

## SOLUTION PROVIDER AGREEMENT

This Solution Provider Agreement ("Agreement") is effective as of the date listed in the applicable proposal or order form ("Effective Date") by and between the ORBCOMM entity listed in the applicable proposal or order ("ORBCOMM") and the SP entity listed in the applicable proposal or order ("SP"). Each of ORBCOMM and SP may be individually referred to herein as a "Party" and, collectively, as the "Parties."

### BACKGROUND

- A. ORBCOMM currently markets and distributes certain Products and Network Services; and
- B. SP desires to purchase and resell Products and Network Services for incorporation in and use with its products.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein set forth, the Parties agree as follows:

#### 1. DEFINITIONS.

As used herein, capitalized terms will have the meanings set forth below:

**"Agreement"** means this Agreement and any attachments hereto.

**"Affiliate"** means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with such Person. For purposes of this definition, "control" means the direct or indirect ability to direct or influence the management or policies of a Person, whether through ownership of voting securities, by contract, or otherwise.

**"Attachment A"** means the Product Schedule(s), Application Services Schedule(s), SPA Addendum(s) or other schedules as applicable, which are provided as an attachment to the Agreement or separately. Attachment A is governed by the terms of this Agreement.

**"Carrier"** means any operator of a satellite or terrestrial wireless communications network that is part of the ORBCOMM network. Carriers may or may not be Affiliates of ORBCOMM.

**"Documentation"** means all accompanying documentation and media supplied by ORBCOMM for inclusion with the Products and Network Services.

**"End User"** means an entity that purchases Products and Network Services from the SP or a SP Reseller using Products and/or Network Services for internal use only and does not resell such Products and Network Services.

**"Export Compliance Declaration"** means the declaration relating to compliance with applicable export control laws and regulations, as amended from time to time and as made available at <https://www.orbcomm.com/uploads/files/PDF/Export-Compliance-Declaration.pdf>.

**"Network Services"** means ORBCOMM's or Affiliate's network services which SP is eligible to purchase from ORBCOMM pursuant to, and as further described in, executed Product Schedules included in Attachment A to the Agreement.

**"Person"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

**"Prices"** means the prices payable to ORBCOMM by the SP for the Products and Network Services as set forth in Product Schedules included in Attachment A hereto.

**"Products"** means the ORBCOMM or Affiliate's products which SP is eligible to purchase from ORBCOMM pursuant to, and as further described in an executed Product Schedule included in Attachment A to the Agreement.

**"Product Schedule"** means the schedule executed by an authorized representative of both Parties, which sets out the product line and related services and product-specific plans which SP is eligible to purchase from ORBCOMM pursuant to the terms and conditions of this Agreement; once executed a Product Schedule is included in Attachment A and incorporated into the Agreement by reference.

**"Release Fees"** means the fees as set forth in the Product Schedule(s) if a Product is not on an ORBCOMM authorized network.

**"Reseller Agreement"** means an agreement under which a SP Reseller is authorized to distribute the Products and Network Services according to the terms and conditions of Section 3 below.

**"ORBCOMM Marks"** means the trade names, trademarks, service marks, logos and certifications as set forth by ORBCOMM, and as amended from time to time. ORBCOMM's current branding guidelines can be found at <https://www.orbcomm.com/uploads/files/PDF/ORBCOMM-Logo-Basic-Usage-Guideline.pdf>.

**"Software Developer's Kit"** means the software including source code and applications, and documentation available from ORBCOMM to facilitate configuration and programming of Products and connectivity to the Network Services.

**"Solution Provider Products"** means those products or services as may be set out in the Product Schedules included in Attachment A which are offered by the SP together or in conjunction with Products and related Network Services for sale to SP Resellers or End Users.



“**SP Reseller**” means an entity that purchases Products and Network Services from the SP for the purposes of reselling to End Users.

“**Territory**” means the territory or territories as set forth in one or more Product Schedules included in Attachment A hereto.

All attachments, schedules, and exhibits referenced in or appended to this Agreement are hereby incorporated by reference and shall form an integral part of this Agreement.

## 2. SP APPOINTMENT

- a. Subject to all the terms and conditions of this Agreement, ORBCOMM grants SP non-exclusive, non-transferable authority to distribute the Products and Network Services to End Users and SP Resellers in the Territory (either directly or indirectly through SP Resellers under a Reseller Agreement). At any time, and in its sole discretion, ORBCOMM may itself, or authorize third parties to market, sell, license, distribute, and otherwise commercialize the Products and Network Services, both within and outside the applicable Territory.
- b. Any appointment of an SP Reseller by SP must have the prior written approval of ORBCOMM which approval shall not be unreasonably withheld or delayed. Each Reseller of SP must be subject to a written agreement with SP consistent with the terms and conditions of this Agreement. SP shall be liable for compliance by SP Reseller with the terms of the agreement with SP.

## 3. SP RESELLERS

- a. In addition to terms and conditions consistent with this Agreement, SP agrees that any Reseller Agreement between SP and any SP Reseller in relation to the Products and/or Network Services, the SP will:
  - i. place an obligation on each SP Reseller and End User to comply with the End User License Agreement provided at <https://www.orbcomm.com/uploads/files/PDF/ORBCOMM-End-User-License-Agreement.pdf> which may be supplemented in applicable Product Schedules and amended from time to time (the “EULA”).
  - ii. require the SP Reseller to distribute the Products and Network Services directly to End Users and prohibit the SP Reseller from entering into any further sub-distribution or similar agreements.
  - iii. include the following provision: “*Although ORBCOMM is not a party to, and shall have no obligation under the Reseller Agreement, as licensor of the Products and Network Services, ORBCOMM is an intended third-party beneficiary of the Reseller Agreement, and as such shall have the right to rely upon and directly enforce any or all rights of recourse which SP may have against such SP Reseller under the Reseller Agreement.*”
- b. SP agrees that it will distribute Products only for use with the Network Services supplied by ORBCOMM or its Affiliates, and SP shall ensure that all SP Reseller Agreements and agreements with End Users include the same restriction.
- c. If SP or ORBCOMM becomes aware that an SP Reseller is distributing Products or Network Services in breach of the EULA, SP shall, at its own expense and in consultation with ORBCOMM:
  - i. Promptly take corrective action, including securing agreements with the SP Reseller to cease unauthorized distribution, suspending or terminating supply to the SP Reseller to prevent further breach, and implementing any additional reasonable measures requested by ORBCOMM;
  - ii. Upon ORBCOMM's request, assign or transfer its rights under the applicable Reseller Agreement to ORBCOMM and cooperate fully to enable ORBCOMM's direct enforcement against the SP Reseller; and
  - iii. Indemnify and hold harmless ORBCOMM and its Affiliates, officers, directors, employees, and agents from any claims, damages, losses, or expenses (including reasonable attorneys' fees) arising from SP's failure to ensure proper communication, delivery, or acceptance of the EULA by its customers.

## 4. TRADEMARKS

Limited to the Term (as defined in Section 16 of this Agreement), and subject to the terms and conditions hereof, ORBCOMM hereby grants SP a revocable, non-exclusive, non-transferable license to use the ORBCOMM Marks only in connection with the marketing and distribution of the Products and Networks Services in the Territory. SP shall not use the ORBCOMM Marks in any manner without ORBCOMM's prior written approval, and all use must: (a) clearly identify ORBCOMM as the owner of the ORBCOMM Marks, (b) comply with ORBCOMM's then-current trademark guidelines, as updated from time to time, and (c) remain unaltered in any form. SP acknowledges and agrees that ORBCOMM retains all the rights, title and interest in the ORBCOMM Marks. SP shall not advertise, promote, market or distribute the Products and Network Services using any marks other than the ORBCOMM Marks.

## 5. INTELLECTUAL PROPERTY OWNERSHIP

All right, title, and interest in and to the Products and Network Services, including all intellectual property rights therein, are and will remain, respectively, with ORBCOMM. SP and its SP Resellers have no right or licence to any Products and Network Services except as expressly licensed under this Agreement, and subject to the requirements and restrictions set forth hereunder. SP hereby unconditionally and irrevocably assigns to ORBCOMM its entire right, title, and interest in and to any intellectual property rights that SP may acquire in or relating to any of the Products or Network Services (including any rights in derivative works or patent improvements relating thereto), whether acquired by operation of law, contract, assignment, or otherwise.

**6. SP OBLIGATIONS:** In addition to other obligations imposed by this Agreement, SP shall:

- a. assign qualified personnel to support Resellers and End Users with respect to the Products and Network Services, ensure sufficient personnel attend ORBCOMM-provided certification training, and provide evidence of their qualifications upon ORBCOMM's request;
- b. conduct business in a lawful, ethical manner that preserves the goodwill and reputation of ORBCOMM and its Products and Network Services;
- c. make no representations, warranties, or guarantees to Resellers or End Users that are in any way inconsistent with ORBCOMM's Documentation, including any limitations or disclaimers contained therein;
- d. promptly notify ORBCOMM in writing of any claimed or suspected defects which come to SP's attention;
- e. be solely responsible for testing compatibility between the Products, Network Services, and its own offerings. ORBCOMM may provide reasonable assistance but is under no obligation to do so, and reserves the right to remove any Product from this Agreement if compatibility issues are not resolved to its reasonable satisfaction or are caused by SP's offerings;
- f. provide ORBCOMM with quarterly, good-faith sales forecasts by Product or Network Service, covering the next three months, no later than March 31, June 30, September 30, and December 31 of each calendar year; and
- g. maintain accurate and complete records of all sales of Products and Network Services by SP and its SP Resellers during the Term. ORBCOMM may, no more than once in any 12-month period, appoint an independent third party to audit such records at ORBCOMM's expense, unless the audit reveals SP's noncompliance, in which case SP shall bear the cost.

**7. ORBCOMM OBLIGATIONS:** Provided that SP is not in breach of any of its obligations hereunder ORBCOMM will:

- a. grant access to and use of the Network Services to the SP, SP Resellers, and End Users, subject to ORBCOMM and Carrier operational policies, which may be amended from time to time. ORBCOMM shall provide reasonable notice of any proposed material changes to Carrier operational policies and procedures, but only to the extent such notice is first provided to ORBCOMM or its Affiliates by the applicable Carrier;
- b. use commercially reasonable efforts to maintain, or to cause its Affiliates to maintain, all permits required by applicable governmental authorities, including the FCC, to provide the Products and Network Services in the Territory;
- c. provide reasonable marketing and training support in connection with SP's sale of the Products and Network Services; and
- d. provide technical support to SP only for Products and Network Services via telephone, or email during normal business hours based on GMT -5 hours. For emergency support relating to Network Services, ORBCOMM will provide to the SP, where commercially reasonable, consultation via telephone, twenty-four (24) hours per day, seven (7) days per week.

**8. ORDERS, SHIPMENT, AND DELIVERY**

- a. SP will submit written orders to ORBCOMM for Products and Network Services pursuant to an executed Product Schedule included in Attachment A. Any terms and conditions appearing on any SP order that are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on ORBCOMM. All orders are subject to acceptance by ORBCOMM at its sole discretion. SP's purchase and use of any Products is subject to the ORBCOMM Equipment Terms and Conditions ("Equipment Terms") provided at <https://www.orbcomm.com/terms-and-conditions-doc/equipment-sale-terms-and-conditions>, which are incorporated herein by reference.
- b. ORBCOMM reserves the right to refuse to accept orders, or to cancel or delay shipment of any orders placed by SP, without liability of any kind to SP if: (i) SP fails to make any payment as required by the terms of this Agreement; or (ii) there is any material, adverse change in SP's financial condition or credit worthiness as established by ORBCOMM from time to time. No such delay or cancellation by ORBCOMM shall be deemed a breach or termination of this Agreement.
- c. Delivery of any Product(s) shall be in accordance with ORBCOMM's Equipment Terms. Orders may be subject to minimum order quantities, which vary by product and shipping location.
- d. If orders for Products exceed ORBCOMM's available inventory, ORBCOMM will allocate available inventory on an equitable basis, such basis to be determined by ORBCOMM in its sole and reasonable discretion. Delays in shipment of any order or part thereof not exceeding thirty (30) calendar days will not relieve SP of its obligation to accept delivery of the order or part thereof.
- e. ORBCOMM shall be entitled to change, modify or discontinue the production of Products and/or Network Services at any time upon thirty (30) days prior written notice. SP shall have the option to purchase from ORBCOMM any available stock of discontinued Products on a first come, first serve basis.

**9. PRICING**

- a. Current pricing for Products and Network Services, including SP pricing, is outlined in the Product Schedule and may be updated by ORBCOMM with notice to SP. ORBCOMM will provide suggested retail prices for resale to SP Resellers or End



Users; however, SP is free to set its own resale prices. Notwithstanding the foregoing, ORBCOMM may revise SP Prices and suggested retail upon thirty (30) days' written notice.

- b. In the event ORBCOMM increases the pricing for any Product or Network Service, any order, or portion thereof, accepted by ORBCOMM prior to the date of the price increase will be charged to SP at the price in effect at the time the order, or part thereof, was so accepted.

## 10. PAYMENT

- a. Payment to ORBCOMM from SP shall be due to ORBCOMM upon Product order placement by SP. ORBCOMM will deliver monthly invoices to SP for Network Services used by End Users in connection with Products sold by SP during each month and based on the Prices for Network Services in the executed Product Schedules in Attachment A. All payments of such invoices are due to ORBCOMM within thirty (30) days from the date of the ORBCOMM's invoices. Late payments will incur interest at a rate equal to 1.5% per month (18.00% per annum) or the highest rate permitted by applicable law, whichever is lower. ORBCOMM reserves the right to suspend or deny access to Network Services or bar Products from service if payment for Products or Network Services is in arrears. All payments must be made in United States currency.
- b. SP will be responsible for payment of all applicable federal, state, city, county, municipality, income, value added, sales, use, property, franchise, and other applicable taxes or amounts in lieu thereof and interest thereon (exclusive of taxes based on ORBCOMM's net income) related to the distribution, sale, marketing, of Products and/or Network Services in the Territory where SP is distributing Products and Network Services.
- c. In the event that any Products, Network Service, or the charges made therefor are currently subject, or at any time become subject, to any tariff or other form of rate regulation imposed by a governmental authority, then the terms and conditions of this Agreement, including the Prices set forth in the Product Schedule(s), shall be deemed amended to conform to any conflicting terms and conditions in effect under such regulation or tariff. All non-conflicting terms and conditions of this Agreement shall remain valid and in full force and effect.
- d. SP shall be responsible for the payment of any fees incurred by ORBCOMM as a result of an End User's payment method (i.e., credit card fees, 3rd party billing engine fees). Such fees shall be listed as a separate line item on the applicable invoice and shall be due to ORBCOMM within thirty (30) days from the date of ORBCOMM's invoice.

## 11. SP WARRANTIES

- a. SP warrants and covenants (a) that it has and will have all licenses and permits necessary to sell the Products and Network Services in the Territory set forth in Product Schedules included in Attachment A and (b) that the execution, delivery and performance of this Agreement by SP are duly authorized by all necessary action (corporate or otherwise) on the part of SP.
- b. SP warrants and covenants that: (i) it complies and at all times during the Term will comply with all applicable export laws and regulations in accordance with the Export Compliance Declaration; (ii) no government authority has suspended, revoked or denied SP's import or export privileges; and (iii) SP is not located in or under the control of a national or resident of a jurisdiction where the transactions contemplated by this Agreement are prohibited.
- c. SP understands that the Network Services may be subject to local regulations. SP covenants that (a) it shall fully comply with all applicable laws and regulations relating to its activities under this Agreement, including obtaining and maintaining for the duration of this Agreement any and all necessary registrations, licenses or permits and (b) all functionality provided by SP does and will comply in all respects with the Communications Assistance for Law Enforcement Act ("CALEA").

## 12. ORBCOMM WARRANTIES

- a. ORBCOMM warrants to SP that on the date each unit of Product is shipped, it shall comply with the ORBCOMM SKU description as described in the applicable Product Schedule and be free from defects in material or workmanship, subject to the terms and conditions set forth in the remainder of this section (the "Warranty"). This Warranty, subject to the Warranty Policy found at <https://www.orbcomm.com/terms-and-conditions-doc/warranty-policy>, which may be amended from time to time, shall apply only to defects which appear within twelve (12) months from the earlier of the date of activation or ninety (90) days from date of shipment (in each case, the "Initial Warranty Period"), and of which SP notifies ORBCOMM in writing within thirty (30) calendar days after SP's discovery of the defect. At SP's option and expense, SP may purchase an extended warranty from ORBCOMM with respect to a particular unit of Product (the "Extended Warranty"). The terms, conditions, and procedures of the Extended Warranty are otherwise the same as those of the Warranty. The SP's purchase of an Extended Warranty will be indicated in the applicable order. The Products are warranted only for use with Network Services acquired from ORBCOMM.
- b. EXCEPT AS PROVIDED IN SECTION 12.a., ORBCOMM PRODUCTS AND NETWORK SERVICES ARE PROVIDED "AS IS" AND ORBCOMM HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND ORBCOMM SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.
- c. WITHOUT LIMITING THE FOREGOING, ORBCOMM MAKES NO WARRANTY OF ANY KIND WITH RESPECT TO THE USE OR INABILITY TO USE THE PRODUCTS AND NETWORK SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES THAT ANY PRODUCTS AND/OR NETWORK SERVICES, OR ANY RESULTS OF THE USE THEREOF, WILL MEET SP, SP RESELLER OR END USER'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT

INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY HARDWARE, SOFTWARE, DEVICE, SYSTEM OR SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF ANY VIRUS, MALWARE OR OTHER HARMFUL CODE, OR ERROR FREE. ORBCOMM DISCLAIMS ALL LIABILITY FOR ANY MALFUNCTIONING, IMPOSSIBILITY OF ACCESS, OR POOR USE CONDITIONS OF THE PRODUCTS AND/OR NETWORK SERVICES DUE TO INAPPROPRIATE EQUIPMENT, DISTURBANCES RELATED TO INTERNET SERVICE PROVIDERS, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, OR ALTERATION OF, USER COMMUNICATIONS, LOSS OF PERSONAL CONTENT.

- d. ORBCOMM MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES THAT THE PRODUCTS OR NETWORK SERVICES ARE SUITABLE FOR USE IN ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING WITHOUT LIMITATION MARINE SAFETY AND DISTRESS SYSTEMS, OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, AIR TRAFFIC CONTROL, OR LIFE SUPPORT, OR ANY OTHER APPLICATION IN WHICH FAILURE COULD RESULT IN DEATH OR PERSONAL INJURY. ANY SUCH USE IS AT THE SOLE RISK OF THE SP OR END USER.
- e. ORBCOMM MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES AS TO THE AVAILABILITY OF SATELLITE SPACE SEGMENT AND RELATED SERVICES OR NETWORK OPERATION SERVICES PROVIDED BY ORBCOMM OR ANY OTHER THIRD PARTY AS APPLICABLE.
- f. ORBCOMM MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES RELATED TO THE PERFORMANCE OF THE NETWORK SERVICES OR PRODUCTS IN THOSE PORTIONS OF THE TERRITORY IN WHICH THE SATELLITE COVERAGE IS LIMITED OR NOT AVAILABLE OR TO THE EXTENT THAT THE NETWORK SERVICES OR PRODUCTS ARE OPERATED OUTSIDE THE ALLOWABLE OPERATING LIMITS DEFINED IN THE APPLICABLE SPECIFICATIONS.
- g. ANY REPRESENTATIONS AND WARRANTIES OF OR RELATING TO THE PRODUCTS OR NETWORK SERVICES ARE MADE DIRECTLY TO END USERS SOLELY UNDER THE APPLICABLE EULA. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN THE SP OR SP RESELLER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH THIRD-PARTY MATERIALS.

### **13. LIMITATION OF LIABILITY**

- a. IN NO EVENT WILL ORBCOMM BE LIABLE TO ANY PARTY FOR ANY LOST PROFITS OR SAVINGS, LOST BUSINESS, LOSS OF DATA, ANY TELECOMMUNICATIONS BREAKDOWN, UNAVAILABILITY, DOWNTIME, INTERRUPTION OR DELAY, ANY SUSPENSION OF SERVICE BY ANY THIRD PARTY SERVICE PROVIDER OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE AND WHETHER OR NOT ORBCOMM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH OCCURRENCE OR DAMAGE. THE PARTIES AGREE THAT THE FOREGOING REPRESENTS A FAIR ALLOCATION OF RISK HEREUNDER.
- b. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ORBCOMM'S TOTAL LIABILITY TO ANY PARTY FOR DAMAGES OF ANY KIND, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE UNDER THIS AGREEMENT WILL BE LIMITED TO AN AMOUNT EQUAL TO THE CUMULATIVE FEES PAID TO ORBCOMM UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS PRECEDING ANY CLAIM FOR THE PRODUCTS AND NETWORK SERVICES THAT GAVE RISE TO THE CLAIM.
- c. THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

### **14. CONFIDENTIAL INFORMATION**

- 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. SP shall be permitted to disclose relevant Agreement terms to SP Resellers to the extent required to satisfy its obligations with respect to Reseller Agreements, provided the information is disclosed under similar or more stringent confidentiality restrictions as set out herein.
- b. During the term of this Agreement, and for a period of three (3) years after any termination of this Agreement, each Party will not use the other Party's Confidential Information except as permitted herein. However, each Party may disclose Confidential Information of the other Party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the disclosing Party gives reasonable notice to the other Party to contest such order or requirement; and (b) on a confidential basis to legal or financial advisors. Either Party may provide a copy of this Agreement or disclose its details in connection with any financing transaction or due diligence inquiry, but only if the recipient agrees to keep this Agreement confidential.

**15. INDEMNIFICATION**

- a. SP shall indemnify and save ORBCOMM and its Affiliates harmless from and against any and all claims, costs, and liabilities of any kind whatsoever, from End Users, SP Resellers, agents of SP, and other third parties including all reasonable legal fees and expenses, arising directly or indirectly out of: (a) SP's material breach of this Agreement; (b) SP's gross negligence or willful misconduct; and (c) the sale or purchase of the Solution Provider Products.
- b. ORBCOMM shall defend SP against any claim brought against SP by an unaffiliated third party alleging that the Products or Network Services, as provided by ORBCOMM, infringes or misappropriates any third party intellectual property rights in the Territory, including without limitation, infringement of any patent or trade secrets under ("Claim") and will indemnify and hold SP harmless from any damages, losses, liabilities, reasonable attorney's fees, expenses and costs finally awarded against SP as a result of a Claim. Notwithstanding the foregoing, ORBCOMM shall have no obligation or liability for a Claim to the extent that the alleged intellectual property infringement(s) arises from (i) the combination, operation, or use of the Products with products not supplied by ORBCOMM except as intended or approved by the ORBCOMM specifications or installation instructions; (ii) alterations to the Products, which were not made or authorized by ORBCOMM; (iii) use of the Products in a manner not in accordance with the specifications or ORBCOMM's express directions; or (iv) the SP's use of aversion of software where a more current version that would have avoided the infringement was made available by ORBCOMM. In the event SP is enjoined from using the Products in a final judgment by a court of competent jurisdiction in a Claim covered by this Section 15.b, ORBCOMM shall, at its option and expense, (a) procure for SP the right to continue to use the Products; (b) replace or modify the Products so that they becomes non-infringing without reducing or altering the functionality of the Products in any material respect; or (c) if (a) and (b) above cannot be accomplished despite the reasonable efforts of ORBCOMM, then ORBCOMM may terminate SP's rights and ORBCOMM's obligations under this Agreement regarding such Products or Network Services and give SP a refund in an amount equal to the fees paid by SP to ORBCOMM for the enjoined Products under this Agreement depreciated on a pro rata basis from the date of shipment. If any claim for which indemnity is or may be sought hereunder is made, SP agrees (i) to promptly notify ORBCOMM in writing; (ii) to cooperate with ORBCOMM; and (iii) to allow ORBCOMM sole authority to control the defense and settlement of such Claim.
- c. Except to the extent that Section 15.b applies, SP 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 Products and/or Network Services not in accordance with ORBCOMM's specifications or installation instructions or methods employed by SP through combining or integrating the Products and/or Network Services with non-ORBCOMM products or services, including without limitation the Solution Provider Products, 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.
- d. THE FOREGOING ARE ORBCOMM'S SOLE AND EXCLUSIVE OBLIGATIONS, AND SP'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO ALLEGED OR PROVEN INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.

**16. TERM AND TERMINATION**

- a. This Agreement shall commence on the Effective Date and shall be in effect for a period of twelve (12) months (the "Term"). Subject to ORBCOMM's right of amendment, this Agreement shall be automatically renewed for subsequent periods of twelve (12) months each unless either Party notifies the other Party in writing thirty (30) days prior to the expiry of the Term, that it does not wish to renew the Agreement.
- b. Notwithstanding the foregoing, ORBCOMM may terminate this Agreement, without prejudice to any other remedies available to ORBCOMM, in the event of any of the following conditions: (a) if SP defaults in any payment due to ORBCOMM and if such default continues uncured for a period of fifteen (15) days following SP's receipt of written notice of such default; or (b) for any or no reason upon thirty (30) day written notice to the SP.
- c. ORBCOMM will have the right to immediately terminate this Agreement upon written notice to SP, if SP or any SP Reseller violates or breaches the EULA or the Export Compliance Declaration.
- d. If SP fails to perform any obligations, warranty, duty or responsibility or is in default with respect to any material term or condition undertaken by SP under this Agreement and such failure or default continues uncured for a period of fifteen (15) days following SP's receipt of written notice of such default, then ORBCOMM may declare this Agreement terminated as of the date provided.
- e. This Agreement is automatically terminated (a) in the event SP experiences financial difficulties (including but not limited to chronic late or failed invoice payments) such that ORBCOMM can reasonably assume that the SP can no longer meet its obligations under the Agreement; or (b) one (1) day before SP becomes bankrupt or insolvent, or a receiving order is made against SP, or an assignment is made for the benefit of creditors, or an order is made or resolution passed for the winding up of SP, or SP takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors.
- f. In the event ORBCOMM terminates this Agreement pursuant to Section 16.b(a), 16.c, 16.d or 16.e, ORBCOMM may terminate or temporarily discontinue furnishing service to SP or its agents, SP Resellers or End Users without incurring any liability to SP or End Users. SP shall indemnify and hold harmless ORBCOMM, and its Affiliates, from any such liability for such termination or temporary discontinuation of service to SP, SP Reseller, or End User.

**17. EFFECT OF TERMINATION**

- a. Upon termination or expiration of this Agreement, SP will immediately return to ORBCOMM (or at ORBCOMM's request destroy and certify in writing the destruction of) all copies of the Products, Documentation, Software Developer's Kits, and Confidential Information in its possession or control and all Products or materials not yet paid for.
- b. Upon termination or expiration of this Agreement for any reason other than breach of the EULA or other material term by SP or a SP Reseller, SP may continue to distribute the Products and Network Services according to the terms and conditions of this Agreement, if applicable, for the shorter of: (i) ninety (90) days from the effective date of termination or expiration of this Agreement; or (ii) exhaustion of SP's inventory of the Products as of notice of the effective date of termination or expiration of this Agreement.
- c. Upon the earlier of the effective date of termination, expiration of this Agreement, the date of notice of termination, or ORBCOMM's intent to allow this Agreement to expire, all unshipped orders for the Products will automatically be canceled.
- d. Upon termination or expiration of this Agreement, the terminal release fees (if any) as described in Product Schedules included in Attachment A shall apply and shall survive any such termination or expiration.
- e. Upon termination or expiration of this Agreement, SP and ORBCOMM will agree on a commercial arrangement to ensure the End Users to which SP or any SP Reseller has distributed any Products will continue to receive services provided by ORBCOMM. SP will use all reasonable efforts to assist the End User in an orderly transition in which the End User may be directed to another SP.

## 18. GENERAL PROVISIONS

- a. **Force Majeure.** If the performance of this Agreement or any obligation arising hereunder is prevented, restricted or interfered with by reason of any acts of war, terrorism, insurrection, fire, flood, tornado, natural calamity, strike or other labor activities, shipping or transport delays, material or labor shortage, pandemic, epidemic or because of any law or government regulation, or because of any acts beyond the reasonable control of a Party, then that Party shall be excused from such performance to the extent of the "force majeure" except for any obligations to make payments by the SP to ORBCOMM hereunder. The Party so affected shall give prompt notice to the other Party, by any method appropriate under the circumstances. The Party so affected shall use its best efforts to avoid or remove the "force majeure," and shall further continue on and use its best efforts to complete full performance of this Agreement when such causes are removed.
- b. **Notices.** All notices that may be given or are required to be given pursuant to this Agreement shall be in writing and shall be effective and deemed received upon delivery to the intended recipient by reputable international courier at the address provided on the cover sheet of this Agreement, or to such other address as may be provided by notice sent in accordance with this paragraph. Standard business communications such as orders or notices of price changes or Product or Network Services modifications, changes or discontinuations can be communicated by e-mail. SP shall notify ORBCOMM upon any change in SP's address.
- c. **Entire Agreement.** The execution of this Agreement supersedes and replaces all previous Solution Provider Agreement(s) (including all amendments thereto) (the "Previous Agreement(s)"), provided however, if the Product Schedule(s) for this Agreement have not been completed, then the Product Schedule(s) for the most recent of the Previous Agreement(s) shall be incorporated by reference into this Agreement and shall serve as the Product Schedule(s) for this Agreement. Furthermore, this Agreement supersedes all negotiations, commitments and understandings, both verbal and written, with respect thereto. No modifications, additions, or amendments to the terms of this Agreement shall be effective unless in writing and signed by the duly authorized representatives of SP and ORBCOMM.
- d. **Assignment.** ORBCOMM's obligations (including without limitation the pricing set forth in Product Schedules included in Attachment A) are for the benefit of SP only and the rights of SP hereunder shall be personal in nature and shall not be for the benefit of any other person unless specifically named as a Party to this Agreement. This Agreement will bind and benefit each Party's permitted successors and assigns. SP may not assign this Agreement, in whole or in part, without ORBCOMM's written consent. Any attempt to assign this Agreement without such consent will be null and void. Notwithstanding the foregoing, ORBCOMM may assign or transfer this Agreement to a third party that succeeds to all or substantially all of ORBCOMM's business and assets relating to the subject matter of this Agreement, whether by sale, merger, operation of law or otherwise. Subject to the foregoing, this Agreement is binding upon and will inure to the benefit of ORBCOMM's successors and permitted assigns.
- e. **Governing Law and Venue.** This Agreement, all related documents, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of (a) where SP contracts with ORBCOMM LLC, the State of New York (including its statutes of limitation and applicable choice of law rules); and (b) where SP contracts with ORBCOMM Canada Inc., the Province of Ontario and the federal laws of Canada applicable therein (including its statutes of limitation and applicable choice of law rules). The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention, 1980). Any claim or cause of action arising out of or related to this Agreement shall be brought (a) where SP contracts with ORBCOMM LLC, in either the United States District Court for the Southern District of New York or, if such court lacks subject matter jurisdiction, the state courts of New York located in New York County, New York; and (b) where SP contracts with ORBCOMM Canada Inc., in the courts of the Province of Ontario located in Ottawa, Ontario, and the Parties hereby submit to the exclusive jurisdiction of such courts.
- f. **Injunctive Relief.** SP acknowledges that the Network Services provided pursuant to this Agreement are unique and recognizes and affirms that in the event of any breach of this Agreement by it, money damages may not be an adequate remedy and that ORBCOMM may seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy shall not be deemed to be the exclusive remedy for any such breach but shall be in addition to all other remedies available at law or in equity.

- g. **Severability.** If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force.
- h. **No Joint Venture.** The Parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- i. **No Waiver.** The exercise by either Party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. No failure of either Party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.
- j. **Language.** The Parties have agreed that this document be prepared in the English language. In the event that the SP requires the Agreement to be translated into another language, it will be at SP's expense. The Parties agree to execute both the English and translated versions, provided that in the event of a discrepancy between the two versions, the English version shall govern.
- k. **Survival.** The provisions of Sections 1 (Definitions), 3 (SP Resellers), 6 (SP Obligations), 11 (SP Warranties), 13 (Limitation of Liability), 14 (Confidential Information), 15 (Indemnification), 17 (Effect of Termination), and 18 (General Provisions) will survive the termination or expiration of this Agreement.
- l. **Counterparts.** A copy or electronic version of the executed original Agreement shall have the same force and effect as the original Agreement.