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TERMS AND CONDITIONS FOR

INTELIE LIVE® SOFTWARE END USER LICENSE AGREEMENT

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IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, THEN DO NOT ACCESS OR USE THE SERVICE. BY SIGNING EITHER A SERVICE ORDER AGREEMENT OR A STATEMENT OF WORK OR AN ORDER FORM, OR BY CLICKING THE "I AGREE" BUTTON AT THE END OF THIS AGREEMENT OR BY OTHERWISE INSTALLING, DOWNLOADING, COPYING, ACCESSING, ACCEPTING OR USING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU UNDERSTAND THEM, AND YOU AGREE TO BE LEGALLY BOUND BY THEM.

1. **DEFINITIONS.** Capitalized terms used but not otherwise defined in this agreement have the meanings set forth as follows**:**

1.1 **"Authorized Reseller"** has the meaning in Section 18.

1.2 **"Authorized User"** has the meaning in Section 3.

1.3 **"Confidential Information"** means any information disclosed by one party to the other in connection with this Agreement, whether in electronic, written, graphic, oral, machine readable or other tangible or intangible form, that is marked or identified at the time of disclosure as "Confidential" or "Proprietary" or in some other manner so as to clearly indicate its confidential nature, or that a reasonable recipient would consider in the circumstances of disclosure such information to be the confidential or proprietary information of the disclosing party. Without limiting the foregoing, the Software shall be deemed the Confidential Information of Viasat regardless of marking or identification.

1.4 **"Content Subscription"** means a subscription for additional content that Customer may purchase from Viasat for updated content applicable to the Software (such as models, rules and configurations, as further described in the relevant Documentation) that Viasat may provide relating to the Software during the subscription period.

1.5 **"Customer Data"** means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Software. For the avoidance of doubt, "Customer Data" does not include Resultant Data or any other information reflecting the access or use of the Software by or on behalf of Customer or any Authorized User.

1.6 **"Customer Systems"** means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or using third-party services.

1.7 **"Delivery"** means the date of Viasat's initial delivery of the license key for the applicable Software or otherwise making the applicable Software available for download by Customer.

1.8 **"Disabled Materials"** means certain materials (including programs, modules or components, functionality, features, documentation, content or other materials) that may be contained in or provided with the Software as part of the delivery mechanism used by Viasat, but that are disabled or hidden in Customer's setting, because Customer either: (a) does not have the relevant license or license key, or (b) has not paid the applicable fees, for those materials.

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1.9 "**Documentation**" means any manuals, instructions, or other documents or materials that Viasat provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Software, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

1.10 "**Enhancements**" means any updates, upgrades, releases, fixes, extensions, or modifications to the Software made generally commercially available by Viasat to its support customers.

1.11 "**Feedback**" means all suggestions for improvement or enhancement, recommendations, comments, opinions, code, input, ideas, reports, information, know-how or other feedback provided by Customer (whether in oral, electronic or written form) to Viasat in connection with the Software. Feedback does not include any data, results or output created or generated by Customer using the Software, unless specifically submitted or communicated by Customer to Viasat as part of the Feedback.

1.12 "**Harmful Code**" means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Software as intended by this Agreement. Harmful Code does not include any Viasat Disabling Device.

1.13 "**Initial Term**" has the meaning in Section 17.1.

1.14 "**Intelie LIVE**" means Viasat's proprietary Intelie LIVE® suite of software products. The applicable Order will define which parts or portions of Intelie LIVE® are being licensed to Customer.

1.15 "**Intellectual Property Rights**" means all patent, copyright, and trade secret rights and all other intellectual property and proprietary rights, whether registered or unregistered.

1.16 "**Internal Business Purpose**" means Customer's use for its own internal business operations on the Customer Systems with Customer Data. Such use shall not include use by Customer on a service bureau basis or otherwise to provide services to, or Process data for, any third party.

1.17 "**Losses**" means all liabilities, losses, damages, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees.

1.18 "**Open Source Software**" means software or similar subject matter that is distributed under an open source license such as (by way of example only) the GNU General Public License, GNU Lesser General Public License, Apache License, Mozilla Public License, BSD License, MIT License, Common Public License, any derivative of any of the foregoing licenses, or any other license approved as an open source license by the Open Source Initiative.

1.19 "**Order**" means the scope of work as described in the applicable ordering document provided by Viasat that Customer has properly and completely filled out, submitted to Viasat and accepted by Viasat for Customer to order Software, Support Services and/or Professional Services which references the products, services, pricing and other applicable terms.

1.20 "**Process**" means to take any action or perform any operation or set of operations that the Software is capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalogue, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy. "**Processing**" and "**Processed**" have correlative meanings.

1.21 **"Professional Services"** has the meaning in Section 10.

1.22 **"Renewal Term"** has the meaning in Section 17.2.

1.23 "**Representatives**" means, with respect to a party, that party's and its affiliates' employees, officers, directors, agents, service providers, subcontractors, and legal advisors.

1.24 **"Resultant Data"** has the meaning in Section 12.2.

1.25 "**Software**" **means** the Intelie LIVE® products specified in an Order, in executable code format only.

1.26 "**Specifications**" means the specifications for the Software set forth in the relevant Order, as such specifications may be updated from time to time by Viasat in its reasonable judgment.

1.27 "**Statement of Work**" or "**SOW**" means a written statement of work detailing any agreed deliverables, specifications, development schedule, and the respective responsibilities of the parties. Unless specifically agreed upon in writing by the parties in an SOW, as between an SOW and this Agreement, this Agreement shall take precedence and any different or additional terms set forth in an SOW are hereby rejected and of no force or effect.

1.28 **"Support Services"** has the meaning in Section 9.

1.29 **"Taxes:** has the meaning in Section 8.2.

1.30 **"Term"** has the meaning in Section 17.2.

1.31 **"Third Party Content"** has the meaning in Section 13.4.

1.32 "**Viasat Disabling Device**" means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by Viasat or its designee to disable Customer's or any Authorized User's access to or use of the Software automatically with the passage of time or under the positive control of Viasat or its designee.

2. **SOFTWARE LICENSE.** Subject to Customer's compliance with the terms and conditions of this Agreement, including Customer's timely payment of all Fees, Viasat grants to Customer a non-exclusive, non-transferable, non-sublicensable (except as set forth in Section 20.6 below), fee-bearing limited license during the applicable Term to install and execute the Software solely for Customer's Internal Business Purposes on the Customer Systems, networks and devices. Any new or conflicting terms of an Order, unless expressly agreed by the parties in writing, are hereby rejected and void.

3. **AUTHORIZED USERS.** Customer may permit its authorized employees, consultants, contractors, and agents ("authorized users") to access and use the software solely on Customer's

behalf, subject to the terms and conditions of this agreement. Customer will be liable for any authorized user's actions relating to or use of the software.

4. **OPEN SOURCE SOFTWARE.** Customer acknowledges that certain software may contain open source software. Any open source software that is delivered to customer as part of the software, and which may not be taken out of the software or used separately from the software, is covered only by the warranty, support and indemnification provisions applicable to the software.

5. **LICENSE RESTRICTIONS.**Limitations on Use of Software. Software created or transferred pursuant to this Agreement is licensed, not sold, and Customer receives no title to or ownership of any copy or of the Software itself. All rights not expressly granted under this Agreement are reserved. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

(a)   copy, modify, or create derivative works or improvements of the Software, except as required to install and execute the Software and for reasonable backup purposes;

(b)   rent, lease, lend, sell, sublicense, transmit, assign, distribute, publish, transfer, or otherwise make available the Software to any person, including on or in connection with the internet or any time sharing, service bureau, or other technology or service;

(c)   except to the extent that applicable law prevents such limitation, reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code, structure, algorithms, or ideas underlying the Software, in whole or in part;

(d)   bypass or breach any security device or protection used by the Software or access or use the Software other than by an Authorized User through the use of his or her own license keys;

(e)   input, upload, transmit, or otherwise provide to or through the Software, any information or materials, including Customer Data, that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;

(f)   damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Software;

(g)   remove, delete, alter, or obscure any disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Software, including any copy thereof;

(h)   access or use any Disabled Materials;

(i)   access or use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right, privacy or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Viasat customer), or that violates any applicable law;

(j)   access or use the Software in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety critical applications, or any other use or application in which the use or failure of the Software could lead to personal injury or severe physical or property damage;

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(k)   attempt to disable or circumvent any license key or other technological mechanisms or measures intended to prevent, limit or control use or copying of, or access to, any Software;

(l)   use any of the features and functionalities of the Software with external applications or code not furnished by Viasat or any data not Processed by the Software, except otherwise specifically permitted in the Documentation;

(m)   misuse the Software or use the Software for any illegal, harmful, fraudulent, or offensive purposes;

(n)   access or use the Services in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage; or

(o)   otherwise access or use the Software beyond the scope of the authorization granted under this Section 5

6.   SUSPENSION OR TERMINATION OF SOFTWARE. Viasat may, directly or indirectly, and by use of a Viasat disabling device or any other lawful means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other person's access to or use of all or any part of the software, without incurring any resulting obligation or liability, if: (a) Viasat receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Viasat to do so; or (b) Viasat believes, in its good faith and reasonable discretion, that: (i) Customer or any authorized user has failed to comply with any material term of this agreement, or accessed or used the software beyond the scope of the rights granted or for a purpose not authorized under this agreement or in any manner that does not comply with any material instruction or requirement of the specifications; (ii) Customer or any authorized user is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iii) this agreement expires or is terminated. Customer is solely responsible for backing its data and information. This section 6 does not limit any of Viasat's other rights or remedies, whether at law, in equity, or under this agreement.**CUSTOMER OBLIGATIONS.**

7.1   <u>Customer Systems and Cooperation</u>. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Software is accessed or used; (b) provide Viasat personnel with such access to Customer's premises and Customer Systems as is necessary for Viasat to perform any required services in accordance with the applicable Order; and (c) provide all cooperation and assistance as Viasat may reasonably request to enable Viasat to exercise its rights and perform its obligations under and in connection with this Agreement.

7.2   <u>Data Backup</u>. The Software does not replace the need for Customer to maintain regular data backups or redundant data archives. VIASAT HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.

7.3   <u>Effect of Customer Failure or Delay</u>. Viasat is not liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement.

7.4   Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 5.1, Customer shall immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Software and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Viasat of any such actual or threatened activity.

7.5   Privacy and Data Security Terms. If Customer collects any personally identifiable information via a Customer System, Customer must ensure that such information is collected, Processed, transmitted, maintained and used in compliance with all applicable laws and a legally acceptable privacy policy that Customer posts and makes available to users from any Customer System. Customer must comply with the terms and conditions of its own privacy policy and all applicable law and employ reasonable measures to protect any personally identifiable information that Customer collects.

7.6   Non Solicitation. During the Term and for one year after, Customer shall not, and shall not assist any other person to, directly or indirectly recruit or solicit (other than by general advertisement not directed specifically to any person or persons) for employment or engagement as an independent contractor any person then or within the prior 12 months employed or engaged by Viasat or any subcontractor. In the event of a violation of this Section 7.6, Viasat will be entitled to liquidated damages equal to the compensation paid by Viasat to the applicable employee or contractor during the prior 12 calendar months.

8.   FEES; PAYMENT AND TAXES

8.1   Fees. Customer will pay all license fees set forth in the applicable Order (the "**Fees**") for the Software delivered to Customer in accordance with this Section **Error! Reference source not found.**.

8.2   Taxes. The Fees payable hereunder do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer shall be responsible for payment of all Taxes, tariffs and transportation costs related to this Agreement (other than taxes on Viasat's net income). Without limiting the foregoing, Customer shall pay or reimburse Viasat for all Taxes based on the services provided under this Agreement or on Customer's use of the Software. In the event that Customer is required to withhold Taxes imposed upon Viasat for any payment under this Agreement by virtue of the statutes, laws, codes or governmental regulations of a country in which the Software or other services are provided, then such payments will be made by Customer on behalf of Viasat by deducting them from the payment then due to Viasat and remitting such Taxes to the proper authorities on a timely basis, and the payments provided for under this Agreement will be adjusted appropriately so that Viasat receives the amounts specified in this Agreement without taking into account such withholding tax; provided, that Customer supplies Viasat with official documentation and/or tax receipts on such withholdings supporting such taxes and such payments as may be required by Viasat for its tax records on or before the date on which such payment is due Viasat under this Agreement.

8.3   Payment. All payments shall be made in U.S. Dollars within 30 days following receipt of the invoice. In the event of late payment of any sums due from Customer, Viasat may charge interest on a daily basis on all sums overdue at the lesser of the rate of 1.5% per month or the maximum amount allowed by law.

8.4 <u>Fee Increases</u>. Viasat may increase Fees no more than once annually for any contract year after the Initial Term, by providing written notice to Customer at least 90 calendar days prior to the commencement of that contract year, and the applicable Order will be deemed amended accordingly. The modified fees will be effective at the start of the next Renewal Term unless Customer notifies Viasat of non-renewal at least 90 days prior to the end of the then-current Term.

8.5 Audits.

(a) <u>Audit Procedure</u>. Viasat or its nominee (including its accountants and auditors) may, in Viasat's sole discretion on ten days' notice, inspect and audit Customer's use of the Software and compliance with this Agreement at any time during the Term and for one year following the termination or earlier expiration of this Agreement. All audits will be conducted during regular business hours, and no more frequently than once in any 12-month period, and in a manner that does not unreasonably interfere with Customer's business operations. Customer shall make available all such books, records, equipment, information, and personnel, and provide all such cooperation and assistance, as may be requested by or on behalf of Viasat with respect to such audit. Viasat shall only examine information related to Customer's use of the Software.

(b) <u>Cost and Results of Audit</u>. If the audit determines that Customer's use of the Software exceeded the usage permitted by this Agreement by more than two percent, Customer shall pay to Viasat all amounts due for such excess use of the Software, plus interest on such amounts, as calculated pursuant to Section 8.3. If the audit determines that such excess use equals or exceeds five percent of Customer's permitted level of use, Customer shall also pay to Viasat all costs incurred by Viasat in conducting the audit. Customer shall make all payments required under this Section 8 within 30 days of the date of written notification of the audit results.

9. MAINTENANCE AND SUPPORT. If Customer has purchased support and maintenance for the Software as set forth in the Order (the "Support Services"), then Viasat will provide Enhancements and the level of support and maintenance included in the applicable Order.

10. CONFIGURATION SERVICES. Subject to customer's payment of applicable fees, Viasat will provide the deployment, usage assistance, configuration, and/or training services (if any) (the "professional services") as may be set forth in the applicable order.**CONFIDENTIAL INFORMATION**

11.1 <u>Confidentiality</u>. Neither party shall use Confidential Information of the other party disclosed to it hereunder for any purpose other than in furtherance of this Agreement and the activities described herein. The recipient shall not disclose, transfer, or disseminate Confidential Information of the disclosing party to any third parties except as otherwise permitted hereunder. The recipient may disclose Confidential Information of the disclosing party only to the recipient's employees or contractors who have a need to know such Confidential Information and who are bound to retain the confidentiality thereof under provisions no less restrictive than those required by this Agreement. The recipient shall maintain Confidential Information of the disclosing party with at least the same degree of care it uses to protect its own proprietary information of a similar nature or sensitivity, but in any event, not less than reasonable care. All Confidential Information (including all copies thereof) shall remain the property of the disclosing party.

11.2 <u>Exclusions</u>. Confidential Information does not include information that the receiving party can demonstrate by written or other documentary records: (a) was rightfully known to the receiving party without restriction on use or disclosure prior to such information's being disclosed or made

available to the receiving party in connection with this Agreement; (b) was or becomes generally known by the public other than by the receiving party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the receiving party on a non-confidential basis from a third party that, to the receiving party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the receiving party can demonstrate by written or other documentary records was or is independently developed by the receiving party without reference to or use of any Confidential Information.

11.3   Legal Obligation to Disclose. This Agreement will not prevent the recipient from disclosing Confidential Information of the disclosing party to the extent required by a judicial order or order of other governmental authority, provided that, in such event, the recipient shall promptly notify the disclosing party prior to disclosure to allow intervention, notify the requesting entity of the confidentiality of the materials, and cooperate with the disclosing party to contest or minimize the scope of the disclosure (including application for a protective order).

11.4   Return of Confidential Information. Upon the request of the disclosing party or upon termination of this Agreement, all copies and embodiments of the disclosing party's Confidential Information shall be promptly returned to the disclosing party by the receiving party, unless such copies are required to perform the receiving party's obligations, exercise the receiving party's rights under the terms of this Agreement or in accordance with the receiving party's automatic electronic archiving and back-up procedures in the ordinary course of business. The receiving party may retain, subject to the terms of this Section 11.4 copies of Confidential Information solely to the extent the receiving party is required to maintain copies of such Confidential Information in its records pursuant to its record keeping policies and legal obligations in the ordinary course of business.

11.5   Nondisclosure of Terms. Each party agrees not to disclose the terms of this Agreement to any third party without the prior written consent of the other party, which consent shall not be unreasonably withheld, except to such party's Representatives on a need to know basis under circumstances that reasonably ensure the confidentiality thereof, to the extent required by law, in connection with the enforcement of this Agreement or rights under this Agreement or in connection with a merger, acquisition, financing transaction or proposed merger, acquisition or financing transaction, or the like.

12.   INTELLECTUAL PROPERTY RIGHTS

12.1   Ownership of the Software. Customer acknowledges and agrees that as between the parties, Viasat retains all right, title and interest in and to the Software, including all Intellectual Property Rights therein, subject to any applicable rights of their third-party providers in any Third-Party Content, Open Source Software included therein or provided in connection therewith. Except for the licenses expressly granted to Customer in Section 2, Customer will not acquire or claim any right, title or interest in or to the Software or related Intellectual Property Rights, whether by implication, operation of law or otherwise. To the extent that Customer provides any Feedback, Customer grants to Viasat a perpetual, irrevocable, worldwide, nonexclusive, transferable, sublicensable, royalty-free, fully paid-up right and license to use and commercially exploit the Feedback in any manner Viasat deems fit.

12.2   Ownership and Use of Customer Data. As between Customer and Viasat, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in this Section **Error! Reference source not found.** Customer hereby grants Viasat a worldwide, sublicensable, transferable, non-exclusive, royalty-free, irrevocable and perpetual license to (i) collect and use the Customer Data for performing and improving the Software,

including Viasat's current or future products or services, (ii) use or disclose the Customer Data in accordance with Viasat's privacy policy, and (iii) disclose the Customer Data in aggregate or anonymized form in connection with Viasat's business, including to compile statistical and performance information related to the provision and operation of the Software ("**Resultant Data**"). Resultant Data shall not be considered Customer's Confidential Information. Customer hereby unconditionally and irrevocably assigns to Viasat all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

12.3   Copyright Notices. Customer agrees not to remove any visible copyright notices and other proprietary legends appearing on any Software.

13.   **LIMITED WARRANTY**Viasat Limited Warranty. Viasat warrants that for a period of 90 days from the Delivery of Software, the Software will substantially perform the material functions described in the applicable Specifications, provided Customer complies with the Specifications and Documentation. The sole liability of Viasat (and its affiliates and suppliers/licensors), and Customer's sole remedy, for any failure of the Software to conform to the foregoing warranty, is for Viasat to (at Viasat's sole option and discretion), either: (a) modify the Software so that it conforms to the foregoing warranty; or (b) replace Customer's copy of the Software with a copy that conforms to the foregoing warranty; or (c) terminate the license with respect to the non-conforming Software [and refund the Fees paid by Customer for such non-conforming Software]. All warranty claims must be made by written notice from Customer to Viasat on or before the expiration of the warranty period.

13.2   Customer Warranties. Customer represents and warrants to Viasat that:

(a)   it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;

(b)   it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement;

(c)   the execution of this Agreement by its Representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms; and

(d)   Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Viasat and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law.

13.3   Disclaimer of Warranty. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 13.1 ABOVE, THE SOFTWARE, OPEN SOURCE SOFTWARE, THIRD-PARTY CONTENT, SUPPORT SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" WITH NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED. TO THE FULL EXTENT PERMITTED BY LAW, VIASAT AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL WARRANTIES OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 13.1, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND ANY

WARRANTIES ARISING OUT OF COURSE OF DEALING OR TRADE USAGE. VIASAT DOES NOT WARRANT THAT THE SOFTWARE WILL PERFORM WITHOUT ERROR OR THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR SECURE, OR THAT ALL DEFECTS WILL BE CORRECTED. VIASAT PROVIDES NO WARRANTY REGARDING, AND WILL HAVE NO RESPONSIBILITY FOR, ANY CLAIM ARISING OUT OF: (A) A MODIFICATION OF THE SOFTWARE MADE BY ANYONE OTHER THAN VIASAT; OR (B) USE OF THE SOFTWARE IN COMBINATION WITH ANY OPERATING SYSTEM NOT AUTHORIZED IN THE SPECIFICATIONS OR DOCUMENTATION OR WITH HARDWARE OR SOFTWARE SPECIFICALLY FORBIDDEN BY THE SPECIFICATIONS OR DOCUMENTATION.

13.4   Third Party Content Disclaimer. Certain extensions and other materials may be available through Viasat for download that are developed and/or provided by third parties ("**Third-Party Content**"). If any, Viasat makes such Third-Party Content available for download as a convenience to its customers, but Viasat neither controls nor endorses, nor is Viasat responsible for, any Third-Party Content, including the accuracy, integrity, quality, legality, usefulness or safety of Third-Party Content. Certain Third-Party Content may, among other things, be inaccurate, non-functional, infringing or dangerous. Nothing in this Agreement will be deemed to be a representation or warranty by Viasat with respect to any Third-Party Content, even if a particular extension or other item of Third-Party Content is identified as "certified" for use with Software. Viasat has no obligation to monitor Third-Party Content, and Viasat may block or disable access to any Third-Party Content at any time. In addition, the availability of any Third-Party Content through Viasat does not imply Viasat's endorsement of, or affiliation with, any provider of such Third-Party Content, nor does such availability create any legal relationship between Customer and any such provider. Customer's use of Third-Party Content is at Customer's own risk and may be subject to any additional terms, conditions and policies applicable to such Third-Party Content (such as license terms, terms of service or privacy policies of the providers of such Third-Party Content).

14.   INDEMNITY

14.1   Viasat Indemnification. Viasat shall indemnify Customer against all Losses finally awarded against Customer arising out of, and defend Customer against, any action, claim, suit or proceeding brought against Customer by a third party, asserting that the Software, each when used as authorized under this Agreement, infringes or misappropriates any intellectual property rights. Viasat will have no indemnity obligation to Customer if the alleged infringement or misappropriation is based on (a) any combination, operation, or use of the Software with products, services, information, materials, technologies, business methods or processes not furnished by Viasat to the extent the infringement or misappropriation is based on such combination, operations or use; (b) any modification (other than by Viasat) to the Software to the extent the infringement or misappropriation is based on such modification; (c) any third party application or data used in or accessible via the Software; or (d) Customer's use of allegedly infringing elements of the Software after Viasat has made available modifications which would have avoided the alleged infringement. In the event the Software is held to, or Viasat believes is likely to be held to, infringe or misappropriate a third party's rights, Viasat shall have the right at its sole option and expense to (x) substitute or modify the Software so that they are non-infringing; (y) obtain a license to continue offering the Software under commercially reasonable terms; or (z) if (x) and (y) are not reasonably practicable as determined by Viasat in its sole discretion, terminate this Agreement. The remedies set forth in this Section **Error! Reference source not found.** are Customer's sole and exclusive remedy, and Viasat's sole and exclusive obligation regarding any claims of infringement or misappropriation under this Agreement.

14.2 <u>Customer Indemnification</u>. Customer shall indemnify Viasat from and against any and all Losses finally awarded against Viasat arising out of, and defend Viasat against, any action, claim, suit or proceeding brought against Viasat by a third party, arising from Customer's use of the Software [(other than to the extent indemnified under Section **Error! Reference source not found.**)], including any claim related to Customer or any Authorized User's violation of Viasat's terms of service or acceptable use policy, any data protection laws, or any other violation of law or privacy policy by Customer.

15. **LIMITATION OF LIABILITY**<u>Exclusion of Damages</u>. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL VIASAT OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SOFTWARE; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

15.2 <u>Cap on Monetary Liability</u>. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF VIASAT AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE AMOUNTS PAID BY CUSTOMER DURING 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR $250,000, WHICHEVER IS LESS. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

16. **CHANGES.** Viasat reserves the right, in its sole discretion, to make any changes to the Software that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Viasat's services to its customers; (ii) the competitive strength of or market for Viasat's services; or (iii) the services' cost efficiency or performance; or (b) to comply with applicable law. **CUSTOMER'S CONTINUED USE OF THE SOFTWARE FOLLOWING VIASAT'S POSTING OF ANY CHANGED TERMS WILL CONSTITUTE CUSTOMER'S ACCEPTANCE OF THE CHANGED TERMS.**

17. **TERM AND TERMINATION**

17.1 The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect for the period stated in the applicable Order (the "**Initial Term**").

17.2 <u>Renewal Term</u>. This Agreement will automatically renew for annual renewal periods unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party

written notice of non-renewal at least 90 days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**").

17.3   <u>Termination</u>. In addition to any other express termination right set forth elsewhere in this Agreement:

(a)   Viasat may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than ten days after Viasat's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 5.1 or Section 11;

(b)   either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; and

(c)   either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

17.4   <u>Effect of Termination or Expiration</u>. Termination of this Agreement for any reason shall not release either party from any liability or obligation that, at the time of such termination, has already accrued to the other party or that is attributable to a period prior to such termination, nor shall it preclude either party from pursuing any rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement except as expressly otherwise provided in this Agreement. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a)   all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate, provided that termination of a Content Subscription shall not affect the term of the base license applicable to the Software that Customer has licensed;

(b)   Viasat shall immediately cease all use of any Customer Data or Customer's Confidential Information, provided that, for clarity, Viasat's obligations under this Section 17.4(b) do not apply to any Resultant Data;

(c)   Customer shall immediately cease all use of any Software and (i) promptly return to Viasat, or at Viasat's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Software or Viasat's Confidential Information; (ii) permanently erase the Software from all Customer Systems; and (iii) certify to Viasat in a signed written instrument that it has complied with the requirements of this Section 17.4(c);

(d)   notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the receiving party may retain the

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disclosing party's Confidential Information; and (ii) Viasat may retain Customer Data, in the case of each of subclause (i) and (ii) in its then current state and solely to the extent required to maintain copies of such Confidential Information in its records pursuant to its record keeping policies and legal obligations in the ordinary course of business; and (iii) all information and materials described in this Section 17.4(d) will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;

(e)   Viasat may disable all Customer and Authorized User access to the Software;

(f)   if Customer terminates this Agreement pursuant to Section 17.3(b), Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination;

(g)   if Viasat terminates this Agreement pursuant to Section 17.3(a) or Section 17.3(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees, on receipt of Viasat's invoice therefor; and

(h)   if Customer requests in writing at least 30 days prior to the effective date of expiration or termination, subject to Section 17.4(d), Viasat shall, within 30 days following such expiration or termination, deliver to Customer the then most recent version of Customer Data maintained by Viasat, provided that Customer has at that time paid all Fees then outstanding and any amounts payable after or as a result of such expiration or termination, including any expenses and fees, on a time and materials basis, for Viasat's services in transferring such Customer Data.

17.5   Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: [Section 1 (Definitions), Section 7.6 (Non-Solicitation), Section 8.5 (Audits), Section 11 (Confidentiality), Section 12.1 (Ownership), Section 13.3 (Warranty Disclaimer), Section 13.4 (Third Party Content Disclaimer), Section 14 (Indemnity), Section 15 (Limitation of Liability), this Section 17.5, Section 17.3 (Termination) and Sections 19 (Choice of Law and Jurisdiction) through 20 (Miscellaneous)] will survive any expiration or termination of this Agreement.

18.   AUTHORIZED RESELLERS. If Customer acquired the Software through an authorized reseller, partner or OEM of Viasat ("**Authorized Reseller**") then, notwithstanding anything to the contrary in this Agreement: (a) Customer's use of the Software is subject to any additional terms in the agreement provided by the Authorized Reseller; (b) Customer agrees to pay the Authorized Reseller the Fees and other applicable fees, and Customer will have no direct Fee payment obligations to Viasat for such Software; (c) Customer's agreement with the Authorized Reseller is between Customer and the Authorized Reseller and is not binding on Viasat; and (d) Viasat may terminate this Agreement (including Customer's right to use the Software) if Viasat does not receive payment for Customer's use of the Software from the Authorized Reseller or if Customer breaches any term of this Agreement. If Customer's warranty and support terms stated in its agreement with the Authorized Reseller are different from those set forth in this Agreement, then such different terms are solely between Customer and the Authorized Reseller and Viasat will have no obligations to Customer under this Agreement with respect to such different terms. Except as set forth in the preceding sentence, if there is any conflict or inconsistency between this Agreement and Customer's agreement with Authorized Reseller, then this Agreement will control (and will resolve such inconsistency) as between Viasat and Customer.

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19. CHOICE OF LAW AND JURISDICTION

19.1 For Services rendered in Brazil, this Agreement will be governed by the substantive laws of Brazil, exclusive of its conflict of laws principles, and any dispute related to Services and/or this Agreement shall be finally settled by binding arbitration by one (1) arbitrator in accordance with and administered by the Arbitration Rules of the London Court of International Arbitration. The place of arbitration shall be the City of Rio de Janeiro, Brazil. The language of the arbitration shall be English. Judgment on any award may be entered by any court of competent jurisdiction.

19.2 For Services provided in all other jurisdictions other than Brazil, this Agreement will be governed by the laws of the State of California, including without limitation applicable federal law, without reference to any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties. The Parties expressly renounce the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement. The Parties consent to the personal and exclusive jurisdiction of the federal and state courts located in San Diego, California. This Section governs all claims arising out of or related to this Agreement.

19.3 Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

19.4 The parties expressly renounce the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement.

20. MISCELLANEOUS

20.1 Further Assurances. On a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

20.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

20.3 Public Announcements. Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided, however, that Viasat may, without Customer's consent, include Customer's name and other indicia in its lists of Viasat's current or former customers of Viasat in promotional and marketing materials.

20.4 Notices. All notices shall be given in writing, and shall be deemed to have been duly given when delivered by hand, posted by registered first class mail (airmail if international) or sent via recognized overnight couriers (e.g., Federal Express) to the party to which such notice is required to be given at the business address stated in this Agreement or to such other address as such party may have specified to the other in writing. Notices shall be deemed received on the earlier of the following: (i) notices delivered by hand shall be deemed received the first business day following

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such delivery or sending; and (ii) notices which have been posted or sent via overnight courier shall be deemed received on the second business day following posting.

20.5   Interpretation. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement. For purposes of this Agreement: (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

20.6   Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Viasat's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Viasat's prior written consent is required. No assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 20.6 is void and shall be deemed a material breach of this Agreement. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

20.7   Force Majeure.

(a)   No Breach or Default. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, pandemic, passage of law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of 90 days or more.

(b) <u>Affected Party Obligations</u>. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

20.8 <u>No Third-Party Beneficiaries</u>. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

20.9 <u>Amendment and Modification; Waiver</u>. No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by an authorized Representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

20.10 <u>Severability</u>. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

20.11 <u>Operational Metrics and Usage Data</u>. The Software may be configured to allow Viasat to collect and process technical and related information about Customer's use of the Software (which may include, without limitation, ingest volume, search concurrency, number of unique user logins, Internet protocol addresses, page views, session duration, and other similar data) and certain aggregated, anonymized information about the Software environment (such as hardware identification, operating system, application version), performance, configuration and other usage information. Viasat uses this information to support and troubleshoot issues, provide updates, automate invoices, analyze trends and improve Viasat's products or services. Participation in the collection and processing of such data by Viasat is voluntary (except for Evaluation Software, which may require Customer's participation in an in-product analytics program as a condition of receiving access to and using such Software) and instructions on how to disable these in-product collection features are set forth in Viasat's end user Documentation. Viasat collects and processes the information it collects subject to Viasat's Privacy Policy, which can be found at www.viasat.com/privacy and is hereby incorporated by reference and made a part of this Agreement. Customer acknowledges that the Software does not have the functionality to Process personally identifiable information.

20.12 <u>Compliance with Law</u>. Customer shall always comply with all applicable international, federal, state and local laws and shall not engage in any illegal or unethical practices, including the Foreign Corrupt Practices Act of 1977 and any anti-boycott laws, as amended, and any implementing regulations and shall at its own expense undertake all necessary actions to ensure that this

Agreement is enforceable. Without limiting any of the foregoing, Customer agrees that Customer shall not download, export, or re-export any software or technical data received hereunder, regardless of the manner in which received, (a) into, or to a national or resident of, any country to which the United States has embargoed goods, or (b) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders, or license use of the Integrated Offerings for any activities involving nuclear materials or weapons, missile or rocket technologies, or proliferation of chemical or biological weapons. Customer shall indemnify and hold Viasat harmless from and against any liabilities, damages, costs and expenses, including reasonably attorneys' fees and costs, resulting from any breach by Customer of this Section 20.12.

20.13   Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

20.14   Entire Agreement. This Agreement (together with any other documents incorporated herein by reference) constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

20.15   Order of Precedence. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, attachments, and appendices any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement, excluding its exhibits, schedules, attachments, and appendices; (b) second, the exhibits, schedules, attachments, and appendices to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.