

## TERMS AND CONDITIONS FOR USE AND SALE OF SERVICES AND EQUIPMENT

The following terms and conditions (“Terms and Conditions”) apply to end-users (“Customer(s)”) using mobile satellite and/or terrestrial wireless communication, information, and related value-added services, including but not limited to Inmarsat®, Iridium®, ViaSat®, Intelsat® DirecTV® and SITAONAIR® services (“Services”) and/or equipment (“Equipment”) provided by Satcom Direct, Inc. d/b/a SD, Satcom Direct Communications, Inc., or their affiliates or operating subsidiaries (collectively, “SD”). These Terms and Conditions shall govern all of Customer’s existing and future SD Services and/or Equipment, unless otherwise agreed to in writing by the Parties. SD and Customer are also referred to herein individually as a “Party” and jointly as the “Parties.”

**1. PROVISION OF SERVICES AND EQUIPMENT BY SD.** (A) Customer shall request Services and/or Equipment hereunder by issuing to SD one or more proposed order(s), in the form provided or approved by SD, or via the electronic order entry system on SD’s website. Upon SD’s acceptance of a proposed order(s), such proposed order(s), shall be deemed an “Order” hereunder and shall, along with these Terms and Conditions, govern the provision by SD of Services and/or Equipment to Customer (the “Agreement”). There are no other oral or implied agreements, warranties or understandings, and from time to time, SD may, at its sole discretion, add, delete or modify the portfolio of Services and/or Equipment made available to Customer under these Terms and Conditions. (B) In the absence of a written or electronically submitted Order, Customer’s verbal instruction or issuance to SD of a purchase order, work order, work ticket or other form of written order on Customer’s standard form (collectively, “PO(s)”) will constitute Customer’s acceptance of SD Services and/or Equipment. If Customer issues a PO to SD for Services and/or Equipment, such PO will be treated as an administrative document only and will not add to, delete from, or change any of these Terms and Conditions. (C) Customer is responsible for notifying SD, in writing, of any request to permanently deactivate or temporarily suspend Services. Customer understands and agrees that such requests may take several days to complete and that Customer is responsible for payment of all charges incurred until Customer receives written confirmation from SD that the deactivation or suspension request has been completed, as well as any applicable early termination fees.

**2. USE OF SERVICES AND EQUIPMENT.** (A) **Additional Terms.** Use of Services and/or Equipment shall be in accordance with any additional terms and conditions that may be imposed by SD or a SD underlying Supplier including but not limited to: ViaSat®, Inmarsat®, Iridium®, Intelsat®, SITAONAIR® and DirecTV® (“Suppliers”). These additional terms and conditions can be found at <https://www.satcomdirect.com/legal-notices/>, are incorporated herein by reference and may be amended from time to time. (B) **Laws & Regulations.** Customer will use the Services and Equipment only in accordance with applicable U.S. and foreign rules, laws and regulations. Customer agrees to obtain, at Customer’s sole expense, all necessary licenses, approvals, permits, consents and governmental authorizations that may be required for Customer’s use of the Services and/or Equipment. Customer is solely responsible for determining and complying with the licensing requirements in any jurisdiction in which it is operating the Services and/or Equipment. No Services shall be used in, or Equipment imported into, any country where doing so is a violation of applicable U.S. law, and no Services shall be used by, or Equipment transferred to, any person or entity identified on the U.S. Specially Designated Nationals (SDN) List. Without limiting the foregoing, in no instance shall Services be used in, or Equipment imported into, the following countries without the express written consent of SD, which will only be provided upon a showing that the proposed use or importation is licensed or otherwise authorized by the applicable authority: Cuba, Iran, Syria, Sudan and North Korea. SD will not be held responsible for any operational restrictions, customs, license or permit fees required for operation of the Services and/or Equipment in the destination country. In addition, SD will have no responsibility for fines associated with terminal seizure nor for legal ramifications of using Equipment and/or Services in countries where doing so is prohibited. (C) **Abusive or Fraudulent Use.** Customer will be liable for all use or misuse of the Services and/or Equipment hereunder, irrespective of whether such use or misuse was authorized, fraudulent or otherwise. Customer will not use the Services or Equipment in an abusive or fraudulent manner, including, but not limited to the following actions: (i) accessing or attempting to access Services by using an unauthorized device or by tampering with or altering Equipment; (ii) obtaining or attempting to obtain permission to use Services or Equipment by providing false or misleading information; (iii) obtaining Services or Equipment without having the intent to pay charges incurred; (iv) using Services or Equipment to further unlawful activity; (v) using Services or Equipment to make obscene or illegal communications, to impersonate another person with fraudulent or malicious intent or to call another person so frequently or at such times of day or in any other manner with the intended effect of annoying, threatening or harassing such other persons; or (vi) using Services or Equipment in a manner that interferes unreasonably with use of Services or Equipment by one or more other SD customers.

### **3. SERVICES TERMS AND CONDITIONS.**

**3.1 AVAILABILITY OF SERVICES.** (A) **In General.** THE SERVICES ARE PROVIDED ON AN “ON-DEMAND” BASIS AND ARE SUBJECT TO AVAILABILITY OF CAPACITY ON THE APPLICABLE SATELLITE OR TERRESTRIAL NETWORK. SERVICES MAY BE TEMPORARILY UNAVAILABLE OR LIMITED BECAUSE OF CAPACITY LIMITATIONS, EQUIPMENT OR NETWORK FAILURES OR LIMITATIONS, DISTRESS OR ANY OTHER EMERGENCY OR NATIONAL SECURITY PRE-EMPTION AS REQUIRED BY SD OR A SUPPLIER OR MAY BE TEMPORARILY INTERRUPTED OR CURTAILED DUE TO MODIFICATIONS, UPGRADES, REPAIRS OR SIMILAR ACTIVITIES OF A SUPPLIER. SD HAS NO LIABILITY FOR ANY SUCH UNAVAILABILITY OR MALFUNCTION. THE SERVICES DO NOT GUARANTEE 911 OR OTHER EMERGENCY RESPONSE CAPABILITIES. Customer is responsible for making such provision as may be required by law or good safety practices for transmission of priority or distress communications through facilities other than the Services. (B) **Use Limits and Network Management.** SD automatically measures and monitors network performance and performance of Customer’s Internet connection. Due to capacity limitations and shared use of the networks used to deliver the Services, SD may prioritize, restrict, or set limits (such as bandwidth allocations, or limits on types of content accessed or transferred) on Customer’s use of the Services for certain applications. In times of heavy network usage, this may impact the functioning of high bandwidth applications. As with any mobile broadband network, speed may vary due to Customer’s device, atmospheric conditions, terrain, network capacity, and location. Content, file sharing or multiplayer gaming requiring high bandwidth, such as VoIP, streaming audio and video and file sharing, are given a lower priority and at times may be blocked or not work consistently. Except as described herein, SD will manage its network in a manner that does not discriminate based on a website’s content or its provider and that is source- and content- neutral whenever reasonably possible to do so. (C) **SD Monitoring.** SD may access and record information about Customer equipment, settings and software in order to provide customized technical support. Customer agrees to permit SD to access and record such data for the purposes described herein. SD shall further have the right, but not the obligation, to monitor Internet traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including, without limitation, Spam, virus, and adult language sniffers and filters), in order to determine compliance with this Agreement and any operating rules established by SD. (D) **Service Coverage.** Service coverage maps are available at SD’s website: [www.satcomdirect.com](http://www.satcomdirect.com). SD disclaims any liability for any inaccuracies in such maps. Actual Service coverage, speeds, locations, and quality may vary. (E) **Additional Use Limits.** To assist in managing Customer’s Service use and associated charges, Customer may elect to utilize SD’s SkyShield data filtering service,

which restricts, limits or blocks specific content. Generally, SkyShield always blocks access to the following: VPN, software application updates, operating system updates, social media websites, streaming video, streaming music, VoIP, and online gaming. Customer confirms that a SD sales representative has talked to Customer about the specific content that will be restricted, limited or blocked. Customer is responsible for notifying SD, in writing, of any request to make changes to what content is restricted, limited or blocked. SkyShield is not effective while Customer is using its VPN.

**3.2 EQUIPMENT COMPATIBILITY.** Customer is solely responsible for ensuring Customer's equipment is compatible with the Services, paying any fees or charges associated with use of Customer's equipment, and obtaining, installing, configuring, and maintaining suitable equipment and software, including any necessary system or software upgrades, patches or other fixes, that are or may become necessary to access the Services and to operate equipment.

**3.3 DATA MANAGEMENT AND SECURITY.** (A) Customer is responsible for managing Customer's data, including but not limited to, back-up and restoration of data, erasing data from disk space Customer controls and changing data on or settings for Customer equipment. SD is not responsible for the loss of Customer's data or for the back-up or restoration of Customer's data. (B) Customer is responsible for developing and maintaining any security procedures Customer deems appropriate, such as logon security and data encryption, User ID, alias, and password on Equipment and Customer equipment. SD is not responsible in the event that any party changes the information on Customer's account, including without limitation, Customer's alias, User ID, password, or security information. SD STRONGLY RECOMMENDS THE USE (AND APPROPRIATE UPDATING) OF PASSWORDS, COMMERCIAL ANTI-VIRUS, FIREWALL, AND ANTI-SPY SOFTWARE, AS WELL AS THE USE OF ANTI-SPAM EMAIL SOFTWARE AND FREQUENT PATCHING OF ANY GENERAL USE SOFTWARE. SD disclaims all liability for any damages that may occur as a result of spam or spam filters, viruses, spyware or any other type of malicious code or software.

**3.4 USE OF IP ADDRESS.** To enable provision of Services, SD may provide Customer with a static or dynamic IP address. IP addresses are a finite resource and SD must ensure the most efficient use of each address. Accordingly, Customer agrees that: (A) SD's assignment of a static IP address to Customer does not create any property rights in Customer to that IP address; (B) SD reserves the right, at any time, to request Customer provide justification, to SD's satisfaction, as to why Customer requires a static IP address assignment; (C) SD reserves the right to reclaim a static IP address from Customer and to assign Customer a different address, either static or dynamic. SD shall not be liable for any damage that may occur as a result of such action.

#### **4. EQUIPMENT TERMS AND CONDITIONS.**

**4.1 DELIVERY/TITLE/RISK OF LOSS.** Risk of loss in the Equipment will transfer upon delivery to Customer and delivery will take place when Equipment is shipped to Customer by SD. Customer will pay any costs incurred by SD to ship the Equipment to Customer's designated location, unless otherwise agreed upon by the Parties prior to shipment. Any additional delivery terms will be mutually agreed to in writing by SD and Customer. SD will use commercially reasonable efforts to comply with delivery terms requested by Customer. In no event will SD have any liability in connection with any shipment, nor will any carrier be deemed to be an agent of SD.

**4.2 PARTIAL SHIPMENTS.** Customer agrees to accept partial shipments unless otherwise specified in advance, particularly in cases where the Equipment is temporarily out of stock. In the event that ordered Equipment is not available, SD will maintain a backorder list compiled by date. As backordered Equipment is received from the underlying Supplier, SD will fill orders based on age of order. Customer is responsible for shipping charges for each partial shipment.

**4.3 TITLE.** (A) **Purchases.** Title to Equipment purchased by Customer will transfer from SD to Customer upon SD's receipt of the full sale price and any applicable taxes, fees, freight, and other charges. Until such time, Customer will keep Equipment that is owned by SD free from any liens, claims or encumbrances and will execute all such documents as may be reasonably required by SD to evidence or perfect its security interest. (B) **Rentals.** Title to Equipment rented by Customer will at all times remain with SD. At no time may Customer subject such Equipment to any form of lien or financial encumbrance, provide the Equipment as security or collateral to any third party, nor incur any financial obligation whatsoever on behalf of SD.

**4.4 INSPECTION & ACCEPTANCE.** Customer shall inspect or test the Equipment that has been tendered for acceptance within ten (10) days of delivery, after which time such Equipment will be deemed accepted by Customer. SD will repair or replace nonconforming Equipment at no increase in price.

**4.5 WARRANTY.** The Satcom Direct Warranty Terms and Conditions pertaining to Equipment are available at [www.satcomdirect.com/warranty](http://www.satcomdirect.com/warranty).

**4.6 REFUNDS/RESTOCKING FEES.** There will be no refunds for used Equipment returned to SD, except as provided in Section 4.5(B)(iii). If Customer returns unused Equipment to SD in its original package, in its original condition, and within thirty (30) days of delivery, SD will refund to Customer eighty five percent (85%) of the purchase price, the remaining fifteen percent (15%) of the purchase price representing a restocking fee. Customer will bear all shipment and insurance costs related to such return shipment. All Equipment must be returned to the SD facility as directed by SD.

**4.7 CANCELLATION OF CUSTOM ORDERS OR BLANKET ORDERS.** Customers desiring to cancel, in whole or in part, a custom or blanket order must notify SD of such request, in writing, any time prior to shipment. Upon written acceptance by SD of any such cancellation request, Customer shall be liable for all costs, expenses, and charges related to such order based upon the percentage of completion of all work performed through the date of acceptance of cancellation, the costs actually incurred by SD in relation to all materials purchased by SD for the related Equipment or systems, and all other production and material costs incurred by SD, including, without limitation, document setup, revision changes, tooling charges, stranded, excess material, and related procurement expenses, or as otherwise determined by SD. The foregoing costs shall also include charges for administrative expenses incurred in obtaining and stocking or restocking materials related to the Order in question, and any labor expenses associated with the custom or blanket order. Customer must receive written authorization from SD before any Order cancellation is approved, and such cancellation will be subject to the terms & fees outlined above.

**5. INTELLECTUAL PROPERTY.** Customer acknowledges and agrees that all intellectual property in the Services and/or Equipment and any underlying technology are owned by SD or SD's licensors. SD grants Customer a fully paid, non-exclusive, non-sublicensable and non-transferable license/sublicense to use such intellectual property solely as necessary to use the Services and/or Equipment in accordance with and during the term of this Agreement. Customer

shall not assign, transfer, pledge, rent, share, copy or sublicense any of the intellectual property licensed under this Agreement and shall not reverse engineer, decompile, modify or create derivative works based on the Services and/or Equipment. All rights not expressly licensed are reserved.

## **6. BILLING & PAYMENT.**

**6.1 PAYMENT FOR SERVICES AND EQUIPMENT.** (A) **Services.** SD will bill and Customer will pay SD for the Services provided by SD and for any other third party charges for which Customer has agreed with that third party to allow SD to bill. (B) **Equipment.** Unless otherwise agreed by SD, pre-payment of Equipment is required before Equipment is shipped. If pre-payment is not required, invoices for Equipment will be sent on or after the date of shipment and will include all applicable federal, state, provincial, local, and other taxes, fees and duties or other charges and amounts that may be levied upon the Equipment.

**6.2 PAYMENT TERMS.** (A) Customer shall pay all invoices within thirty (30) days of the date of invoice and in accordance with the instructions stated on the invoice unless otherwise agreed to by the Parties in writing. (B) Amounts not paid within thirty (30) days will be subject to SD's then-current late fee. (C) SD reserves the right to apply any amounts or credits SD owes Customer to any outstanding balances on any of Customer's SD accounts. (D) Customer will pay for any and all collection or litigation expenses, including reasonable legal fees, incurred by SD in collecting any late payments or late payment fees. (E) Customer shall pay an administrative fee of \$10 USD per month for the issuance of paper invoices. To avoid this fee, Customer may elect to receive electronic invoices, in PDF format, each month. SD e-Invoicing also allows Customers to pay invoices directly online by credit card.

**6.3 PRICING.** (A) All pricing will be in accordance with SD's then-current pricing or pricing provided to Customer in a written Order for the applicable Service and/or Equipment. SD reserves the right to revise such pricing from time to time. (B) Prices and availability of Equipment and Services are subject to change without notice. Errors will be corrected where discovered, and SD reserves the right to revoke any stated offer and to correct any errors, inaccuracies or omissions including after an order has been submitted and whether or not the order has been confirmed. SD shall have the right to issue adjustments to invoices after the date of any given invoice in the event of the discovery of errors or adjustments affecting such invoices. The right to issue adjustments shall be limited to eighteen (18) months after the date of any given invoice. SD shall, on discovery of any such error, notify Customer in writing within thirty (30) days of such discovery of the intention to make such adjustments.

**6.4 LIABILITY FOR DATA USAGE.** (A) Customer shall be fully liable for payment of any and all voice and data charges accrued through the use of Equipment or Customer's equipment. It is Customer's sole obligation and responsibility to ensure that all Equipment or Customer equipment and associated computer hardware and software are properly configured with respect to the Services being used and that only authorized users are permitted access to the Equipment or Customer equipment. (B) **SIM (Subscriber Identity Module) Card.** When signing up for certain Services, Customer will receive a SIM card that will give Customer access to Services. Any and all traffic (including voice and data) sent through Customer's SIM card will be considered provided to Customer.

**6.5 ADVANCE PAYMENTS.** Customer may be required to make an advance payment specified by SD for Services and/or Equipment. If Customer has made an advance payment and this Agreement is terminated, SD will refund to the Customer the amount of any advance payment less any charges (including, if applicable, a termination charge under Section 7.2(A)) due SD through the date of termination.

**6.6 CREDIT.** SD may require Customer to provide a third-party guarantee, deposit, letter of credit, or other form of security deemed necessary by SD, in its sole discretion, to provide adequate assurance of payment. The provision of such third-party guarantee, deposit, letter of credit, or other form of security does not relieve Customer of its payment obligations specified herein.

**6.7 METHODS OF PAYMENT.** Payment for all Equipment and/or Services must be made via check (fee of \$100 will be charged on returned checks), ACH, wire (Customer is responsible for all wiring fees), credit card (Master Card, VISA, American Express, or other credit cards as SD may designate from time to time), or as otherwise allowed by SD, payable in US dollars. SD reserves the right to assess a fee for initiating and processing Customer payment. SD may, but is not required to, accept partial payments from Customer. If Customer sends SD a check or other form of payment marked "payment in full" or otherwise labeled in restrictive endorsements, SD may accept it without losing any rights to collect all amounts owed by Customer under this Agreement.

**6.8 TAXES/FEES.** Customer shall pay all taxes, excises, fees, charges, surcharges or similar exactions imposed by any government authority (local, state, national or foreign) on the Services and/or Equipment that are the subject of this Agreement (even if imposed retroactively) including but not limited to sales and use taxes, telecommunications taxes, duties, custom fees and universal service fund contribution charges. Further, SD shall have the right to recover from Customer the amount of any government fees or taxes arising as a result of this Agreement, which are imposed on SD or Services/Equipment. Such fees or taxes shall be invoiced to Customer in the form of a surcharge included on Customer's invoice. Customer shall be responsible for providing SD any and all documentation substantiating a claim for exemption from taxes or fees prior to the date Services or Equipment are first provided under this Agreement. To the extent such documentation is held invalid for any reason, Customer agrees to reimburse SD for any tax or fee liability including without limitation related interest and penalties arising from such invalid documentation. Customer acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification of some of the Services SD provides and, consequently, uncertainty about what fees, taxes and surcharges are due from SD and/or its Customers. Customer agrees that SD has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to Customer. Customer hereby waives any claims it may have regarding SD's collection or remittance of such fees, taxes and surcharges. In the event that any tax, duty, impost, levy or the like charge becomes payable in any territory, either by deduction or otherwise, on or in respect of any amount to be paid by Customer to SD, or which Customer may be required to withhold in respect of any amount due to SD, such tax, duty, impost levy or like charge shall be for the account of Customer and Customer shall pay to SD such an amount as to yield to SD a net amount equal to the amount that but for such tax, levy, impost or charge would have been received by SD. SD will provide reasonable assistance to Customer to minimize the amount of such withholdings or deductions, including providing any relevant certification of its status as a non-resident of a jurisdiction or of its entitlement to benefits under a treaty.

**6.9 INVOICE INQUIRIES.** Customer must pay all invoiced amounts (even Disputed Amounts) when due. If any portion is in dispute, Customer must, within

thirty (30) days of the date of the invoice containing such disputed amount, give written notice to SD of the amount it disputes (“Disputed Amount”), after which time such invoice will be deemed to be accepted by Customer, and shall include in such notice the specific details and reasons for disputing each item. Claims of unauthorized or unintended use, fraudulent use or any other misuse will not constitute a valid basis for dispute of an invoice. If the Disputed Amount is resolved in favor of SD, and Customer has not yet paid the Disputed Amount, late fees may also be assessed, if applicable, upon final determination of such dispute. SD will issue credits against amounts owing on subsequent invoices upon resolution of any disputed amounts in favor of Customer.

**6.10 UNINTENDED OR UNAUTHORIZED TRAFFIC/DATA CONNECTIONS.** Customer shall pay for any and all unintended traffic/data connections including but not limited to call, data or IP traffic generated from malware and/or viruses, Wi-Fi enabled devices, Unlicensed Mobile Access (UMA) devices, through equipment testing and connection, equipment failure, automatic software updates or background tasks, even if Customer was not the user and/or did not authorize use. **FOR FURTHER EXPLANATION SEE DOCUMENT ENTITLED “IMPORTANT NOTICE-UNINTENDED TRAFFIC/DATA CONNECTIONS”** at <https://www.satcomdirect.com/content/files/important-notice-unintended-traffic-data-connections-July-2018.pdf>, which is incorporated herein by reference.

## **7. TERM OF AGREEMENT.**

**7.1 SERVICES PURCHASED UNDER THE PAY-AS-YOU-GO PAYMENT OPTION.** Services purchased under the Pay-As-You-Go payment option can be terminated at any time by either Party by providing written notice to the other Party. Upon termination, Customer will remain liable for all charges including, but not limited to, airtime and monthly access fees up to and including the last day of the billing period in which Customer receives written confirmation from SD that Customer’s deactivation request has been completed.

**7.2 SERVICES PURCHASED UNDER A SERVICE/SUBSCRIPTION PLAN.** (A) Certain Services may be sold under a subscription/service plan, some of which may require minimum service term commitments (“Term”). Accordingly, termination of a subscription/service plan that specifies a Term prior to expiration of the Term will result in Customer being liable to pay SD a termination charge in the amount of the full contractual commitment of that specific subscription/service plan. For example, if Customer purchases a 2 year service plan at \$5,995/month and terminates service in the eighteenth (18) month, the termination charge will be \$35,970 (6 months times \$5,995). Customer acknowledges that the assessment of a termination charge is reasonable and is not a penalty, but rather constitutes liquidated damages. (B) **Auto Renewal.** With the exception of Inmarsat SwiftBroadband plans, all subscription/service plans automatically renew, unless Customer provides written notice of cancellation to SD thirty (30) days prior to the end of the Term. (C) **Plan Changes.** If Customer wishes to change their service/subscription plan during its Term please contact a SD sales representative for available options. Changes to a service/subscription plan can only be made in writing between the Parties.

**8. DEFAULT AND TERMINATION.** (A) The occurrence or happening of any one or more of the following events will constitute an Event of Default if not remedied within ten (10) days after notice from SD: (i) use of the Services or Equipment in any manner or for any purpose contrary to law; (ii) abuse or fraudulent use of the Services and/or Equipment; (iii) failure to make any payments due as invoiced; (iv) discovery by SD that any representation or warranty made by Customer in any document furnished by Customer to SD is incorrect; (v) breach or violation of any of these Terms and Conditions by Customer; or (vi) commencement of any proceeding, whether voluntarily or involuntarily, relating to Customer under any law relating to insolvency, bankruptcy or the protection of creditors' rights generally. (B) In an Event of Default, SD may, at SD’s sole option and without in any way limiting any other rights and remedies it may have, suspend or terminate this Agreement and any other Agreements Customer has with SD without notice. SD will bill Customer and Customer will pay SD, in accordance with Section 7, for all outstanding charges accrued up to and outstanding on the date of such termination. In all such cases, SD will incur no liability whatsoever. Customer will be liable for all costs and expenses incurred by SD due to default by a Customer, including but not limited to legal costs. (C) SD, may, with no liability whatsoever, suspend or terminate Services if lawfully ordered to cease operation of such Services by a state or federal court of law, or any other lawful federal, state or local governmental authority. If at any time during the Term of this Agreement any equipment, facilities, or property used by SD or its underlying Suppliers to provide the Services are taken for a public or quasi-public purpose by a lawful power or authority under the exercise of condemnation or eminent domain, SD will have the right, upon written notice to Customer to terminate the Services affected by the taking. (D) SD may also terminate Services in the event that a Supplier Contract (as defined in Section 13.1) for purchase of Services expires or it terminated, provided that termination of the Services will only be with respect to the Services provided pursuant to that Other Contract. (E) The rights of termination, restriction or suspension set forth in this Section are in addition to any other remedies available to SD under this Agreement, or at law or in equity.

**9. DISCLAIMERS.** (A) THE SERVICES ARE PROVIDED “AS-IS” AND AS AVAILABLE. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH HEREIN, SD AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, AND NON-INFRINGEMENT. SD AND ITS SUPPLIERS MAKE NO WARRANTY THAT: (I) THE SERVICES AND/OR EQUIPMENT WILL MEET CUSTOMER REQUIREMENTS; (II) THE SERVICES WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE AND MALICIOUS CODE-FREE BASIS; OR (III) THE RESULTS THAT MAY BE OBTAINED FROM THE SERVICES AND/OR EQUIPMENT WILL BE ACCURATE OR RELIABLE. EXCEPT FOR CERTAIN SERVICES AND EQUIPMENT SPECIFICALLY IDENTIFIED AS BEING OFFERED BY SD, SD DOES NOT CONTROL ANY MATERIALS, INFORMATION, PRODUCTS, OR SERVICES ON THE INTERNET, SOME OF WHICH MAY BE OFFENSIVE TO CUSTOMER. CUSTOMER ASSUMES FULL RESPONSIBILITY FOR ASSESSING AND EVALUATING THE COMPLETENESS, ACCURACY, AND USEFULNESS OF ALL SUCH MATERIALS, INFORMATION, EQUIPMENT, OR SERVICES. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT THERE ARE CERTAIN SECURITY, CONFIDENTIALITY, AND PRIVACY RISKS INHERENT IN WIRELESS COMMUNICATIONS AND TECHNOLOGY, AND SD MAKES NO ASSURANCES OR WARRANTIES RELATING TO SUCH RISKS. SD SHALL NOT BE LIABLE FOR, AND CUSTOMER ASSUMES ALL RISK OF, ANY ADVICE OR FAILURE TO PROVIDE ADVICE BY SD TO CUSTOMER REGARDING THE EQUIPMENT AND/OR SERVICES.

**10. INDEMNITY AND LIMITATION OF LIABILITY.** (A) THE FOLLOWING LIMITATIONS AND INDEMNITIES APPLY ONLY TO THE EXTENT ALLOWABLE UNDER APPLICABLE LAW. (B) CUSTOMER AGREES TO RELEASE, PROTECT, INDEMNIFY, DEFEND AND HOLD HARMLESS SD AND SD’S SUPPLIERS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, INSURERS, ASSIGNS, SUBSIDIARIES AND AFFILIATED (INCLUDING PARENT) COMPANIES, AND THEIR DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, THE “INDEMNIFIED PARTIES”) FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, ACTIONS, LOSSES, DAMAGES, DEMANDS, SUITS, (INCLUDING DAMAGE TO PROPERTY AND PERSONAL INJURY) AND EXPENSES (INCLUDING LOSSES FROM SETTLEMENT AND

REASONABLE COURTS COSTS AND ATTORNEY'S FEES) ARISING OUT OF OR RELATING IN ANY WAY OR ALLEGED TO BE CAUSED BY ANY OF THE FOLLOWING: (I) CUSTOMER'S USE OR MISUSE OF THE EQUIPMENT AND/OR SERVICES; (II) FAILURE OR LIMITATIONS OF ANY EMERGENCY DISTRESS FEATURES ASSOCIATED WITH THE EQUIPMENT AND/OR SERVICES; (III) INSTALLATION, MAINTENANCE AND/OR REMOVAL OF SUCH EQUIPMENT AND/OR SERVICES PROVIDED BY SD AND/OR ITS SUPPLIERS; (IV) CUSTOMER'S BREACH OF THESE TERMS AND CONDITIONS, EXCEPT TO THE EXTENT SUCH CLAIMS ARE BASED UPON THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF SD; (V) ANY CLAIMS OR ACTIONS FOR LIBEL, DEFAMATION, SLANDER, INVASION OF PRIVACY, PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, OR THE VIOLATION OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS, ARISING IN CONNECTION WITH CUSTOMER'S USE OR MISUSE OF THE SERVICES AND/OR EQUIPMENT; OR (VI) ANY CLAIM OR ACTION FOR PATENT INFRINGEMENT RESULTING FROM CUSTOMER'S USE (OR USE BY ANY OF ITS AFFILIATES) OF THE EQUIPMENT AND/OR SERVICES IN COMBINATION WITH EQUIPMENT, HARDWARE, SOFTWARE, SYSTEMS, CABLING, FACILITIES OR SERVICES NOT PROVIDED HEREUNDER BY SD. (C) THE TOTAL, AGGREGATE LIABILITY OF SD TO CUSTOMER (OR TO ANY AFFILIATE OF CUSTOMER) FOR ANY AND ALL CLAIMS WHATSOEVER RELATED TO THE EQUIPMENT AND/OR SERVICES OR THESE TERMS AND CONDITIONS FOR ANY CLAIMS WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, STRICT LIABILITY, PRODUCT LIABILITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, HOWSOEVER ARISING, WILL BE LIMITED TO DAMAGES PROVEN AS DIRECTLY ATTRIBUTABLE TO SD, AND FURTHER LIMITED TO AN AMOUNT EQUAL TO THE LAST THREE (3) MONTHS OF PAYMENTS MADE BY CUSTOMER TO SD UNDER THESE TERMS AND CONDITIONS PRECEDING THE DATE OF ANY CLAIM MADE AGAINST SD. (D) THE INDEMNIFIED PARTIES SHALL NOT BE LIABLE TO CUSTOMER ON ANY BASIS WHATSOEVER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFIT, LOSS ARISING FROM OR ATTRIBUTABLE TO FAILURE TO REALIZE ANTICIPATED SAVINGS, OR LOSS OF PRODUCTION, EQUIPMENT OR DATA) EVEN IF A PARTY KNEW OR HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. THIS SECTION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

#### **11. DISPUTE RESOLUTION.**

**11.1 GOVERNING LAW & VENUE.** This Agreement will be governed by and construed in accordance with the laws of the State of Florida, excluding any choice of law rule thereof that would direct the application of the laws of another jurisdiction. Any action based upon or arising out of this Agreement shall lie exclusively in the state courts located in Brevard County, Florida. Customer and SD each hereby irrevocably submit to the exclusive jurisdiction of such courts.

**11.2 ATTORNEYS' FEES AND COSTS.** In the event of a legal action or other proceeding arising under this Agreement or a dispute regarding any alleged breach, default, claim, or misrepresentation arising out of this Agreement, whether or not a lawsuit or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, whether incurred before suit, during suit, or at the appellate level. The prevailing party shall also be entitled to recover any attorneys' fees and costs incurred in litigating the entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of attorneys' fees and costs due to it.

**12. CONFIDENTIAL INFORMATION / PRIVACY AND DATA PROTECTION.** (A) Unless Customer consents in writing, or disclosure is required by law, SD will keep confidential all information or data furnished by Customer or otherwise acquired by SD through performance. Such information will not be released by SD to anyone other than: (i) Customer; (ii) a person who in the reasonable judgment of SD is acting as an agent of Customer; (iii) to a Supplier or another communications carrier provided that the information is to be used for the provision of Services and/or Equipment and disclosure is made on a confidential basis with the information to be used solely for that purpose; (iv) as necessary to fulfill SD's obligations under this Agreement and disclosure is made on a confidential basis with the information to be used solely for that purpose; (v) a collection agent retained by SD to collect outstanding balances owed to SD by Customer; or (vi) as necessary to protect SD's rights or property, or to protect other Customers or Suppliers from fraudulent, abusive, or unlawful use of, or subscription to, the Services. Customer's data will be held and/or transferred in strict accordance with the applicable data protection laws, including the Federal Telecommunications Act, and Customer consent. Customer's privacy rights are more particularly described in the CPNI Rights notice available at <https://www.satcomdirect.com/main/legal-notice/cpni-rights.aspx>, which is incorporated herein by reference. (B) Each party will comply fully with all applicable privacy and data protection laws and regulations, and will provide such assistance to the other party as is reasonably necessary to assist the other party in complying with such laws and regulations.

**12.1 AGREEMENT CONCERNING THE EUROPEAN UNION GENERAL DATA PROTECTION REGULATIONS (GDPR).** To the extent that the GDPR is applicable (which is determined by variables such as type of Services purchased, when and where Services are used, what type of data is transmitted or received via the Services, etc.), the Customer agrees as follows:

- A. Customer is the Controller (as defined within the GDPR) and SD is the Processor (as defined within the GDPR) of all data sent or received by Customer through the Services. This Agreement constitutes written instructions from the Customer (as Controller) to SD (as Processor) with respect to the processing of data.
- B. Customer is responsible for:
  - a. the subject matter and duration of the processing;
  - b. the nature and purpose of the processing;
  - c. the type of personal data and categories of data subject; and
  - d. the obligations and rights of the controller.
- C. SD, acting exclusively subject to the written instructions of the Customer (unless required by law to act without such instructions), is responsible for:
  - a. ensuring that those processing the data are subject to a duty of confidence;
  - b. taking appropriate measures to ensure the security of processing;
  - c. assisting the Customer in providing subject access and allowing data subjects to exercise their rights under the GDPR upon reasonable request;
  - d. assisting the Customer in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments upon reasonable request;

- e. submitting to audits and inspections, providing the Customer with necessary and appropriate information to ensure that Customer and SD are meeting applicable GDPR Article 28 obligations;
  - f. notifying Customer in the event of personal data breach as soon as SD reasonably becomes aware of the same; and
  - g. either deleting or returning, in SD's sole discretion, all personal data to the Customer as requested at the end of the contract; and
- D. Customer represents and warrants to SD that Customer has provided to SD all information necessary for SD to meet its record-keeping obligations under GDPR Article 30.2.
- E. Customer represents and warrants that SD shall not be required to appoint a data protection officer pursuant to GDPR Article 37 because:
- a. processing of personal data under this Agreement is not carried out by a public authority or body;
  - b. the core activities of the controller or the processor do not consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; and
  - c. the core activities of the controller or the processor do not consist of processing on a large scale of special categories of data pursuant to Article 9 and personal data relating to criminal convictions and offences referred to in Article 10.
- F. Nothing in this Section 12.1:
- a. relieves SD of its own direct responsibilities and liabilities under the GDPR for data other than data sent or received by Customer through the Services; and
  - b. reflects any indemnity other than as expressly agreed.

### **13. MISCELLANEOUS PROVISIONS.**

**13.1 SUPPLIER CONTRACTS.** SD's obligations under this Agreement are subject to the agreements under which SD purchases Services and/or Equipment from its Suppliers (each, a "Supplier Contract"). To the extent fulfillment of any obligation of this Agreement is not permissible or possible under a Supplier Contract, the Supplier Contract will prevail and such obligation will be suspended, terminated or modified to the extent required by the Supplier Contract. SD represents and warrants that it is not presently aware of any material respect in which this Agreement is inconsistent with a Supplier Contract.

**13.2 FORCE MAJEURE.** SD will not be liable for any failure of performance hereunder due to causes beyond its reasonable control ("Force Majeure"), including, without limitation, acts of God, fire, explosion, satellite failure, vandalism, cable cut, storm or other catastrophes, national emergency, insurrections, riots, wars or strikes, lock-outs, severe weather, epidemics, earthquakes, floods, work stoppages or other labor disputes, or any law, order, regulation, direction, action or request of any government or authority or instrumentality thereof, or delay in delivery of Equipment, to the extent such delay is beyond the reasonable control of SD or Customer and other delays incurred for reasons beyond SD's reasonable control. SD's obligation to perform will be suspended for the duration of a period of Force Majeure and will resume as soon as reasonably possible, upon the cessation of the event of Force Majeure.

**13.3 WAIVER.** The waiver or failure of either Party to enforce any provision of this Agreement or to exercise any right or privilege hereunder, will not be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any provisions, rights or privileges hereunder.

**13.4 ASSIGNMENT.** SD may assign this Agreement and any rights and obligations hereunder to any third party without consent of or notice to Customer. Customer may not assign its rights or obligations hereunder without SD's prior written consent. This Agreement will inure to the benefit of, and will be binding on Customer's and SD's respective successors and permitted assigns.

**13.5 SEVERABILITY.** If any provision of this Agreement is declared invalid, illegal or unenforceable by a court or regulatory agency of competent jurisdiction, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby. In the event that any such provision is declared invalid, illegal or unenforceable due to its scope, breadth or duration, then it will be modified to the scope, breadth or duration permitted by law and will continue to be fully enforceable as so modified. All provisions of this Agreement which would naturally survive its expiration or termination will so survive.

**13.6 NOTICE.** All notices, requests, demands and other communications hereunder will be effective upon delivery. Such notices will be in writing and will be sent by facsimile, email, nationally recognized overnight courier or delivered in person, addressed as set forth below. Either Party may, at any time, amend the below addresses for notice upon written notice to the other Party.

#### **If to SD:**

##### **For Customer Service**

Satcom Direct, Inc.  
1050 Satcom Lane  
Melbourne, FL 32940  
Attention: Customer Service Department  
Tel: +1-321-777-3000  
Fax: +1-321-777-3002  
Email: support@satcomdirect.com

##### **For Contract & Legal**

Satcom Direct, Inc.  
1050 Satcom Lane  
Melbourne, FL 32940  
Attention: Legal Department  
Tel: +1-321-777-3000  
Fax: +1-321-777-3002  
Email: legal@satcomdirect.com

##### **For Billing Inquiries**

Satcom Direct, Inc.  
1050 Satcom Lane  
Melbourne, FL 32940  
Attention: Accounting Department  
Tel: +1-321-777-3701  
Fax: +1-321-777-3002  
Email: accounting@satcomdirect.com

**If to Customer:** To the mailing address or e-mail address given at the time SD initially set up Customer's account. Customer agrees to give SD prompt (within 7 days) notice of Customer's change of name, billing address, telephone number and contact person. This notification must be in writing or via e-mail to SD.

**13.7 FULL DISCLOSURE.** Customer has had the opportunity to review this Agreement and consult with an attorney or other person/entity of Customer's choosing for legal/professional advice prior to executing this Agreement. Further, Customer has fully informed itself of the contents, terms, conditions, and effects of this Agreement, has read the entire Agreement and fully understands all of the terms.

**13.8 ENTIRE AGREEMENT.** These Terms and Conditions constitute the entire agreement between SD and Customer relating to the subject matter hereof and supersedes all prior agreements between the Parties with respect to such subject matter. There are no other oral or implied agreements, warranties or understandings between SD and Customer with respect to such subject matter.

**13.9 NEW AND MODIFIED SD TERMS AND CONDITIONS.** SD may modify these Terms and Conditions from time to time, and may modify or terminate any and all Services at its discretion. SD will notify Customer of a modification to these Terms and Conditions by: (A) posting a notice on SD's website at <https://www.satcomdirect.com/legal/> or SD's Plane Simple website at <https://ps.satcomdirect.com>, (B) emailing Customer at Customer's e-mail address of record, or (C) written correspondence, including notification on Customer's invoice. Such modification(s)/termination(s) will be effective on the date specified in the notice. SD will use reasonable efforts to provide notice one (1) month in advance of changes to Service(s). CUSTOMER'S CONTINUED USE OF THE SERVICES AND/OR EQUIPMENT CONSTITUTES CUSTOMER'S AGREEMENT TO SD'S TERMS AND CONDITIONS THAT ARE IN EFFECT AT THE TIME CUSTOMER USES THE SERVICES AND/OR EQUIPMENT.

**13.10 SIGNATURES.** The person signing or electronically accepting this Agreement on behalf of Customer (by clicking a box or otherwise) (A) agrees that his or her signature or electronic acceptance indicates Customer's unconditional acceptance of this Agreement; (B) represents that he or she is authorized to execute and deliver this Agreement; and (C) represents that this Agreement is binding upon Customer and no other signature is required to bind Customer.

**13.11 EFFECTIVE DATE.** These Terms and Conditions are effective as of November 2018, and will remain in effect unless modified, revoked or terminated by SD. Notwithstanding the foregoing, these Terms and Conditions will continue to govern the provision by SD and use by Customer of the Services and/or Equipment, unless otherwise amended and agreed upon in writing by the Parties.