, knowing transmission of any virus, worm, Trojan, or other harmful code, attempting to gain unauthorized access to any ORBCOMM systems or data, or engaging in any type of denial-of-service or other cyber-attack on the ORBCOMM systems; or (iii) in violation of local, state, federal or equivalent privacy or other regulations.

c. To the extent that any data derived from Equipment installed on Customer assets is considered personal data subject to privacy laws or regulations by any country in which the Equipment is used, Customer represents and warrants that it has obtained and will continue to obtain, update, and maintain adequate consent from the individuals to whom such data relates for ORBCOMM to receive, process, and make such data available through the Data Service.

d. Customer's use of the Data Service will be subject to the data practices set forth in the ORBCOMM Privacy Policy as posted from time to time on ORBCOMM's website <http://www.orbcomm.com/en/privacy-policy>.

ORBCOMM reserves the right to use the information generated from the data for statistical analysis or other industry purposes, provided that ORBCOMM ensures that the source of such data is and remains anonymous.

e. Customer agrees to accept the ORBCOMM website reports in their existing format and system architecture as such may be reasonably modified by ORBCOMM from time to time as provided below. Any customization of the Equipment, Data Service or reports is not included in the Data Service fees. If requested by Customer, such customization shall be subject to a Professional Services Statement of Work and service order mutually agreed upon by the parties outlining the work to be performed, the applicable fees, the payment and other terms.

f. ORBCOMM may, in its sole discretion, make feature or functionality updates to the Data Service from

time to time. ORBCOMM will provide advance notice of such Data Service updates and will make commercially reasonable efforts to identify Data Service updates that may require modifications to Customer's applications that interface with it. For those types of update (such as a major version release, e.g., v1.0 to v2.0) that ORBCOMM reasonably believes will necessitate significant modification of interfacing applications of all users of the Data Service, ORBCOMM will maintain the immediately previous version (one version back) of the Service for no less than 12 consecutive months starting from the date of release of the new version. Customer's failure to upgrade its interfacing applications to be compatible with the latest version of the Data Service during this time may result in an interruption or termination of Customer's access to the Data Service without liability on the part of ORBCOMM.

g. ORBCOMM will make commercially reasonable efforts to maximize the availability of the ORBCOMM web sites; however, Customer acknowledges that system maintenance and backups, as well as server and network malfunctions, may and do occur and ORBCOMM will not be liable to Customer for outages and Data Service issues that occur despite ORBCOMM's commercially reasonable efforts.

h. ORBCOMM will provide reasonable technical support to Customer. ORBCOMM assumes no responsibility to provide support for Customer's applications or for Internet access issues or other issues not under ORBCOMM's direct control.

5. Term and Termination of Data Service

a. The term of Data Service is determined on a unit-by-unit basis. Each unit of Equipment for which the Customer desires Data Service must be listed on a Data Service Order accepted by ORBCOMM.

b. For each unit of Equipment within a Data Service Order, the term of Data Service commences upon the earlier of Activation or thirty (30) days from the date of shipment.

c. The Data Service term for each unit of Equipment shall be as set forth on the Sales Order Acknowledgment ("Initial Term") and thereafter shall automatically renew for additional twelve (12) month periods (each a "Renewal Period") until and unless either party gives written notice to the other, at least ten (10) days prior to the end of a term, of its intention not to renew. Data Service fees begin as of the first day of the month of Activation and end on the last day of the month in which deactivation occurs, without proration. In the event Data Service for any Device(s) is terminated by Customer prior to completion of the Initial Term, Customer shall pay the remaining monthly Data Service Fees for each Device(s) so terminated, for the remainder of the Initial Term. For clarity, if Customer has 100 Devices using the Data Service and terminates the Data

Services for 5 of those Devices at month twelve (12) of the Initial Term, Customer shall pay the Data Service monthly fees for those units for the remaining twenty-four months of the Initial Term; ("Termination Fees").

d. Service may be suspended immediately as to all of Customer's units upon notice if the Customer is in material breach of 3.b, items (i), (ii) or (iii) or 3.c. of these Data Service Terms and Conditions. Once Service has been suspended, such Service may be reactivated only upon receipt by ORBCOMM of all outstanding undisputed then owing (together with accrued interest thereon as applicable) together with payment of the reactivation fee set forth in Exhibit C for each unit of Equipment being reactivated. In addition, either Party may terminate this Agreement as to all, but not less than all, units, if the other Party is in breach of any material term of this Agreement and fails to cure such breach within 30 days after written notice thereof. Customer may terminate any Data Service Order hereunder within twenty (20) days following any material revision by ORBCOMM of the privacy policies referenced in Sections 3.c. or 3.d. of these Data Service Terms and Conditions, if such revision is materially inconsistent with Customer's then existing privacy policy. Upon termination of this Agreement for breach, (a) all rights granted to Customer under any Data Service Order will immediately terminate and Customer shall cease to use the Data Service and all intellectual property of ORBCOMM; and (b) Customer will pay any outstanding amounts owed to ORBCOMM. Upon proper termination by Customer based on ORBCOMM's revision of its privacy policies, ORBCOMM will refund the unearned portion of the service fees paid. Termination for any other reason shall not excuse CUSTOMER obligation to pay any and all amounts due. Notwithstanding the foregoing, the terms of this Agreement will apply to continued use of the Data Service by Customer following the termination or expiration of any Data Service Order.

6. Pricing and Payment Terms

a. Data Service fees shall be as specified in the Sales Order Acknowledgment and are invoices are due in full within 30 days following the invoice date. Commencing on the first anniversary of the Effective Date and each anniversary thereafter, ORBCOMM may, upon thirty (30) days written notice, increase the Data Service fees equal to the percentage increase (if any) in the CPI for the preceding twelve-month period. For purposes hereof "Consumer Price Index" shall mean the Consumer Price Index for all Urban Consumers (CPI-U); U.S. City Average; all items, not seasonally adjusted. Any change in Data Service pricing shall be effective at the start of the next billing cycle commencing thirty (30) days.

b. Service pricing includes 1 MB of data per month. ORBCOMM reserves the right to charge for data

overages as provided in the applicable ORBCOMM quotation.

d. Service pricing is for home-network service for the particular service and ORBCOMM reserves the right to make additional charges for roaming service as provided in the applicable ORBCOMM quotation.

e. Payment with respect to the Data Services, shall be as set forth in the Sales Order Acknowledgment and are due in full within 30 days following the invoice date. Invoiced amounts are not subject to reduction, by set-off or otherwise, without the express prior written consent of ORBCOMM. Customer may be required to pay a late charge equal to one and one-half (1.5%) percent per month on all amounts not paid within thirty (30) days of the date of invoice.

7. Disclaimer of Warranties

ORBCOMM MAKES NO WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE DATA SERVICE AND ORBCOMM DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR AGAINST CLAIMS OF PATENT INFRINGEMENT OR THE LIKE AND ACCESS TO THE ORBCOMM WEBSITES ARE PROVIDED "AS IS." ORBCOMM MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE OPERATIONS OF THE DATA SERVICE WILL BE UNINTERRUPTED OR ERROR FREE AND ORBCOMM MAKES NO WARRANTY THAT THE DATA SERVICE WILL OPERATE PROPERLY AS INTEGRATED WITH CUSTOMER'S SYSTEMS AND APPLICATIONS. CUSTOMER ACKNOWLEDGES THAT TEMPORARY INTERRUPTIONS OF THE DATA SERVICES AVAILABLE THROUGH THE ORBCOMM WEBSITES OR OTHERWISE TO CUSTOMER MAY OCCUR AS NORMAL EVENTS.

8. Confidentiality

a. "Confidential Information" means all documents, software, reports, data, records, forms and other materials obtained by one party (the "Receiving Party") from the other party (the "Disclosing Party") or at the request or direction of the Disclosing Party in the course of performing or proposing the Services: (i) that have been marked as confidential; (ii) whose confidential nature has been made known by the Disclosing Party to the Receiving Party; or (iii) that due to their character and nature, a reasonable person under like circumstances would treat as confidential including, but not limited to, non-public information regarding a Disclosing Party's products, features, marketing and promotions, as well as the terms of this Agreement and any pricing provided by ORBCOMM other than ORBCOMM's published list prices. Notwithstanding the foregoing, Confidential Information does not include information which: (1) is already known to the Receiving Party at the time of disclosure by the Disclosing Party; (2) is or becomes publicly known

through no wrongful act of the Receiving Party; (3) is independently developed by the Receiving Party without benefit of the Disclosing Party's Confidential Information; (4) is received by the Receiving Party from a third party without restriction and without a breach of an obligation of confidentiality.

b. The Receiving Party will deliver to the Disclosing Party or destroy all Confidential Information of the Disclosing Party and all copies thereof when the Disclosing Party requests the same, except for copies retained in work paper files or records, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata. Except as otherwise set forth in this section, the Receiving Party shall not disclose to any Person any Confidential Information of the Disclosing Party without the Disclosing Party's express, prior written permission; provided, that notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent that it is required or necessary to be disclosed pursuant to a statutory or regulatory provision or court or administrative order or to submit and process an insurance claim.

c. The Receiving Party may disclose the Disclosing Party's Confidential Information to its employees, contractors, consultants, advisors (collectively, "Representatives") subject to the confidentiality obligations imposed herein. Each party shall exercise the same level of care to protect the other's information as it exercises to protect its own confidential information but in no event less than reasonable care. In the event of an actual or anticipated unauthorized disclosure, the Receiving Party will immediately notify the disclosing Party upon discovery of any such unauthorized use or disclosure and will cooperate in any reasonable way to help the other Party regain possession of the Confidential Information and prevent further unauthorized use or disclosure.

d. If the Receiving Party receives a subpoena or other validly issued administrative or judicial demand requiring it to disclose the Disclosing Party's Confidential Information, the Receiving Party shall, unless prohibited by law, provide prompt written notice to the Disclosing Party of such demand in order to permit it to seek a protective order. So long as the Receiving Party gives notice as provided herein, the Receiving Party shall be entitled to comply with such demand to the extent required by law, subject to any protective order or the like that may have been entered in the matter. In the event the Receiving Party is requested to testify or produce its documents relating to the Services hereunder pursuant to subpoena or other legal process in judicial or administrative proceedings to which it is not a party, or in connection with an informal inquiry or investigation with the consent of the Disclosing Party, the Disclosing Party shall reimburse the Receiving Party for its time and expenses, including reasonable

attorney's fees, time and expense, incurred in responding to such requests.

e. No License or Warranties. Except as set forth in this Agreement, no license to the receiving party under any trade secrets or patents is granted or implied by conveying Proprietary Information or other information to such party, and none of the information transmitted or exchanged shall constitute any representation, warranty, assurance, guaranty or inducement with respect to the infringement of patents or other rights of others. In addition, the disclosure of Proprietary Information by the disclosing party shall not constitute or include any representation or warranty as to the accuracy or completeness of such information.

9. Infringement Indemnity.

a. ORBCOMM shall defend, indemnify and hold Customer harmless against all costs and expenses, including reasonable attorney's fees, damages, and liabilities arising out of any claim by an unaffiliated third party that the Data Services, as provided by ORBCOMM, infringes or misappropriates any intellectual property rights, including without limitation infringement of U.S. patent or any trade secrets under U.S. law, provided, Customer gives ORBCOMM: (i) prompt written notice of such claim; (ii) control over the defense; and (iii) proper and full information and assistance to settle and/or defend such claim. Notwithstanding the foregoing, ORBCOMM shall have no obligation or liability to the extent that the alleged intellectual property infringement(s) arises from (1) the combination, operation, or use of the Data Service with products not supplied by ORBCOMM except as intended or anticipated; (2) alterations to the Data Service, which alterations were not made or authorized by ORBCOMM; or (3) use of the Data Service in a manner for which it was not designed. In the event Customer is enjoined from using the Data Service in a final judgment by a court of competent jurisdiction in a claim covered by this Section 8.a., ORBCOMM shall, at its option and expense, (a) procure for Customer the right to continue to use the Data Service; or (b) allow Customer to terminate the Data Service without penalty. If any claim for which indemnity is or may be sought hereunder is made, Customer agrees (i) promptly to notify ORBCOMM in writing; (ii) to cooperate with ORBCOMM and to allow ORBCOMM sole authority to control the defense and settlement of such claim.

b. Except to the extent that Section 9.a., applies, Customer shall indemnify and save ORBCOMM harmless from and against losses, damages, liabilities, fines, penalties, and expenses (including reasonable attorneys' fees) that arise out any third party claim alleging that the manner of using the Data Services not

in accordance with ORBCOMM's in accordance with the terms and conditions set forth herein, the specifications or instructions or employed by Reseller through combining or integrating the Data Services with non-ORBCOMM products or services infringes its patent, copyright or trademark, including, but not limited to, improper, false, and/or invalid patent, trademark, and/or copyright markings, misappropriation of trade secrets or other rights occasioned thereby.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF ORBCOMM FOR INFRINGEMENT AND IS IN LIEU OF ANY AND ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED OR STATUTORY IN REGARD THERETO.

10. Allocation of Risk and Limitation of Liability.

a. CUSTOMER UNDERSTANDS THAT ITS USE OF THE DATA SERVICE ALLOWS USERS TO SEND COMMANDS TO MECHANICAL DEVICES BELONGING TO OR UNDER THE CONTROL OF CUSTOMER. CONSISTENT WITH AND/OR IN ADDITION TO THE LIMITATIONS AND DISCLAIMERS IN THIS SECTION AND SECTION 6, ORBCOMM SHALL NOT BE LIABLE FOR THE MISUSE OR IMPROPER USE OF THE DATA SERVICE, FOR MISTAKES MADE BY OR ERRORS IN THE USE OF THE DATA SERVICE BY THE COMPANY'S APPLICATION USERS, OR FOR CONTROL COMMANDS WHICH ARE LOST, NOT DELIVERABLE, OR INAPPROPRIATE FOR ANY REASON, INCLUDING SAFETY ISSUES. CUSTOMER ACKNOWLEDGES THAT IT IS CUSTOMER'S RESPONSIBILITY, AND NOT ORBCOMM'S, TO INSURE ITS ASSETS, EQUIPMENT AND LOADS AGAINST LOSS OR DAMAGE, INCLUDING LOSS OR DAMAGE RESULTING FROM FAILURES, ERRORS, OR OTHER PROBLEMS WITH THE DATA SERVICE

b. ORBCOMM SHALL NOT BE HELD LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR OTHER SIMILAR DAMAGES, AS WELL AS LOSS OF PROFITS, LOSS OF SERVICE, LOSS OF LOAD, BUSINESS INTERRUPTION, LOSS OF OR INCORRECT BUSINESS INFORMATION/DATA AND THE LIKE SUFFERED OR INCURRED BY CUSTOMER IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ANY FUNCTIONALITY OR DATA SERVICES TO BE PROVIDED HEREUNDER.

c. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND ORBCOMM'S ENTIRE LIABILITY, IF ANY, FOR ANY CLAIMS ARISING OUT OF THIS AGREEMENT, FUNCTIONALITY OR SERVICE TO BE PROVIDED HEREUNDER OR CUSTOMER'S USE OF THE ORBCOMM WEBSITES OR A ORBCOMM DATA FEED SHALL BE LIMITED TO THE AMOUNT THAT CUSTOMER PAID ORBCOMM PURSUANT TO THIS AGREEMENT, FOR SERVICES PER UNIT AFFECTED BY THE ACT OR OMISSION GIVING RISE TO SUCH LIABILITY, DURING

THE THREE (3) MONTH PERIOD BEFORE THE ACT OR OMISSION GIVING RISE TO SUCH LIABILITY.

d. THESE LIMITATIONS OF REMEDY ARE A MATERIAL PART OF THE ECONOMIC BARGAIN OF THE PARTIES AND WILL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11. **Governing Law.** The construction, interpretation, and performance of this Agreement, as well as the legal relations of the parties arising hereunder, shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflict or choice of law provisions thereof. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Neither party may bring any action for a claim under this Agreement later than one year after the termination of this Agreement; provided that claims under any provision of this Agreement that survives termination of this Agreement may be brought within one year of the later of the occurrence of the event giving rise to the claim and actual knowledge thereof by the party asserting such claim.

12. **Dispute Resolution.**

a. Except in connection with a breach of confidentiality or, in ORBCOMM's sole discretion, non-payment of amounts due hereunder, any dispute or claim arising out of or relating to this Agreement shall be submitted to binding arbitration in accordance with the Rules for Non-Administered Arbitration of the International Institute for Conflict Prevention and Resolution (the "IICPR"). Any issue concerning the extent to which any dispute is subject to arbitration, or any dispute concerning the applicability, interpretation, or enforceability of these dispute resolution procedures, including any contention that all or part of these procedures is invalid or unenforceable, shall be governed by the Federal Arbitration Act and resolved by the arbitrators. By operation of this provision, the parties agree to forego litigation over such disputes in any court of competent jurisdiction and agree that the dispute resolution set forth in this section shall be the exclusive mechanism with respect to disputes, claims or controversies arising out of or relating to this Agreement.

b. Arbitration, as well as any ancillary proceedings including, but not limited to an appeal related to the arbitration, if permitted, shall take place in the Supreme Court of the State of New York, County of New York or the United States District Court for the Southern District of New York, having exclusive jurisdiction and the parties hereby consent to such exclusive jurisdiction, waiving any defense or objection relating to such jurisdiction. The arbitration panel shall have no power to award non-monetary or equitable relief of any sort except as provided in IICPR Rule 13 (Interim

Measures of Protection). Damages that are inconsistent with any applicable agreement between the parties, that are punitive in nature, or that are not measured by the prevailing party's actual damages shall be unavailable in arbitration or any other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitration panel have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrators' award shall include an award to the prevailing party of its attorney's fees, costs and expenses in connection with the arbitration.

c. Either party may seek to enforce any written agreement reached by the parties during arbitration, or to confirm and enforce any final award entered in arbitration, in any court of competent jurisdiction.

d. Notwithstanding the agreement to such procedures, either party may seek equitable relief to enforce its rights in any court of competent jurisdiction.

13. **Export Compliance.** In the case of an international sale, that is, one in which Customer has designated a destination address for Equipment that is outside the United States, ORBCOMM shall be responsible for obtaining any required export licenses from the United States Government to cover such sale to such designated destination. Customer shall be responsible for obtaining from any government all necessary licenses and permission to import the Equipment to such designated destination. Customer shall not violate the terms of the applicable export license, divert or suffer the diversion of any shipment of Equipment from its designated destination and shall not otherwise export (as the term is defined in applicable United States laws), re-export, re-import, or forward any of the Products without all necessary licenses from the United States Government and any other government with jurisdiction over such transaction.

14. **Force Majeure.** ORBCOMM shall not be liable for failure to perform any of its obligations under this Agreement or any Equipment Order hereunder due to causes beyond its reasonable control. Such causes shall include, but shall not be limited to, such things as acts of God, fire, flood, earthquake or other natural disaster, unusually severe weather conditions, war, terrorist activity, embargo, riot, the intervention of any governmental authority, strikes (regardless of the characterization thereof), labor slowdowns or walkouts, shortages of labor, material or transport, and failures of suppliers to deliver in accordance with the terms of their contracts. ORBCOMM will, within a reasonable time after a *force majeure* event, notify Customer in writing, and the time for delivery or other performance by ORBCOMM hereunder shall be extended by at least the same length of time as such *force majeure* event continues.

15. **No Joint Venture.** The Parties hereunder are independent contractors, and nothing in this Agreement will be construed as creating a partnership, franchise, joint venture, employer-employee or agency relationship. Neither party shall have the right to, and neither party shall, control the means or methods by which the other party carries out its obligations under this Agreement.

16. **No Third-Party Beneficiaries.** The provisions of this Agreement are for the benefit of the Parties and not for any other person or entity. In particular, a cross-reference to another person or entity who may be purchasing equipment or services to be used in conjunction with those purchased by the Customer is not intended to, and shall not, constitute the referenced person or entity a party to or beneficiary of this Agreement.

17. **Network Changes.** ORBCOMM disclaims all liability in the event of technical or network changes made by a telecommunications carrier to its network that result in a Customer's inability to continue to use, or the degradation of performance, of the Data Service. ORBCOMM will use commercially reasonable efforts to provide notice of such changes once notification by the applicable carrier has been received so that Customer may plan for the transition.

18. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect. The Parties intend that the provisions of this Agreement be enforced to the fullest extent permitted by applicable law. Accordingly, the Parties agree that if any provision is deemed not enforceable, it will be deemed modified to the extent necessary to make it enforceable.

19. **Section Headings.** The section headings used in this Agreement are intended for convenience only and will not be deemed to supersede or modify any provision.

20. **Assignment.** This Agreement is binding on the Parties and their respective successors and assigns. ORBCOMM may assign this Agreement to any person or

entity acquiring all or substantially all of the business and assets of ORBCOMM upon prior notice to Customer. Otherwise, neither party may assign this Agreement without the prior written consent of the other and any such attempted assignment without such consent shall be void.

21. **Notices.** All notices between the Parties must be in writing and will be deemed given as of the day they are received either by messenger, delivery service, or the United States Mail, postage prepaid, addressed to the Party as specified above, or to such other addresses as the Party to receive the notice or request so designates by written notice to the other Party.

22. **Amendment.** These standard Data Service Terms and Conditions may not be amended or modified except in a writing signed by authorized representatives of the parties.

23. **Marketing.** Each Party is prohibited from using in advertising, publicity, promotion, marketing, or other similar activity, any name, trade name, trademark, or other designation, including any abbreviation, contraction or simulation, of the other Party without the prior written permission of the other Party. Notwithstanding the foregoing, ORBCOMM may identify Customer by name on its customer list or similar marketing presentation.

24. **Integration and Risk Allocation.**

THE DATA SERVICE ORDER, INCLUDING THE SALES ORDER ACKNOWLEDGEMENT, T, REPRESENT THE PARTIES' ENTIRE AGREEMENT AND CANNOT BE MODIFIED EXCEPT BY A WRITING SIGNED BY A DULY AUTHORIZED REPRESENTATIVES OF BOTH PARTIES. CUSTOMER UNDERSTANDS THAT THE FEES CHARGED BY ORBCOMM REFLECT THE ALLOCATION OF RISK EXPRESSED BY THE LIMITED WARRANTIES, THE EXCLUSIVE LIMITED REMEDIES FOR BREACH OF THOSE LIMITED WARRANTIES, AND THE LIMITATIONS ON LIABILITY AND DAMAGES SET FORTH IN THIS INTEGRATED AGREEMENT. BY EXECUTING THIS THE SALES ORDER ACKNOWLEDGEMENT AND ACTIVATING THE EQUIPMENT, CUSTOMER ACCEPTS THESE TERMS AND CONDITIONS.

[END OF DATA SERVICE TERMS AND CONDITIONS]