



STANDARD PROFESSIONAL SERVICES TERMS AND CONDITIONS

THIS DOCUMENT contains the terms and conditions under which ORBCOMM sells Professional Services (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 covering Professional Services is in effect between ORBCOMM and the customer issuing the purchase order (“Customer”). These terms and conditions are to be 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.

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

“Confidential Information” has the meaning assigned to it in Section 12.

“Customer” means the person or entity issuing a purchase order for Professional Services.

“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.

“Professional Services” means software or hardware customization and/or integration services relating to equipment and data services provided by ORBCOMM as further specified in a written quotation or proposal provided by ORBCOMM to the Customer.

“Professional Services Order” means a written purchase order or other written offer to purchase specifying services, identified per an ORBCOMM quotation, at the price or prices contained in the written quotation from ORBCOMM to the Customer that is in effect as of the date of the order. ORBCOMM may accept Customer's offer to purchase through issuance of an Sales Order Acknowledgement to the Customer.

2. ORDERING OF PROFESSIONAL SERVICES

Each time Customer desires to engage ORBCOMM to perform a Professional Service or discrete set of Professional Services, Customer identify to ORBCOMM in writing the specific work to be performed in terms of, for example, number of units to be installed and place of installation, types of customization desired, or other particulars and units of service. ORBCOMM will respond with a written price quotation for the requested services. Customer may then request and ORBCOMM may accept a Professional Service Order as provided in Section 2 of the Master Agreement.

3. PAYMENT TERMS.

Payment with respect to Professional Services 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 Professional Services on the terms of payment above, ORBCOMM may require a letter of credit or full or partial payment in advance, may discontinue any Professional Services, and/or may terminate any order or any portion thereof.

4. ORBCOMM'S REPRESENTATIONS AND COVENANTS

ORBCOMM shall perform the ordered Professional Services in a good and workmanlike manner and in accordance with applicable laws, regulations, manufacturer's published instructions, and good industry practice using either its own employees or independent contractors engaged by it who are, in either case, reasonably skilled in the arts in question. If, within thirty days after performance of Professional Services, it appears that they were not performed to this standard, ORBCOMM will reperform the services on Customer's request or, at its option, credit or refund the amount paid for the substandard services. Such reperformance, credit, or refund shall be Customer's sole and exclusive remedy for substandard or defective performance of Professional Services by ORBCOMM.

- a. ORBCOMM represents and covenants that any physical, virtual, or software tools used by it or its contractors for the performance of the Professional Services, other than such tools as are provided by Customer, are property of ORBCOMM or its contractors or duly licensed by it or the applicable contractor from the owner.
- b. To the extent that any Professional Services are to be performed on premises belonging to Customer or a third party, ORBCOMM agrees that it will, and will require its independent contractors (if any) to:
 - i. Maintain the following insurance coverages with respect to such work and provide a certificate of the same to Customer upon request:
 - ii. Workers' compensation insurance of the type and in the amount required by the law of the place where the work is to be performed;
 - iii. General and automotive liability insurance with per occurrence limit not less than \$1 million.
 - iv. Errors and omissions insurance with per occurrence limit not less than \$1 million.
- c. Comply with Customer's or such third party's reasonable site security regulations and procedures that are communicated to ORBCOMM in advance of the work.

5. CUSTOMER'S REPRESENTATIONS AND COVENANTS

- a. Customer represents and covenants that either:
 - i. It is the owner of any assets, equipment, software, or other subject matter on which the Professional Services are to be performed by ORBCOMM and consents to the performance of the same; or
 - ii. It has the lawful power and authority to consent on behalf of such owner to the performance of the Professional Services on such subject matter by ORBCOMM and does so consent; or
 - iii. It has obtained the written consent of such owner to the performance of the Professional Services and the performance of such Professional Services will not violate the rights of any third party with respect to such subject matter.
- b. Customer represents and covenants that any physical, virtual, or software tools provided by it to ORBCOMM for the performance of the Professional Services are Customer's property or duly licensed by it from the owner with the right to permit use by ORBCOMM for the performance of the Professional Services.
- c. Customer agrees that it, and not ORBCOMM, is responsible for any consequences resulting from ORBCOMM following any directions given to it by Customer with respect to the performance of the Professional Services.
- d. To the extent that any Professional Services are to be performed on premises belonging to Customer or a third party, Customer agrees:

- i. that it will maintain, or ensure that the owner of the premises maintains, the following insurance coverages and to provide a certificate of insurance to that effect to ORBCOMM upon request:
 1. Fire and all-risk casualty insurance on the buildings and improvements for their full insurable value;
 2. All-risk casualty insurance on all personal property on the premises, including any Customer assets on which Professional Services are to be performed and any loads contained therein, for their full insurable value; and
 3. General liability insurance with per occurrence limit of at least \$1 million; and
- ii. That it will maintain, or require that such third party maintain, the premises in a safe condition for the performance of the Professional Services in accordance with local fire codes and applicable workplace safety regulations, such as, but not limited to, OSHA regulations.

6. WAIVER OF SUBROGATION

Customer and ORBCOMM each waive subrogation against the other with respect to any claim arising out of a fire, casualty, or other occurrence in the course of or relating to the performance of Professional Services by ORBCOMM or its contractors on the premises of the Customer or a third party, but only to the extent that such waiver will not relieve or reduce the liability of any insurer of the waiving party with respect thereto. Customer and ORBCOMM each agree to use commercially reasonable efforts to obtain the consent of their respective insurers to such waiver so that it will be fully effective.

7. DISCLAIMER OF WARRANTIES

ORBCOMM MAKES AND CUSTOMER RECEIVES NO WARRANTY WHATSOEVER, EXPRESSED 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 WITH RESPECT TO THE PROFESSIONAL SERVICES. ALL SERVICES TO BE PROVIDED HEREUNDER AND ACCESS TO THE ORBCOMM WEBSITES ARE PROVIDED "AS IS." ORBCOMM MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE OPERATIONS OF THE INTERFACE WILL BE UNINTERRUPTED OR ERROR FREE AND ORBCOMM MAKES NO WARRANTY THAT THE SERVICE WILL OPERATE PROPERLY AS INTEGRATED WITH CUSTOMER'S SYSTEMS AND APPLICATIONS. CUSTOMER ACKNOWLEDGES THAT TEMPORARY INTERRUPTIONS OF THE SERVICES AVAILABLE THROUGH THE ORBCOMM WEBSITES OR OTHERWISE TO CUSTOMER MAY OCCUR AS NORMAL EVENTS.

8. ALLOCATION OF RISK AND LIMITATION OF LIABILITY

a. 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 PROFESSIONAL SERVICES, EVEN IF SUCH ARE DETERMINED TO BE THE RESULT OF ORBCOMM'S NEGLIGENCE.

b. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL ORBCOMM BE HELD LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR OTHER SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, 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 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 SHALL BE LIMITED TO THE AMOUNT THAT CUSTOMER PAID ORBCOMM PURSUANT TO THIS AGREEMENT, FOR PROFESSIONAL SERVICES 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.

9. CONFIDENTIALITY

a. "Confidential Information" means information marked or otherwise identified in writing by a Party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes non-public information regarding either Party's products, features, marketing and promotions, as well as the terms of this Agreement and any pricing provided by ORBCOMM to Customer other than ORBCOMM's published list prices.

b. Confidential Information does not include information which: (i) the recipient developed independently without reference to any of the discloser's Confidential Information; (ii) the recipient knew before receiving it under this Agreement; or (iii) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality.

c. During and for a period of 5 years after the term of this agreement, neither Party will use the other Party's Confidential Information without the other Party's written consent except in furtherance of this business relationship or as expressly permitted by this Section, or disclose the other Party's Confidential Information except: (i) to obtain advice from legal or financial consultants; or (ii) if compelled by law, in which case the Party compelled to make the disclosure will use its best efforts to give the other Party notice of the requirement so that the disclosure can be contested.

d. Each Party will take all reasonable precautions to safeguard the other Party's Confidential Information. Such precautions will be at least as great as those the Party takes to protect its own Confidential Information. The receiving Party will disclose the other Party's Confidential Information to its employees or consultants only on a need-to-know basis and subject to the confidentiality obligations imposed herein. When the other Party's Confidential Information is no longer necessary to perform any obligation under this Agreement, the receiving Party will return it to the other Party or destroy it at the other Party's request. Each Party will immediately notify the other Party upon discovery of any unauthorized use or disclosure of the other Party's Confidential Information, 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.

e. Either Party may provide suggestions, comments or other feedback to the other Party with respect to the other Party's products and services. Such feedback is voluntary, and the party receiving the feedback may use it for any purpose without obligation of any kind, except that the Party receiving the feedback will not disclose the source of the feedback without the consent of the Party providing it.

f. Each Party is free to develop products independently without the use of the other Party's Confidential Information. Neither Party is obligated to restrict the future work assignments of people who have had access to Confidential Information. In addition, each Party, and these people, are free to use the information that these people remember related to information technology, including ideas, concepts, know-how or techniques, so long as Confidential Information of the other Party is not disclosed in violation of this Agreement in the course of such use. This use will not grant either Party any rights under the other Party's copyrights or patents, and does not require payment of royalties or separate license.

10. *FORCE MAJEURE*.

ORBCOMM shall not be liable for failure to perform any of its obligations under this Agreement or any Professional Services 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. ASSIGNMENT.

The Professional Services Order is binding on the Parties and their respective successors and assigns. Either party may assign the Professional Services Order an Affiliate on prior notice to the other. ORBCOMM may assign this Agreement and Professional Services 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.

16. 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.

17. 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.

18. GOVERNING LAW AND DISPUTE RESOLUTION.

This Agreement and all Related Orders shall be construed and controlled by the substantive laws of the State of New Jersey without reference to conflict-of-laws principles. The Parties consent to exclusive jurisdiction and venue in the state and federal courts sitting in New Jersey. The Parties waive all defenses of lack of personal jurisdiction and *forum non conveniens* with respect to actions arising out of or relating thereto that are so filed. Process may be served on either Party in the manner authorized by applicable law or court rule. In any action to enforce any right or remedy under this Agreement or any Related Order or to interpret any provision of this Agreement or Related Order, the prevailing Party will be entitled to recover its reasonable attorneys' fees, costs, and other expenses.

19. INTEGRATION AND RISK ALLOCATION.

THE PROFESSIONAL SERVICES ORDER, INCLUDING THE SALES 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 PROFESSIONAL SERVICES ORDER.

[END OF PROFESSIONAL SERVICES TERMS AND CONDITIONS]