



## General Terms and Conditions for Use and Sale of Services and Equipment

The following terms and conditions (“Terms and Conditions”) apply to your (“You”/ “Your” or “Customer”) use of mobile satellite and/or terrestrial wireless communication, information, and related value-added services (each individually and collectively, the “Services”) and/or equipment (“SD Equipment”) provided by Satcom Direct, Inc. d/b/a SD, Satcom Direct Communications, Inc., or their affiliates or operating subsidiaries (collectively, “SD”) including Services and/or SD Equipment provided in whole or in part through its third party service providers (“Suppliers”). These Terms and Conditions shall govern all of Customer’s existing and future use of Services and/or SD 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) **Orders.** Customer may (i) order SD Equipment by issuing to SD one or more proposed order(s), in the form provided or approved by SD, and (ii) obtain Services by executing a mutually agreed pricing and proposal document(s), each individually and collectively “Order(s)”. Orders shall, along with these Terms and Conditions, govern the provision by SD of Services and/or SD Equipment to Customer (the “Agreement”); any additional or alternative terms in Customer’s Order, except for quantity, delivery dates and location are hereby rejected and shall not apply or form part of the Agreement. There are no other oral or implied agreements, warranties or understandings, and, from time to time, SD may, at its sole discretion and without notice to Customer, add, delete, suspend or modify the portfolio of Services and/or SD Equipment made available to Customer under these Terms and Conditions. (B) **Customer Acceptance.** 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 SD Equipment. If Customer issues a PO to SD for Services and/or SD 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) **Deactivation; Service Suspension.** In order to request deactivation of a Service, Customer must submit an online deactivation form through <https://csa.satcomdirect.com/>. In order to request a temporary suspension of a Service, Customer must submit a suspension request via email to [activations@satcomdirect.com](mailto:activations@satcomdirect.com). Customer understands and agrees that any such requests will not take immediate effect 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 and Customer understands that it may be responsible for early termination fees up to the fees applicable for the remainder of the contracted Term (as defined in Section 7.2). Customer further acknowledges and agrees that SD may extend the Term of Customer’s Agreement for the corresponding amount of time the Services were suspended and that suspension fees may apply.
- 2. USE OF SERVICES AND EQUIPMENT.** (A) **Customer Responsibilities.** Customer is solely responsible for its guests’, passengers’, crew members’ and other third parties’ use of the Services and/or SD Equipment. Customer may access the Services only through access methods assigned to Customer by SD (collectively, “Access Methods”). Customer shall (i) be fully responsible for maintaining the confidentiality and security of all such Access Methods and for all activities that occur through the use of such Access Methods, whether or not such use is authorized by Customer, and (ii) revoke, or request SD to revoke, the Access Methods of any authorized user immediately upon the termination of such authorized user’s employment or contractor relationship with Customer (if applicable) or at any other time such person is no longer authorized by Customer to access the Services. (B) **Additional Terms.** In the event that Customer’s Services and/or Equipment are subject to any additional terms and conditions that may be imposed by SD or a Supplier, these additional terms and conditions shall be set out at [www.satcomdirect.com/legal-notices](http://www.satcomdirect.com/legal-notices), are incorporated herein by reference and may be amended from time to time. (C) **Laws & Regulations.** Customer will use the Services and SD Equipment only in accordance with applicable U.S. and foreign rules, laws and regulations. Customer agrees to obtain, maintain and update, 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 SD Equipment (individually and collectively, “Compliance Requirements”). Customer is solely responsible for determining and complying with all Compliance Requirements in any jurisdiction in which it is using the Services and/or SD Equipment. Customer acknowledges and agrees that the Services and/or SD Equipment may be subject to, and governed by, U.S. export control laws, which Customer agrees to comply with in all respects. No Services shall be used in, or SD Equipment imported into, any country where doing so is a violation of applicable U.S. law, and no Services shall be used by, or SD 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 SD 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: Crimea, Cuba, Iran, North Korea, Sudan and Syria. SD will not be held responsible for any operational and/or use restrictions, customs, license or permit fees required for use of the Services and/or SD Equipment in any Customer destination country. In addition, SD will have no responsibility for fines associated with terminal seizure nor for legal ramifications of using SD Equipment and/or Services in countries where doing so is prohibited. Customer shall, at SD’s request, cooperate in good faith in respect of any inquiries, investigations, audits, requests, demands or other proceedings by any governmental authority, law enforcement agency or court having jurisdiction over either of the Parties relating to the subject matter of this Agreement and/or either Party’s performance of its obligations or exercise of its rights hereunder. (D) **Abusive or Fraudulent Use.** Customer will be liable for all use or misuse of the Services and/or SD Equipment hereunder, irrespective of whether such use or misuse was authorized, fraudulent or otherwise. Customer is prohibited from using the Services or SD 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 SD Equipment; (ii) obtaining or attempting to obtain permission to use Services or SD Equipment by providing false or misleading information; (iii) obtaining Services or SD Equipment without having the intent to pay charges incurred; (iv) using Services



or SD Equipment to undertake, encourage, promote or further any unlawful, fraudulent or criminal purpose or otherwise illegal activity; (v) interfering with, gaining unauthorized access to (including circumventing the user authentication or security of) any SD, Supplier, or any other third party's server, host, account, network, network access, computer, computer or computer system or control device, software, or data without consent to do any of the foregoing; (vi) impersonating any person or entity, engaging in sender address falsification, forging any third party's digital or manual signature, falsifying, altering or removing any packet or message headers; (vii) posting, storing, sending, transmitting or disseminating any information or material which a reasonable person could deem to be offensive, indecent, pornographic, harassing, threatening, invasive of privacy, vulgar, hateful, defamatory, racially or ethnically offensive or otherwise inappropriate, regardless of whether such information or material or its dissemination is unlawful; (viii) using Services or SD 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; (ix) using Services or SD Equipment in a manner that interferes with a Supplier's ability to provide its services or equipment to its customers (including disabling or interfering with any security features or intentionally introducing viruses, spyware, corrupted files or malware of any kind) or avoids Customer's obligation to pay for the Services or SD Equipment; (x) using or distributing tools designed or used for compromising security; (xi) engaging in unauthorized port scanning; (xii) transmitting unsolicited bulk or commercial messages or "spam", as defined under applicable law ("Spam"); (xiii) using Services or SD Equipment in any way that may violate, infringe or assist others in infringing upon the legal rights of any third party, including any third party intellectual property rights (including but not limited to uploading, posting, publishing, transmitting, creating derivative works of, distributing or engaging in any action that may violate the rights of or facilitate the infringement of any third party intellectual property right); (xiv) using the Services or SD Equipment in any way that may be in breach of any obligation of confidence or privacy; (xv) using Services or SD Equipment in a manner that interferes unreasonably with use of Services or SD Equipment by one or more other SD customers or Supplier customers, including but not limited to taking any action that imposes an unreasonable or disproportionately large load on the Services; (xvi) using the Services to perform "service bureau," "software as a service," "cloud service," or "application services provider" type services for any third party; (xvii) referring to any portion of the Services, or otherwise using any of the Services in connection with the development of any websites, software or other product or service having functionality, look and feel, or other features similar to or competitive with the Software or the Services; or (xviii) using the Services other than for the purposes expressly set forth in this Agreement. (E) **Customer Content.** Notwithstanding any other provision of this Agreement, Customer shall be solely responsible for all information, data, files, records and other materials, including personal information, that Customer uploads or transmits via the Services or otherwise provides to SD hereunder ("Customer Content"). Customer agrees that all Customer Content uploaded or otherwise transmitted to or via the Services shall comply with these Terms and Conditions and all applicable laws. (F) **Notification.** Customer will immediately notify SD in the event any SD Equipment or enabling information (e.g., SIM cards, IMEI numbers) are lost, stolen or are rendered unserviceable due to damage or are used for a purpose other than that for which they are intended. Customer shall notify SD immediately upon becoming aware of: (i) any violation of this Agreement, (ii) any and all actual or suspected unauthorized disclosures or uses of any Access Methods or any thefts, losses or other breaches of security with respect to any Access Methods; (iii) any and all actual or suspected unauthorized use or misuse of any Services; (iv) any actual or suspected infringement or other violation of any rights of SD or any third party; (v) any other acts or omissions of Customer, including its users, which are likely to jeopardize or prejudice the rights of SD in any Services or threaten the security of any Services; and (vi) any claim, demand, or cause of action brought against Customer, including its users, or any subpoena or other similar legal document served upon Customer or any other person, which relates to this Agreement or any Services. Notwithstanding the foregoing, except to the extent mandated by applicable laws, SD shall have no obligation hereunder to investigate, prosecute, or otherwise take any action in respect of any violation of which it is notified by Customer.

### **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 NETWORK(S), INCLUDING SATELLITE OR TERRESTRIAL NETWORK(S). SERVICES MAY BE SUSPENDED, TEMPORARILY UNAVAILABLE OR LIMITED BECAUSE OF CAPACITY LIMITATIONS, SD EQUIPMENT OR NETWORK FAILURES OR LIMITATIONS, DISTRESS OR ANY OTHER EMERGENCY OR NATIONAL SECURITY PRE-EMPTION AS REQUIRED BY SD OR A SUPPLIER IN EACH CASE AT SD'S OR THE SUPPLIER'S SOLE DISCRETION OR MAY BE TEMPORARILY INTERRUPTED OR CURTAILED DUE TO MODIFICATIONS, UPGRADES, REPAIRS OR SIMILAR ACTIVITIES OF A SUPPLIER. SD AND ITS SUPPLIERS HAVE NO LIABILITY FOR ANY SUCH UNAVAILABILITY OR MALFUNCTION. SD DOES 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 and Service availability may vary due to Customer's device, atmospheric conditions, terrain, network capacity, and location. Content, file sharing or multiplayer gaming requiring high bandwidth (e.g., 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, bulk messaging or 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/connectivity/networks](http://www.satcomdirect.com/connectivity/networks). SD disclaims any liability for any inaccuracies in such maps. Actual Service coverage, speeds, locations, and quality may vary. (E) **Disaster Recovery.** SD shall use commercially reasonable efforts to maintain, and continue to maintain throughout the term, disaster recovery plans and capabilities reasonably designed to enable the resumption of the Services after a disaster.

**3.2 EQUIPMENT COMPATIBILITY.** Customer is solely responsible for ensuring: (i) Customer's equipment is compatible with the Services, (ii) paying any fees or charges associated with use of Customer's equipment, and (iii) 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 or use the Services and/or to operate SD Equipment.

**3.3 DATA MANAGEMENT AND SECURITY.** (A) **Data Management.** Customer is responsible for managing Customer's data, including but not limited to, backup 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) **Security of Customer's Data.** 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 the Services, SD 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; and (B) SD reserves the right to reclaim a static IP address from Customer and to assign Customer a different address, either static or dynamic. SD disclaims all liability 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 SD Equipment will transfer upon delivery to Customer FCA Ottawa (Incoterms® 2020). Customer will pay any costs incurred by SD to ship the SD 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 dates 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 SD Equipment is temporarily out of stock. In the event that ordered SD Equipment is not available, SD will maintain a backorder list compiled by date. Customer is responsible for shipping charges for each partial shipment.

**4.3 TITLE.** (A) **Purchases.** Title to SD 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 SD 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) **Loans.** Any SD equipment loaned to Customer or a prospective customer is subject to the SD Bailment Agreement.

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

**4.5 WARRANTY.** The SD Warranty Terms and Conditions pertaining to SD Equipment are available at <http://www.satcomdirect.com/warranty/>.

**4.6 REFUNDS/RESTOCKING FEES.** There will be no refunds for used SD Equipment returned to SD, except as provided in Section 4.5. If Customer returns unused SD 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 SD Equipment must be returned to the SD facility as directed by SD.



**4.7 CANCELLATION OF CUSTOM ORDERS OR BLANKET ORDERS.** In the event Customer desires to cancel, in whole or in part, a custom or blanket order, Customer must notify SD of such request prior to shipment. Upon written acceptance by SD of any such cancellation request, in SD's sole discretion, 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 SD 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 of the Agreement and any additional fees set out in the agreed Order, SD Order acknowledgement or SD invoice.

## **5. INTELLECTUAL PROPERTY.**

**5.1 CUSTOMER PROPERTY.** As between SD and Customer, all right, title and interest in and to all Customer Content and Confidential Information of Customer, together with all intellectual property associated therewith, shall be and remain vested in Customer. Customer hereby grants to SD an irrevocable, nonexclusive, royalty-free, sub-licensable, fully paid-up, worldwide right and license (the "Customer Content License") to (a) use, and share with SD's Suppliers, Customer Content for the purpose of performing the Services and otherwise performing SD's obligations and exercising its rights under this Agreement; and (b) de-identify Customer Content and aggregate it with content from other customers of the Services and use and share such de-identified and aggregated Customer Content for any such legitimate business purposes as SD may determine, including benchmarking, analytics, innovation, product and service design, product and service development, improvement of the Services and research.

**5.2 SD PROPERTY.** As between SD and Customer, all right, title and interest in and to: (a) the SD website and any and all user guides or other information provided by SD to Customer; (b) all Confidential Information of SD; (c) the Services, including any software contained therein; (d) all system and network data, details, statistics, metrics, measurements and other non-personal information collected or generated by the Services, SD Equipment, or the SD network; and (e) all intellectual property associated therewith (collectively, "**SD Property**"), shall be and remain vested solely and exclusively in SD or SD's third party licensors or suppliers. All rights in the SD Property not expressly granted to Customer under this Agreement are hereby reserved by SD or SD's third party licensors or suppliers. In the event Customer provides to SD any suggestions, comments or other feedback with respect to the Services (collectively, "**Feedback**"), such Feedback shall be deemed to be SD Property. Customer shall not remove, obscure, alter, or deface any notice of confidentiality, any trademark, any copyright notice, or any other indicia of ownership that may be contained in or displayed via SD Property.

SD hereby grants Customer a limited, non-exclusive, non-sublicensable, revocable and non-transferable license to use SD Property provided by SD to Customer solely as necessary to use the Services and/or SD Equipment in accordance with and during the term of this Agreement. Customer shall not reverse engineer, decompile, modify or create derivative works based on the SD software, Services and/or SD Equipment.

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

**6.1 PAYMENT FOR SERVICES AND SD EQUIPMENT.** (A) **Services.** SD will bill and Customer will pay SD for the Services provided by SD and for any Supplier and/or other third party charges for which Customer has agreed with that third party to allow SD to bill. (B) **SD Equipment.** Unless otherwise agreed by SD, pre-payment of SD Equipment is required before SD Equipment is shipped. If pre-payment is not required, invoices for SD 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 SD Equipment.

**6.2 PAYMENT TERMS.** (A) Customer shall pay all invoices within thirty (30) days of the date of invoice and in accordance with this Section 6 and 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. If Customer elects to receive electronic invoices, Customer may also pay invoices directly online by credit card through SD's electronic invoicing system.

**6.3 PRICING.** (A) **Price.** 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 SD Equipment. SD reserves the right to revise such pricing from time to time. (B) **Changes.** Prices and availability of SD 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) **Usage Fees.** Customer shall be fully liable for payment of any and all voice and data charges accrued through the use of Services and/or SD Equipment (including Customer's equipment). It is Customer's sole obligation and responsibility to ensure that all SD 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 SD 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 SD 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 Services and/or SD Equipment must be made via check (subject to a fee of \$100 each for any returned checks), ACH, wire (for which 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 in writing 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. Any Customer payments submitted to SD via check or other form of payment marked "payment in full" or otherwise labeled in restrictive endorsements, shall, if accepted by SD, be accepted as only partial payment and SD will retain any and all 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 SD Equipment that are the subject of this Agreement (including 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 or SD 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 SD 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 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 applied to 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 (including Disputed Amounts, as defined below) 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 owed by Customer 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.



## **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) **Minimum Commitments.** 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. (B) **Automatic 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.** Changes to a service/subscription plan can only be made in writing between the Parties.

**8. DEFAULT, SUSPENSION AND TERMINATION.** (A) **Default.** The Parties acknowledge and agree that the following events shall constitute "Events of Default" and that the occurrence of one (1) or more such Events of Default shall constitute a material breach of this Agreement, which shall allow the non-defaulting Party to terminate this Agreement and seek the rights and remedies available to such Party as provided in this Section 8 and as otherwise provided by law: (a) failure of Customer to pay any amount due to SD under this Agreement that is not cured within thirty (30) calendar days following receipt of written notice of such failure; (b) failure of a Party to perform any other material obligation under this Agreement that is not cured within thirty (30) calendar days following receipt of written notice of such failure. If either Party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned for the benefit of creditors, the other Party may terminate this Agreement without notice and may cancel any unfilled obligations. (B) **Consequences.** In an Event of Default, SD may terminate this Agreement and any other Agreements Customer has with SD in accordance with Section 8(A) above. Upon the effective date of termination of this Agreement, unless otherwise agreed in writing by the Parties, (i) all rights granted to Customer hereunder to use the Services shall terminate, and Customer shall immediately cease use thereof, (ii) Customer shall return to SD or destroy, and certify to SD as destroyed, any and all Confidential Information of SD and any other SD Property in Customer's possession or control, and (iii) SD will bill Customer and Customer will pay SD, in accordance with this Agreement, including Section 7, for all outstanding charges accrued up to and outstanding on the date of such termination, including all fees and charges applicable for the remainder of the Term, which shall become immediately due and payable upon termination. Customer will be liable for all costs and expenses incurred by SD due to any Event of Default by Customer, including but not limited to legal costs. SD shall use commercially reasonable efforts to retain a copy of Customer Content in SD's possession or control for a period of thirty (30) days immediately following the effective date of termination. If requested by Customer within such thirty (30) day period, SD shall provide Customer with limited access to permit Customer to retrieve such Customer Content, SD shall have no obligation thereafter to maintain, retain or provide Customer Content. (C) **Suspension.** SD may also suspend or terminate Services with no liability whatsoever 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 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 (a "Taking"), SD will have the right, upon written notice to Customer to terminate the Services affected by the Taking. (D) **Supplier Contracts.** In the event that a Supplier Contract (as defined in Section 13.1) for purchase of Services expires or is terminated, SD may at its option and discretion either (i) terminate Services, provided that termination of the Services will only be with respect to the Services provided pursuant to that expired or terminated Supplier Contract, or (ii) assign or transfer its obligations to provide Services for the remainder of the Term to another service provider designated by the Supplier, in which case Customer hereby consents to such assignment or transfer. (E) **Additional Remedies.** The rights of termination, restriction or suspension set forth in this Section 8 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 EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, AND NON-INFRINGEMENT. SD MAKES NO WARRANTY THAT: (I) THE SERVICES AND/OR SD 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 SD EQUIPMENT WILL BE ACCURATE OR RELIABLE. EXCEPT FOR CERTAIN SERVICES AND SD 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, SD EQUIPMENT, OR SERVICES. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT THE INTERNET IS AN INHERENTLY INSECURE MEDIUM, THERE ARE CERTAIN SECURITY, CONFIDENTIALITY, AND PRIVACY RISKS INHERENT IN WIRELESS COMMUNICATIONS AND TECHNOLOGY, AND NEITHER SD NOR ITS SUPPLIERS MAKE ANY ASSURANCES OR WARRANTIES



RELATING TO SUCH RISKS INCLUDING THE SECURITY OR INTEGRITY OF ANY COMMUNICATIONS MADE OR RECEIVED USING THE SERVICES. 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 SD 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 SD EQUIPMENT AND/OR SERVICES; (II) FAILURE OR LIMITATIONS OF ANY EMERGENCY DISTRESS FEATURE; (III) INSTALLATION, MAINTENANCE AND/OR REMOVAL OF SUCH SD 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 WILLFUL 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 SD EQUIPMENT; OR (VI) ANY CLAIM OR ACTION FOR INTELLECTUAL PROPERTY INFRINGEMENT RESULTING FROM CUSTOMER'S USE (OR USE BY ANY OF ITS AFFILIATES) OF THE SD 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 SD 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 TWELVE (12) 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. (E) ANY ACTION AGAINST SD MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE DATE THAT THE CLAIM AROSE.

**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. EACH PARTY FURTHER IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM RELATED THERETO.

**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. CONFIDENTIALITY; PRIVACY AND DATA PROTECTION.**

**12.1 CONFIDENTIAL INFORMATION.** (A) Except as otherwise described in this Agreement, each Party shall treat as strictly confidential all non-public or proprietary information, data and materials of the other Party and any of its affiliates it receives from, or is given access to by, the other Party under this Agreement in any form (including writing, electronic and verbal) or manner (collectively, "Confidential Information"), using at least the same degree of care it employs to protect its own confidential information, and in no event less than reasonable care. Confidential Information of SD shall include all non-public information contained within or otherwise relating to the Services. Notwithstanding the foregoing, Confidential Information will not include information that (i) the receiving Party can demonstrate is independently developed thereby without use of or referral to any confidential information of the other Party; (ii) the receiving Party can demonstrate was lawfully received free of restriction from another source with the right to furnish such information, and other than as a result of its relationship with the receiving Party; or (iii) that is or becomes generally available to the public other than as a result of the direct or indirect acts of the receiving Party or any of its employees, contractors, agents or representatives. (B) The receiving Party shall not (i) use the Confidential Information for any purpose other than the performance of its obligations, or exercise of its rights expressly granted, under this Agreement, or (ii) divulge any Confidential Information, without the other Party's prior written consent, to any person other than those employees, contractors, agents and representatives of the receiving Party who need to know such Confidential Information to perform any of the receiving Party's obligations or exercise any of its rights under this Agreement. Each Party shall be responsible for compliance with all applicable terms of this **Section 12** by all such persons to whom it permits access to the disclosing Party's



Confidential Information. (C) Notwithstanding the foregoing, in the event disclosure of any Confidential Information is mandated by applicable laws, or by an order of a court or requested by a governmental authority, such disclosure shall not be a violation of this Agreement.

**12.2 AGREEMENT CONCERNING THE EUROPEAN UNION GENERAL DATA PROTECTION REGULATION (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.):

- A. Customer hereby represents and warrants that Customer has all rights required to provide all personal data to SD and its Supplier under this Agreement (“Customer Data”), including such consents required by applicable privacy and data protection laws;
- B. SD will use adequate technical and organizational measures to protect Customer Data as required under applicable privacy and data protection laws; and
- C. Any required notices with respect to SD’s use of Customer Data will be posted on SD’s customer portal.

Customer 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 with respect to customer proprietary network information (CPNI), are more particularly described in the CPNI rights notice available at <https://www.satcomdirect.com/legal-notices/cpni/>, which is incorporated herein by reference. 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.

### **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 SD Equipment from its Suppliers and any separate agreements between Supplier(s) and Customer (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, unavailability of Supplier-provided Service elements, 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 SD 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, after 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. No waiver by either Party hereunder shall be effective unless agreed to pursuant to a writing signed by an authorized representative of the Party granting the waiver.

**13.4 RELATIONSHIP; ASSIGNMENT.** Nothing in this Agreement shall constitute or be deemed to establish a partnership, joint venture, association or employment relationship between the Parties, and neither Party is granted herein or shall have the authority or power to bind the other Party, or to contract in the name of the other Party, in any manner or for any purpose. 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 and any attempt to do so shall be void and of no force or effect for any purpose whatsoever and shall constitute a breach of this Agreement. This Agreement will inure to the benefit of, and will be binding on Customer’s and SD’s respective successors and permitted assigns. The Parties agree that, except as expressly set forth herein, no provision of this Agreement is intended, expressly or by implication, to purport to confer a benefit or right of action upon any authorized user or other third party (whether or not in existence, and whether or not named, as of the Effective Date).

**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 Contracts**

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

**For 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: +1-321-777-3000  
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 seven (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 PUBLICITY.** Neither Party shall, without the prior written approval of such other Party in each instance, issue any press release relating to this Agreement or other display, broadcast or otherwise use in publicity distributed materials any corporate name, trade name, trademarks or service marks of the other Party.

**13.9 ENTIRE AGREEMENT.** This Agreement constitutes 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.

**13.10 REMEDIES.** No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in Law or in equity or by statute or otherwise.

**13.11 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 customer portal, (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 or discontinuation of Service(s). CUSTOMER'S CONTINUED USE OF THE SERVICES AND/OR SD EQUIPMENT CONSTITUTES CUSTOMER'S AGREEMENT TO SD'S TERMS AND CONDITIONS THAT ARE IN EFFECT AT THE TIME CUSTOMER USES THE SERVICES AND/OR SD EQUIPMENT.

**13.12 SIGNATURES.** In the event You are signing or electronically accepting this Agreement on behalf of Customer (by clicking a box or otherwise), You: (A) agree that Your signature or electronic acceptance indicates Customer's unconditional acceptance of this Agreement; (B) represent that You are authorized to execute and deliver this Agreement on behalf of Customer; and (C) represent that this Agreement is binding upon Customer and no other signature is required to bind Customer.

**13.13 EFFECTIVE DATE.** These Terms and Conditions are effective as of May 2021, and will remain in effect unless modified, revoked or terminated by SD.

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**SD HOSTED SERVICES**



SD makes certain cloud-based aviation data management system services available to Customer through remote access to software, data and related materials hosted on SD's Scheduler platform at its facilities. The following additional terms and conditions shall apply to Customer's use of SD hosted services ("Hosted Services"). **Customer will opt for such Hosted Services by election on Customer's pricing proposal agreement.**

**Support Services and Service Levels:** The support services and service levels set forth in as Exhibit A shall apply to SD's provision of the Hosted Services.

**Data Authorization:** Customer shall authorize its data providers to provide the data feeds specified in the order in order to receive the Hosted Services. SD shall have no liability to your data provider in connection with the provision of the Hosted Services.

**Access to the Hosted Services:** SD will provide to customer a link to access the Hosted Services operated and maintained by SD at its facilities.

**EXHIBIT A**  
**SD PRO SUPPORT SERVICES**

**1. Availability of the Service**

**1.1.** Service Provider's portal for the Services is available at SCHEDULER.SATCOMDIRECT.COM (the "**Portal**"). The Services will be available on a 7 (day) x 24 (hour) basis except for outages for maintenance and upgrades within the Maintenance Window defined below. If any outage is outside of the Maintenance Window, then Service Provider will provide reasonable prior written notice to Client of such scheduled outage as detailed below. Otherwise, Service Provider will continuously employ production system disciplines and monitor capacity and performance levels for its service environments.

**1.2.** Service Provider will, at Service Provider's expense, upgrade or improve capacity and performance levels within its environments as Service Provider, through reasonable commercial judgment, determines improvements are warranted and necessary for availability and performance attainment. The Services will be available for access and use by Client, including all features and functionality thereof 99.9% of the time (the "**Uptime Guarantee**"), measured on a yearly basis (the "**Measurement Period**"). Availability will be calculated for the Measurement Period by dividing (a) the Baseline Uptime less Unscheduled Downtime during the Measurement Period by (b) the Baseline Uptime for the same Measurement Period.

**1.3. "Baseline Uptime"** means the total number of minutes during the Measurement Period during which the Services, including all features and functionality thereof, is available for access and use by Client. Baseline Uptime excludes Excused Downtime.

**1.4. "Scheduled Downtime"** means the total time during the Measurement Period that the Services, including any features or functionality thereof, is not available for access and use by Client during Maintenance Window.

**1.5. "Unscheduled Downtime"** means the total number of minutes during the Measurement Period during which the Services or any feature or function thereof is not available for access or use by Client (other than Excused Downtime), measured from the time Client first reports the outage to Service Provider.

**1.6. "Excused Downtime"** means the total time during which the Services or any feature or function thereof is not available for access or use by Client during Scheduled Downtime or due to events outside of Service Provider's control, including: (i) Client side hardware or network issues; (ii) telecommunications outages; and (iii) Force Majeure events as the same is defined in the applicable Agreement.

**2. Maintenance Services**

**2.1** Services or any component thereof (including the Sites, Software and Guides), *provided that* SD shall ensure that any Modifications to the Software shall not adversely affect in any material respect the Client functionality of the then current version of the Software. SD shall endeavor to complete such installations and modifications during SD's "**Standard Maintenance Period**" as specified by SD. Whenever possible, and only as maintenance is necessary, SD will schedule maintenance of the SD Scheduler application during Thursdays at 6am ET. There may be times where the Standard Maintenance Period is scheduled outside of this window in order to maintain system availability, performance, and security of the SD Scheduler application.

**2.2 Notification of Maintenance.** SD shall use commercially reasonable efforts to notify Client of any scheduled Hosted Services maintenance that SD reasonably believes (a) will cause SD not to meet the Availability Service Level (described below) for the applicable calendar year or (b) will occur outside of SD's Standard Maintenance Period. Except in cases of emergency, SD shall use commercially reasonable efforts to notify Client of such scheduled maintenance at least **forty-eight (48) hours** prior to such maintenance being performed. In cases of emergency, SD will use commercially reasonable efforts to notify Client of such scheduled maintenance as soon as reasonably practicable.

**3. Ongoing Support of Client's Use of SD Scheduler Hosted Services**

Commencing upon the earliest date Client or any of its Authorized Users access the Hosted Services, SD shall use commercially reasonable efforts to provide the following technical support services ("**Support Services**") remotely, to Client:

**3.1 Support Requests.** All requests to SD for support must be communicated to SD by a Client Support Administrator via such telephonic support line 1 (888) 448-9003, via sending an email to support@satcomdirect.com or other means of contact as may be specified from time to time by SD (the "**Support Line**"), 24 hours a day, 7 days a week ("**Service Hours**").

**3.2 Response to Issues Raised.** SD shall use commercially reasonable efforts to classify and endeavor to resolve any issues with the Hosted Services reported to SD by a Client Support Administrator via the Support Line during Service Hours. SD will classify the severity of the issue brought up by the Client. Target initial response times are as follows:

Classification	Description	Initial Acknowledgement Response Timeframe	Initial Diagnostic Timeframe	Resolution Commitment Period
Severity 1	<p>Services are inoperable or its performance is so severely reduced that Client cannot reasonably continue to utilize the Services because of the error and the error cannot be circumvented with a workaround.</p> <p>Critical Business Impact</p> <p>Critical functionality or performance issue causing loss of service availability or severely limited functionality for all users. There are no identified workarounds.</p> <p>Severity Level 1 problems with the following characteristics:</p> <ul style="list-style-type: none"> <li>• System/Service unavailable or running in a severely degraded state</li> <li>• Data loss or data corruption</li> <li>• Critical functionality not available</li> </ul>	1-2 hours (during Service Hours) from receipt of notice of issue	Upon Initial Response to Client, SD will begin diagnostic and remedial measures promptly hereafter.	Once SD has commenced corrective measures, SD will work continuously and diligently until the Defect has been remedied.

Severity 2	<p>Some operations can continue in a highly restricted fashion, but there is some severe and critical loss of use of functionality affecting the majority of Authorized Users</p> <p>Significant Business Impact</p> <p>Critical functionality or performance issue causing loss of service availability or severely limited functionality.</p> <p>Severity Level 2 problems could have the following characteristics:</p> <ul style="list-style-type: none"> <li>• Product error or failure forcing a restart or recovery</li> <li>• Severely degraded performance</li> <li>• Functionality unavailable but the system is able to operate in a restricted fashion.</li> </ul>	2-4 hours (during Service Hours) from receipt of notice of issue	Upon Initial Response to Client, SD will begin diagnostic and remedial measures promptly hereafter.	Once SD has commenced corrective measures, SD will work complete all corrections as soon as reasonably practicable.
Classification	Description	Initial Acknowledgement Response Timeframe	Initial Diagnostic Timeframe	Resolution Commitment Period
Severity 3	<p>Hosted Services can be used with some restrictions, but some Hosted Services do not function correctly, and no alternative features are available to achieve equivalent functionality</p> <p>Minimal Business Impact</p> <p>Non- critical functionality or performance issue impacting all or a limited set of users.</p> <p>Severity Level 3 problems could have the following characteristics:</p> <ul style="list-style-type: none"> <li>• Error message with workaround</li> <li>• Minimal performance degradation</li> <li>• Incorrect product behavior with minor impact</li> </ul>	4-8 hours (during Service Hours) from receipt of notice of issue		Released with the next release

Severity 4	<p>Hosted Services can be used with some inconvenience because some Hosted Services do not function correctly. Authorized Users can work around the problem or may use alternative features in the Hosted Services to achieve equivalent functionality</p> <p>Nominal Business Impact</p> <p>Non- critical functionality or performance issue impacting one user, where a workaround is available.</p> <p>Severity Level 4 problems could have the following characteristics:</p> <ul style="list-style-type: none"> <li>• General requests or user specific issue</li> <li>• Clarification on product documentation</li> <li>• Product enhancement request</li> </ul>	8 hours (during Service Hours) from receipt of notice of issue		Added to the Product Management triage for planning
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Such response times are merely targets and not guarantees, and no Service Credits shall be issued hereunder for any failure by SD to meet such targets.

**3.3 Exclusions.** SD shall have no obligation to provide any Support Services (a) for any service requested by anyone other than a Client Support Administrator of which SD has received notice in accordance with Section 2.1 above; or (b) to the extent any issue relates to any Exclusions. “**Exclusions**” means any unavailability of the Hosted Services or other issue relating to: (a) scheduled maintenance (whether by SD, a third party service provider, or by Client); (b) modification of the Hosted Services by any Person other than SD; (c) Client Content; (d) the combination of the Hosted Services with any other items not provided by SD; (e) use of the Hosted Services in any manner that violates the Agreement and/or any Authorized User Agreement or is otherwise inconsistent with the proper use thereof as described in the Guides or the Agreement; (f) Client’s failure to fulfill any of its obligations in accordance with the terms of the Agreement; (g) any other acts or omissions of Client, any Authorized User, or any other Person utilizing any of Client’s Access Methods; (h) server down-time related to connectivity issues resulting from remote access to the hosted server managed by a third party or Client internal network problems; (i) any other defects in, failure, malfunction, degradation, restoration or incorrect or unauthorized installation or operation of any equipment or other technology or services owned by Client or otherwise not provided by SD, including any defects or bugs in any technology utilized by Client or any Authorized User to access the Hosted Services; (j) any Force Majeure Event; and/or (k) any suspension of the Hosted Services by SD in accordance with the terms of the Agreement. In the event SD provides any Support Services relating to any Exclusions, Client shall pay for such Support Services on a time and materials basis as set forth in Schedule A of the Agreement.

**4. Backup Services**

SD shall use commercially reasonable efforts to (a) back up Client Content stored via the Hosted Services and (b) retain such backups for a reasonable time as determined by SD to ensure prompt restoration of the Hosted Services and/or Client Content. Client Support Administrators may request restoration of Client Content by submitting a request via the Support Line. SD shall use commercially reasonable efforts to initiate restorations of Client Content promptly. Client acknowledges that any changes made to Client Content subsequent to the time of creation of the backup file used for restoration may be lost and not retrievable by SD.

**5. Disaster Recovery Plan**

SD shall maintain a Disaster Recovery plan that covers services that are provided to the Client and each of the proposed service locations. SD will provide a target recovery time objective (RTO) and recovery point objective (RPO) of 12 hours and 24 hours, respectively.

## **6. Service Credits**

In the event that the availability (access and use) of the Services for the applicable Measurement Period, as described and measured above, fails to meet the Uptime Guarantee, the below matrix provides the uptime availability ranges (“Uptime Percentages”), which will determine what percentage of the Fees paid for the Services affected during the applicable Measurement Period (“Service Credit”) Client will receive.

<b>Uptime Percentage</b>	<b>Service Credit</b>
≥99.9%	0% of Fees
≥99.85% but <99.9%	5% of Fees
≥99.80% but <99.85%	10% of Fees
≥99.70% but <99.80%	15% of Fees
<99.70%	20% of Fees

**6.1** The Service Credits detailed in the table above will be in the form of credits applicable to future periods of the Services and will be automatically applied against the next applicable subscription Fees (only) or if no additional subscription Fees are payable when the term expires or terminates then, such credits will be provided to Client in the form of a refund paid within 30 days after the effective date of such expiration or termination. For the avoidance of doubt, no credits are offered or will be applied with respect to any charges for managed services.

**6.2** In the event that the availability falls below (a) 99.9% for three (3) consecutive months in any twelve (12) month period, or (b) 90% in any month, Client may, immediately upon written notice to SD, terminate the applicable Change Order or the Agreement and the applicable Change Orders without penalty or further obligation to SD. In the event of such termination, SD will (i) refund any prepaid unused Fees attributable to the Fees paid for the remainder of the unused term, and (ii) pay the applicable Service Credit for the periods prior to the effective date of termination.

## **7. Training Support Services**

**7.1. Initial Training:** SD employs a "train the trainer" methodology. This approach provides long-term stability for the staff of the client; it allows a dedicated group lead or team member to manage, own and understand the solution. As such, this group lead or team member will become the essential point of contact for questions and requests going forward, streamlining and prioritizing support and communications. Training sessions are conducted within 90 days of “go-live” date. Sessions may include but are not limited to three (3) one hour phone/teleconference training sessions. In some cases, an on-site four-hour training session may be provided.

**7.2. Additional Training:** SD also offers online training, including self-paced e-learning modules, live webinar training, and digital training materials that can be accessed, downloaded, and used wherever there is internet availability. These options can be used in addition to any other training available to the client. Additional requests for phone/teleconference training or on-site training may be subject to resource and availability. These training sessions may also be subject to an hourly rate plus travel expenses as agreed upon between SD and Client.

## **8. Reports**

**8.1. Measurement and Monitoring Tools:** SD will utilize the necessary measurement and monitoring tools and procedures required to measure and report SD’s performance of the Services against the Service Levels on at least a quarterly basis. All measurement and monitoring tools will enable reporting at a level of detail sufficient to verify compliance with the Service Levels and are subject to audit by Client. Audits by Client will be conducted on-site in Melbourne, FL and will be limited to a maximum of two times a year. Client must submit the audit request at least 30 days in advance in writing. SD will provide Client with information and access to all measurement and monitoring tools and procedures upon request, for purposes of verification.