



STANDARD EQUIPMENT SALE TERMS AND CONDITIONS

THIS DOCUMENT contains the terms and conditions under which ORBCOMM sells telematics equipment 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 issuing the purchase order ("Customer"). These terms and conditions 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, any of the incorporated documents checked above, or any Related Order 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. Activation occurs upon ORBCOMM's action in response to notice from the Customer (or Customer's customer if Customer is not the purchaser of the Data Service) to ORBCOMM's customer service center of units, identified by ORBCOMM identification number (provided to with the Equipment), to be activated. This notice may be given by any method authorized in ORBCOMM's customer service procedures in effect at the time and communicated to customer either directly in writing or by posting on ORBCOMM's website.

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

"Equipment" means ORBCOMM telematics units, other hardware manufactured by or for ORBCOMM and carrying the ORBCOMM brand, Software Components, and Peripheral Devices.

"Equipment Order" means a purchase order placed by the Customer for equipment and the related Sales Order Acknowledgement and these Standard Equipment Sale Terms and Conditions.

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

"Peripheral Devices" means any Equipment furnished by ORBCOMM to Customer hereunder that was not manufactured by or for ORBCOMM and carrying the ORBCOMM brand, such as temperature probes, door sensors, fuel sensors, antennas, cargo sensors, cabling, and conduits.

"Software Components" means software and firmware programs embedded in hardware or otherwise furnished under this Agreement and a Related Order but does not include any ORBCOMM website or functionality thereof.

"Service Order Acknowledgement ("SOA")" 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. **Delivery and Acceptance**

a. Delivery of the Equipment shall be ExWorks (INCOTERMS 2010) from the location of ORBCOMM's contract manufacturer or distribution facility in the United States. Title and risk of loss of or damage to the Equipment shall pass to the Customer when the Equipment is made available to the common carrier at the point of delivery referenced above.

b. ORBCOMM may make partial and advance deliveries in its sole discretion without penalty.

c. Delivery dates are approximate, but ORBCOMM will make commercially reasonable efforts to deliver on time and will notify Customer if a scheduled delivery is expected to be delayed.

3. **Packaging and Shipping**

a. ORBCOMM will, without additional charge to the Customer, package and, unless Customer instructs otherwise in writing, arrange for shipping the Equipment by ORBCOMM's choice of carrier according to customary standards for domestic or international shipments, as the case may be, of similar items. If Customer requests, ORBCOMM will arrange for shipment by premium transportation, provided that Customer will pay the additional shipping cost.

b. Customer is responsible and will be invoiced for the costs of shipping and any special packaging specified by Customer.

c. Customer is responsible for insuring the Equipment in transit, if desired. ORBCOMM will arrange insurance in transit for Customer's account upon Customer's written request. Customer is responsible and will be invoiced for costs of insurance arranged by ORBCOMM at Customer's request. For international shipments, customs clearance is the responsibility of the Customer and duties and any customs clearance or customs brokerage fees or charges are to be paid directly by the Customer.

4. **Security Interest.** ORBCOMM reserves, and Customer hereby grants ORBCOMM, a purchase money security interest in each unit of Equipment, resulting in ORBCOMM having all rights of a secured creditor under the Uniform Commercial Code as enacted in New Jersey (“UCC”) with respect thereto until such time as all Customer’s payments and obligations for all Equipment ordered have been fully discharged. Customer agrees to execute and deliver any additional document or instrument ORBCOMM may reasonably request from time to time to evidence or perfect its security interest in the Equipment. Without limiting the foregoing, Customer agrees that ORBCOMM is authorized to file or record in any jurisdiction, without Customer’s signature, any applicable financing statement under the UCC with respect to its interest in the Equipment. If Customer is in default of any obligation hereunder, or if a proceeding in bankruptcy, dissolution, liquidation, insolvency, receivership or reorganization is instituted by or against Customer, Customer’s property or business, then ORBCOMM shall have the right to declare the unpaid balance owing under any orders to be payable immediately, and to take immediate possession of the Equipment or any portion thereof without demand, further notice or legal process.

5. **Prices**

a. Unless the Customer places a purchase order which accepts these Terms and Conditions within the time period specified for a firm offer of price in a written ORBCOMM quotation, or unless Customer and ORBCOMM have agreed in writing that Customer will purchase its requirements of similar goods from ORBCOMM for a particular period at particular prices and Customer’s order is placed within such period, all prices are subject to change by ORBCOMM without notice and all sales will be invoiced at ORBCOMM’s published list prices for the ordered items if ORBCOMM accepts Customer’s order.

b. Equipment prices are for the specified items of Equipment only and do not include any optional Equipment or accessories not listed in ORBCOMM’s official description of the selected SKU or any Data Services.

6. **Payment Terms.** Payment with respect to Equipment shall be in U.S. Dollars and 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. Unless prior arrangements for electronic payment are made, payments will be by Customer’s check on a U.S. bank sent by mail or overnight express to ORBCOMM’s payment address per this Agreement. Customer maybe 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. Should Customer fail to make payment as required in this Section or if ORBCOMM believes Customer’s financial condition does not justify delivery of Equipment or Data Service, as the case may be, on the terms of payment above, ORBCOMM may require a letter of credit or full or

partial payment in advance, may stop delivery of Equipment in transit, may reclaim Equipment upon demand, discontinue any Data Service, and/or may terminate any order or any portion thereof.

7. **Taxes**

a. Pricing is exclusive of any applicable taxes, duty, tariffs or fees (collectively “taxes and fees”) including but not limited to sales, use, excise, import, export, or any similar tax or any fee to comply with applicable government imposed regulations whatsoever including but not limited to environmental regulations regarding elimination of certain chemical content and recycling fees, FCC regulations, and any other regulations that govern or affect the provision of the Equipment, including any tax or fee levied on the transaction as a result of an audit by a governmental body.

b. Taxes and fees will be invoiced to and paid by the Customer. If Customer purchases the Equipment for installation on assets to be sold, leased, rented, or otherwise furnished to Customer’s customers, Customer may submit a valid exemption certificate from the applicable state or states in lieu of payment of sales taxes; however, Customer shall indemnify and defend ORBCOMM at Customer’s expense against all liability for any taxes or assessments, plus any interest, fines and penalties, assessed by any governmental entity, which are not invoiced by ORBCOMM to Customer in reliance upon an exemption certificate or a representation by Customer that such taxes or assessments are not applicable to the sale.

8. **Software Components/Equipment**

a. “Software Components” means software and/or firmware programs or scripts embedded in the Equipment or otherwise furnished with or in connection to the Equipment by ORBCOMM but does not include ORBCOMM’s Data Services. The Software Components are proprietary intellectual property owned by ORBCOMM or owned by a third-party provider and licensed to ORBCOMM. Customer is only granted a limited, personal, non-exclusive, non-transferable license to use the Software Components while resident on and in connection with the use of the Equipment for the sole purpose of obtaining and sending data or commands in the operation of Customer’s (or Customer’s customer’s, if Customer is not the purchaser of the Data Service) business over the internet or via direct linkage to Customer’s existing information systems through ORBCOMM’s Data Service. Customer shall and shall not allow any third party to (i) make any copies; (ii) download; (iii) reverse engineer; (iv) decompile; or, (vi) disclose, the Software Components to any third party. The Software Components are designed and licensed to Customer solely for use in connection with ORBCOMM’s Data Service. Any use or attempted use with any other data service whatsoever shall automatically terminate and cancel all of Customer’s right and license with respect to the Software Components. Customer shall have no rights in the Software

Components except as expressly provided in this Section. To the extent that Customer purchases Equipment for installation on assets to be sold, rented, leased, or otherwise furnished by Customer's customers, Customer shall be permitted to sublicense the Software Components to its customers, but only on the same terms and subject to the same restrictions, stated in this section.

b. Customer shall not disclose to, or allow any third party to use, copy, deconstruct or reverse engineer any Equipment or other hardware supplied by ORBCOMM under this Agreement and shall not copy, reproduce or reverse engineer any component thereof.

9. Limitations of Technology/Equipment

Limitations.

a. Customer acknowledges the following inherent technical limitations relating to Equipment use. The existence of unfavorable conditions, such as weather and geographical factors and other atmospheric conditions can interrupt Equipment functionality and interfere with complete service area coverage at all times. Other environmental issues including, but not limited to service interruptions, poor coverage areas, network congestion, roaming and other wireless access issues may affect Equipment performance. Moreover, if Equipment is moved out of an available service area, communication with that Equipment will be unavailable until it returns to the available service area. In addition, the GPS antenna in Equipment must have a radio frequency link to the GPS satellites in order to function properly. The Equipment has many complex elements and are not guaranteed against eavesdroppers, hackers, service attacks, viruses or interception. Customer agrees to inform all users of Equipment, that ORBCOMM shall not be liable for any lack of privacy or security resulting from use of the Equipment.

b. The Equipment is based on technology which may become obsolete in the future as a result of changes in wireless technology or actions by telecom regulators. In such event, ORBCOMM shall have no obligation to issue a refund or furnish replacement Equipment.

10. Limited Warranty and Disclaimers

a. ORBCOMM warrants to Customer that on the date each unit of Equipment is shipped, it shall comply with the applicable ORBCOMM SKU description and be free from defects in material or workmanship, subject to the terms and conditions set forth in the remainder of this Section.

b. This warranty does not cover defects or nonconformity caused by abuse, mishandling, accident, improper storage, installation, application, operation, maintenance, temperature, humidity or other

environmental condition, or the malfunction of another component or part (including any software or firmware) of any device in which the Equipment is installed or with which the Equipment interfaces, nor does it extend to Equipment which has been modified or repaired by anyone except ORBCOMM or its authorized service representative, or whose serial numbers or identification marks have been altered or removed.

c. This warranty shall apply only to defects which appear within one year from the earlier of the date of Activation or 30 days from the date of shipment in the case of Equipment other than Peripheral Devices, and within thirty (30) days from the date of shipment in the case of Peripheral Devices (in each case, the "Warranty Period"), and of which Customer notifies ORBCOMM in writing within thirty (30) calendar days after Customer's discovery of the defect.

d. Customer may purchase an Extended Warranty from ORBCOMM with respect to a particular unit of Equipment (other than Peripheral Devices). Terms, conditions, and procedures of the Extended Warranty are otherwise the same as those of the standard warranty.

e. Repaired or replaced Equipment shall be warranted for the longer of the remainder of the original Warranty Period, or ninety (90) days from the date of shipment of the repaired or replaced Equipment.

f. ORBCOMM's sole obligation, and Customer's sole and exclusive remedy for defective or nonconforming Equipment is repair, replacement, or credit of the original purchase price (not including any shipping or service charges associated therewith) at ORBCOMM's option under the terms of this warranty, and such repair, replacement, or credit shall satisfy ORBCOMM's entire obligation to Customer for defective or nonconforming Equipment and liability to or through Customer, whether in contract, tort, negligence, strict liability or otherwise.

g. Prior to returning Equipment for warranty adjustment, Customer shall request a return authorization number and return shipping instructions from ORBCOMM. The return authorization number shall be placed conspicuously on the outer package shipping label and the returned Equipment shall be shipped to the warranty administrator at the address designated by ORBCOMM in the return authorization. Returned Equipment shall be accompanied by a written description of the reasons for the return, the circumstances under which the defect became apparent, and the date the defect occurred or, if not known, the date the defect was discovered. Provided that the Equipment is non-operational for reasons covered by warranty, ORBCOMM will ship a replacement Unit at no cost to the Customer as soon as practicable after the RMA is issued. ORBCOMM may replace the original Unit with a different model, as long as the replacement Unit is capable of delivering Customer's data in accordance with this Agreement. Customer acknowledges that ORBCOMM

agrees to ship replacement Units in advance of receiving the non-operational Units for the convenience of the Customer, and that receipt of the non-operational Unit by ORBCOMM is a requirement. If ORBCOMM does not receive the original non-operational Unit for which the RMA was issued within thirty (30) days of the shipment of the replacement Unit, Customer shall be invoiced for, and shall pay the cost of the replacement Unit at the then current list price.

h. Customer is responsible for any costs and risks of de-installation of the Equipment and Customer shall return allegedly defective Equipment for which a return authorization number has been obtained to ORBCOMM's designated warranty administration facility with shipping charges prepaid. ORBCOMM shall reimburse Customer for those shipping charges (but not the costs or risks of de-installation) if the returned Equipment is found to be defective or nonconforming and the defects or nonconformities are covered by this warranty.

i. If returned Equipment is found to be conforming and not defective, then ORBCOMM shall ship the Equipment back to Customer and shall invoice Customer and Customer shall pay the cost of testing as set forth on the SOA plus return shipment.

j. If returned Equipment is found to contain a defect which is not covered by this warranty, then ORBCOMM shall provide a written quotation showing the estimated costs of repair or the price of a replacement. If Customer does not provide instructions as to disposition of the Equipment within thirty (30) days from receipt of the quotation, then ORBCOMM shall ship the Equipment back to Customer and invoice Customer and Customer shall pay the costs of testing and return shipment.

k. If returned Equipment is found to be defective or nonconforming and the defect or nonconformity is covered by this warranty, then ORBCOMM shall, at its option and at no charge to Customer, repair or replace the Equipment or offer Customer the choice of a refund in the amount of the original purchase price paid for the Equipment, exclusive of any associated shipping or service charges. Following the repair or replacement, ORBCOMM shall ship the Equipment back to Customer at ORBCOMM's expense. Customer is responsible for all costs and risks of installation of the repaired or replaced Equipment.

l. ORBCOMM MAKES NO WARRANTIES OTHER THAN THAT EXPRESSLY STATED IN THIS SECTION. ORBCOMM DISCLAIMS ALL OTHER WARRANTIES AND STATUTORY OR OTHER IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR TITLE; IMPLIED WARRANTIES AGAINST CLAIMS OF PATENT INFRINGEMENT OR THE LIKE; AND ANY IMPLIED WARRANTY OR VARIANCE FROM THE TERMS OF THE EXPRESS WARRANTY STATED HEREIN ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT

THAT APPLICABLE LAW DOES NOT PERMIT ORBCOMM TO DISCLAIM ANY PARTICULAR IMPLIED WARRANTY, THE TERM OF SUCH IMPLIED WARRANTY IS LIMITED TO THE TERM OF THE EXPRESS WARRANTY STATED HEREIN AND CLAIMS UNDER SUCH IMPLIED WARRANTY ARE SUBJECT TO THE PROCEDURES STATED HEREIN FOR CLAIMS UNDER THE EXPRESS WARRANTY.

11. Limitations of Liability

a. IN NO EVENT AND UNDER NO CIRCUMSTANCES, SHALL ORBCOMM BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR OTHER SIMILAR DAMAGES AS WELL AS LOSS OF PROFITS, LOSS OF PRODUCT, LOSS OF LOAD, LOSS OF SERVICE, COLLATERAL DAMAGE TO PROPERTY, BUSINESS INTERRUPTION, LOSS OF OR INCORRECT BUSINESS INFORMATION/DATA SUFFERED OR INCURRED BY CUSTOMER OR ANY THIRD PARTY ARISING FROM OR IN CONNECTION WITH (i) ANY BREACH OF ANY PROVISION OF THIS AGREEMENT; (ii) THE DELIVERY, USE, PERFORMANCE OR NONPERFORMANCE OF ANY UNIT SUPPLIED UNDER THIS AGREEMENT; (iv) ANY CLAIMS AGAINST CUSTOMER BY ANY PARTY EXCEPT AS SET FORTH HEREIN; OR (v) ANY OTHER OBLIGATION ORBCOMM MAY HAVE, REGARDLESS OF WHETHER SUCH DAMAGES WERE REASONABLY FORSEEABLE AND REGARDLESS OF WHETHER ORBCOMM WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTIES AND THE MAXIMUM EXTENT OF ORBCOMM'S LIABILITY OF ANY KIND (EXCEPTING LIABILITY FOR PERSONAL INJURY CAUSED SOLELY BY ORBCOMM'S NEGLIGENCE) WITH RESPECT TO THE EQUIPMENT FURNISHED UNDER THIS AGREEMENT AND ALL OTHER PERFORMANCE OR NONPERFORMANCE BY ORBCOMM RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE PRICE CUSTOMER HAS PAID FOR THE EQUIPMENT WHICH IS THE SUBJECT OF THE DAMAGE CLAIM. CUSTOMER SHALL INDEMNIFY AND HOLD ORBCOMM HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS, SUITS, PROCEEDINGS, COSTS, EXPENSES, DAMAGES AND LIABILITIES OF ANY KIND THAT ARISE OUT OF OR ARE CONNECTED WITH THE CUSTOMER'S POSSESSION, USE, OR OPERATION OF THE EQUIPMENT TO THE EXTENT THAT THEY EXCEED THE PRICE CUSTOMER HAS PAID FOR THE EQUIPMENT WHICH IS THE SUBJECT OF THE DAMAGE CLAIM.

c. THE LIMITATIONS OF LIABILITY AND INDEMNITIES SHALL SURVIVE FOR THE LIFE OF THE EQUIPMENT. THESE EXCLUSIVE REMEDIES SHALL NOT BE DEEMED TO HAVE FAILED IN THEIR ESSENTIAL PURPOSE, SO LONG AS ORBCOMM IS WILLING TO REPAIR OR REPLACE DEFECTIVE EQUIPMENT OR REFUND THE PRICE PAID BY THE CUSTOMER. ORBCOMM NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR ORBCOMM ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, OR USE OF THE EQUIPMENT FURNISHED UNDER THIS AGREEMENT.

12. 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.

13. 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 Equipment, 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 Equipment with products not supplied by ORBCOMM except as intended or anticipated; (2) alterations to the Equipment, which alterations were not made or authorized by ORBCOMM; or (3) use of the Equipment in a manner for which it was not designed. In the event Customer is enjoined from using the Equipment in a final judgment by a court of competent jurisdiction in a claim covered by this Section 13.a., ORBCOMM shall, at its option and expense, (a) procure for Customer the right to continue to use the Equipment; (b) replace or modify the Equipment so that it becomes non-infringing without reducing or adversely to Customer altering the functionality of the Equipment in any material

respect; or (c) give Customer a refund in an amount equal to the fees paid by Customer to ORBCOMM for the enjoined Equipment under this Agreement depreciated on a pro rate basis from the date of delivery. 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 13.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 installing, configuring or using the Equipment not in accordance with ORBCOMM's specifications or installation instructions or methods employed by Customer through combining or integrating the Equipment with (i) non-ORBCOMM products or services; or (ii) products or services not approved in writing by ORBCOMM, 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.

14. **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.

15. **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.

16. **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 or any Related Order.

17. **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 in a Related Order 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 or the referencing Related Order.

18. **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 either the Equipment or 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.

19. **Severability.** If any provision of this Agreement or any Related Order hereunder 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 and Related Orders 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.

20. **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.

21. **Assignment.** The Equipment Order is binding on the Parties and their respective successors and assigns. Either party may assign the Equipment Order an Affiliate on prior notice to the other. ORBCOMM may assign this Agreement and Related Orders 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 or any Related Order without the prior written consent of the other and

any such attempted assignment without such consent shall be void.

22. **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.

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. **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. 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.

25. **Amendment.** These standard Equipment Sale Terms and Conditions may not be amended or modified except in a writing signed by an authorized representative of each party.

25. **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.

26. **INTEGRATION AND RISK ALLOCATION.** THE EQUIPMENT ORDER, INCLUDING THE SERVICE ORDER ACKNOWLEDGEMENT, WHICH, WITH THIS DOCUMENT, 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 AGREEMENT, CUSTOMER ACCEPTS THESE TERMS AND CONDITIONS AND AFFIRMS THAT IT UNDERSTANDS THAT TO CHANGE THEM WOULD AFFECT THE ECONOMIC BARGAIN EXPRESSED IN THE EQUIPMENT ORDER.

[END OF EQUIPMENT SALE TERMS AND CONDITIONS]