

**NORTH FLIGHT DATA SYSTEMS, LLC, STANDARD TERMS AND CONDITIONS**  
(JULY 2013 VERSION)

**General.** Customer agrees that every quote provided to it by NORTH Flight Data Systems, LLC ("NFDS") are subject to these Standard Terms and Conditions and that Customer's issuance of a purchase order to NFDS, whether oral or written, is evidence of Customer's full acceptance of these Standard Terms and Conditions. Customer and NFDS hereby agree that these Terms and Conditions shall govern all purchased hardware ("Hardware"), all licensed software, including any updates, enhancements, and/or revisions thereto ("Software"), and all communications and customer support services ("Services") provided by NFDS to Customer as specified in the NFDS FASTARS FOQA Services Agreement and shall constitute the Agreement between Customer and NFDS.

**Hardware.** The term "Hardware" shall include but not be limited to any OVVR, CV²R, Area Mic, MFDAU, or QAR unit and any other hardware as specified in any Quote.

a. **Delivery and Installation.** The Hardware shall be delivered to Customer F.O.B. NFDS's shipping point on the Delivery Date specified in the applicable Quote. Customer shall assume all risk of loss or damage to the Hardware following delivery to carrier for shipment to Customer's designated Site Address. Customer shall be responsible for the installation of the Hardware unless otherwise specified in a writing signed by NFDS.

b. **Title and Acceptance.** Title to the Hardware shall pass from NFDS to Customer when delivered to carrier for shipment to Customer. Acceptance of the Hardware by Customer shall occur upon delivery to the Site Address unless otherwise specified.

c. **Security Interest.** NFDS reserves, and Customer grants to NFDS a purchase money security interest in each item of Hardware purchased and all Software related thereto, and all proceeds thereof, to secure Customer's full and timely payment of the purchase price of such Hardware to NFDS.

d. **Payment.** Payment for Hardware and for the Software license shall be for the amount set forth on the applicable Quote and shall be due and payable no later than thirty (30) days after the date of delivery unless otherwise specified. Payment for Services shall be for the amount set forth on the applicable Quote and due no later than thirty (30) days from receipt of invoice unless otherwise specified. All Customer payments are payable in U.S. Dollars at the offices of NFDS as shown on its invoices. If Customer fails to timely or completely pay any amount under this Agreement: (i) such failure shall be a material breach of this Agreement; (ii) interest at the rate of one and one half percent (1.5%) per month shall accrue on all past due amounts until such amounts, including accrued interest, are paid in full; (iii) NFDS shall have the right to repossess the Hardware and the Software; (iv) NFDS shall have the right to immediately cease providing Customer with the FOQA service; (v) NFDS shall have the right to immediately cease providing Customer with updates to the Software; and, (vi) NFDS shall have the right to pursue any and all other legal and equitable remedies available to it. The purchase price and all fees set forth in this Agreement are exclusive of all sales, use, value-added, excise, property, withholding, and other taxes and duties. Customer shall pay or promptly reimburse NFDS for all such taxes and duties assessed by any authority in connection with this Agreement.

**Software License.** NFDS grants Customer a limited-term, non-exclusive, non-transferable license to run, use, operate, and perform (collectively "use") the Software and documentation for use at the designated Site Address in connection with its use of the Hardware.

a. **Users.** The license granted herein is for the number of Software users set forth in the Quote. The Software may be copied only as necessary for archival or back-up purposes. Any updates to the Software shall be subject to the terms and conditions of this Agreement.

b. **Own Operations.** Customer shall not lend, rent, lease or use the Software as a service bureau or as an application service provider or otherwise for a third party without the prior written consent of NFDS. Customer shall not have the right to sublicense the rights granted herein.

c. **Object Code.** The license granted herein applies only to the object code version of the software in the Software. Customer shall have no rights to the source code of the software in the Software.

d. **Ownership.** All right, title and interest in and to the Software, including any and all intellectual property rights related thereto, is and shall remain the exclusive property of NFDS.

e. **No Reverse Engineering.** Customer shall not modify, adapt, alter, translate, prepare derivative works from, decompile, reverse engineer, disassemble, decrypt the Software, the Hardware or any part thereof or otherwise attempt to derive source code from the Software.

f. **No Notice Removal.** Customer shall not remove, obscure, or alter NFDS's copyright notices, trademark notices, or other proprietary rights notices affixed to or contained within the Software or documentation.

g. **License Subject To Payment.** The license granted in this Section is contingent upon the timely and full payment of all amounts due and owing to NFDS under this Agreement.

h. **United States Government Restricted Rights.** If Customer is acquiring the Software on behalf of any unit or agency of the United States Government, the

government agrees that such Software is "commercial computer software" or "commercial computer software documentation" and that the government's rights with respect to such Software are limited by the terms of this Agreement, pursuant to FAR Section 12.212(a) and/or DFAR Section 227.7202-1(a), as applicable.

i. **Term and Termination.** The term of the license granted above shall expire at such time as Customer permanently discontinues use of such Software. Either party may terminate this Agreement at any time in the event of a material breach of the terms herein by the other party, if such party shall fail to cure such material breach (if it can be cured) within thirty (30) days of notice of such breach. If either party: (a) commences or becomes the subject of any case or proceeding under the bankruptcy laws of any country; (b) has appointed for it a court-appointed receiver, trustee or other similar official; (c) makes an assignment for the benefit of its creditors; or (d) fails generally to pay its debts as they become due, the other party hereto shall have the right at any time thereafter to terminate this Agreement, effective immediately upon giving notice to such party. Upon the expiration or termination of this Agreement for any reason: (i) the license granted below shall immediately terminate; (ii) all rights granted herein shall automatically revert to NFDS; (iii) Customer shall immediately cease and desist from using the Software; (iv) Customer shall immediately erase, delete, or otherwise destroy all copies of the Software and documentation related thereto from Customer's computers and other media; (v) Customer shall immediately deliver to NFDS all tangible copies of the Software; (vi) NFDS shall have the right to repossess the Software and, (vii) Customer shall immediately pay all amounts due NFDS.

**Access.** Customer shall permit NFDS access to the Software between the hours of 9:00am and 5:00pm, Monday through Friday, except for federal holidays, for NFDS to inspect, test, maintain or upgrade the Software, and confirm Customer's compliance with this Agreement.

**Services.** NFDS shall provide the Services to Customer in accordance with the NFDS FASTARS Services Agreement.

Customer acknowledges that (i) NFDS uses leased computer server capacity secured contractually from a commercial network operator; (ii) a limited risk of server system malfunction or catastrophic loss is inherent in any communications system utilizing server networks; (iii) in the event of a major malfunction or catastrophic loss of the server network, NFDS may be forced to interrupt its Services without advance notice during the period of the malfunction or unavailability of the network; and (iv) any such event shall not be deemed a breach of this Agreement.

**Purchase Orders.** The terms and conditions of any purchase order or other instrument issued by Customer in connection with the purchase of any Hardware, Software and/or Services that are in addition to or inconsistent with this Agreement are not binding on NFDS and will not be deemed to affect or modify this Agreement. Moreover, this Agreement shall apply to and control any oral purchase order issued by Customer.

**Limited Warranty.** **NFDS PROVIDES THE FOLLOWING LIMITED WARRANTIES. SUCH LIMITED WARRANTIES DO NOT APPLY TO NFDS HARDWARE PURCHASED FROM ANY INDIVIDUAL OR ENTITY OTHER THAN NFDS OR ANY OF ITS AUTHORIZED RESELLERS.**

a. **Defects.** NFDS warrants that the Hardware shall be free from material defects in materials or workmanship for a period of one (1) year after the Delivery Date for new products and six (6) months for component repairs.

b. **Functionality.** NFDS warrants that the Software will, when used pursuant to NFDS's instructions, perform substantially in accordance with the specifications set forth in NFDS's standard documentation for a period of one (1) year after the Delivery Date.

c. **Services.** NFDS warrants that the Services shall be performed in a professional manner.

d. **NFDS's Warranty Obligation.** NFDS's sole responsibility under the limited warranty set forth in this Section shall be, at its option, to either repair or replace any covered component that fails during the warranty period due to a defect in workmanship and/or material provided that Customer has promptly reported the defect to NFDS in writing. The above limited warranty is contingent upon proper use of the Software and Hardware by Customer and does not cover any Software or Hardware (i) that has been used contrary to this Agreement, (ii) that has been modified without NFDS's approval, or (iii) that has been subjected to unusual physical or electrical stress, or (iv) on which the original identification marks have been removed or altered.

**WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NFDS HAS NOT MADE AND SHALL NOT BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY OF THE FOLLOWING WARRANTIES: MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; NON-INFRINGEMENT OF THE SOFTWARE AND/OR THE HARDWARE; LAPSES OF SERVICE ARISING FROM CAUSES BEYOND THE DIRECT CONTROL OF NFDS INCLUDING, WITHOUT LIMITATION, DEFECTS IN PRODUCTS OR SERVICES PROVIDED TO NFDS OR CUSTOMER BY ANY THIRD PARTY NOT COVERED UNDER THIS AGREEMENT; SECURITY OF DATA DURING TRANSMISSION VIA ANY PUBLIC TELECOMMUNICATIONS FACILITY; LAPSES OF SERVICE**

**CAUSED BY THE FAILURE OF ANY TELECOMMUNICATIONS FACILITIES, OR, LAPSES ASSOCIATED WITH ANY ACT OR OMISSION ON THE PART OF CUSTOMER'S EMPLOYEES OR AGENTS.**

**LIABILITY LIMITATION. IN NO EVENT SHALL NFDS BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, OR FOR CORRUPTION, LOSS OR MISTRANSMISSION OF DATA VIA ANY TELECOMMUNICATIONS FACILITY OR RECORDING MEDIUM, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT, THE LIABILITY OF NFDS FOR ANY LOSS OR DAMAGES DIRECTLY OR INDIRECTLY SUFFERED BY CUSTOMER, IF ANY, AS A RESULT OF THE USE OF THE SOFTWARE, THE HARDWARE, OR THE SERVICES OR ANY FAILURE, ACT, OMISSION, OR BREACH OF THIS AGREEMENT BY NFDS SHALL NOT EXCEED THE AGGREGATE FEES PAID BY CUSTOMER TO NFDS PURSUANT TO ANY APPLICABLE QUOTE.**

Infringement. Should the Software, the Hardware or any part thereof become, or in NFDS's reasonable opinion be likely to become, the subject of a claim of infringement or misappropriation, NFDS shall have the right, at NFDS's option and expense (a) to procure for Customer the right to continue using the Software and/or the Hardware, (b) to replace or modify the Software and/or the Hardware with a non-infringing version of substantially equivalent function and performance or (c) to accept the return of the Software and/or the Hardware in exchange for a refund of amounts paid less a charge for the period of use and thereupon immediately terminate this Agreement.

Indemnification.

a. By Customer. Customer shall indemnify, defend, and hold harmless NFDS against and from any and all actions, causes of action, claims, demands, costs, liabilities, expenses (including reasonable attorneys' fees, arbitration fees and expenses, and court costs) and damages arising out of or in connection with any and all third party claims relating to Customer's activities pursuant to this Agreement not covered by sub-section (b) below.

b. By NFDS. NFDS shall indemnify, defend, and hold harmless Customer against and from any and all actions, causes of action, claims, demands, costs, liabilities, expenses (including reasonable attorneys' fees, arbitration fees and expenses, and court costs) and damages arising out of or in connection with any claim that the Software infringes a United States patent or copyright.

c. Limitation. Notwithstanding any provision contained herein, NFDS shall have no liability or obligation to Customer for any infringement (i) related to Customer's combination of any of the Software and/or the Hardware with any other software, hardware or other products not provided by NFDS, (ii) Customer's use of other than a current, unaltered version of the Software, (iii) related to modifications, improvements and derivative works of the Software and/or the Hardware created by or on behalf of Customer or (iv) if Customer is in breach of this Agreement.

d. Cooperation. In connection with any claim or action described in this Section, the party seeking indemnification (i) will give the indemnifying party prompt written notice of the claim, (ii) will cooperate with the indemnifying party (at the indemnifying party's expense) in connection with the defense and settlement of the claim, and (iii) will permit the indemnifying party to control the defense and settlement of the claim, provided that the indemnifying party may not settle the claim without the indemnified party's prior written consent (which will not be unreasonably withheld). Further, the indemnified party (at its sole cost and expense) may participate in the defense and settlement of the claim.

e. Irreparable Harm. Customer acknowledges that any breach or violation of the license granted above will cause irreparable harm to NFDS and that damages are not an adequate remedy. Customer therefore agrees that NFDS shall be entitled to seek and obtain a court order enjoining Customer from the continuance of any such violation, in addition to any monetary damages or any other remedies at law or in equity. The posting of a bond shall not be required for any injunction to be issued in accord with this provision.

Arbitration. Subject to NFDS's right to seek injunctive relief in court as provided above, all disputes, if any, arising between Customer and NFDS related to (i) this Agreement, (ii) the Hardware, (iii) the Software, (iv) or the Services (the "Dispute") shall be submitted to binding arbitration as the sole method of dispute resolution under this Agreement. A party shall initiate the arbitration process by giving the other party(ies) written notice of its intention to arbitrate, which demand shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the amount involved, if any, the remedy sought, and the hearing locale requested. Within ten (10) days after of such written notice, the parties shall attempt to agree on one arbitrator. If within such ten-day period the parties have not agreed on the identity of an arbitrator, then within the next ensuing fifteen (15) days, each party shall select an arbitrator. Within the next ten (10) days, the selected arbitrators acting together shall select one or more additional arbitrators so that the number on the panel of arbitrators is an odd number. The parties and arbitrators so selected shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), but the parties shall not be compelled to engage AAA to administer the arbitration. **ARBITRATION IS FINAL AND BINDING ON THE PARTIES. THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO JURY TRIAL.**

Miscellaneous. **THE PARTIES HEREBY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION RELATED TO OR ARISING OUT OF THIS AGREEMENT.** This Agreement is performable in Tarrant County, Texas. Venue of any litigation or arbitration between the parties shall be in

Tarrant County, Texas. In the event of litigation, this Agreement may be filed as written consent to a trial by court. If any legal action or other proceeding is brought for a breach of this Agreement or any of the warranties herein, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred in bringing such action or proceeding, in addition to any other relief to which such party may be entitled. The parties are and have been contracted with each other as independent contractors. A breach of any provision of this Agreement may only be waived in writing and the waiver of such breach shall not operate or be construed as a waiver of any subsequent breach. If any provision of this Agreement should be held invalid or unenforceable, the remainder of this Agreement shall be enforced to the full extent permitted by law. The parties shall be excused from delays in performing to the extent that such delay results from causes such as war or natural disaster or strike which are beyond the reasonable control of the affected party, provided that, the affected party acts diligently to remedy such delay. Under this Agreement, if one party is required to deliver or submit something to the other, or give notice, such delivery and such notice shall be receivable in writing and only on business days by next day courier or US Postal Service. Such notice, if to NFDS shall be sent to NORTH Flight Data Systems, LLC, 1214 Hawn Ave #100 Shreveport, LA 71107 and, if to Customer, shall be sent to the Customer's last known address used by NFDS for invoicing Customer. Notice shall be deemed given upon receipt. Each party may freely assign and/or transfer this Agreement in connection with a sale of its business as a whole or substantially all of the assets of its business. The parties shall not otherwise assign or transfer this Agreement without the express prior written consent of the other. The provisions hereof shall survive the termination of this Agreement. This Agreement contains the entire agreement between the parties as to the subject matter hereof. This Agreement supersedes all prior oral and written agreements between the parties as to the subject matter hereof. This Agreement may not be modified or amended except by writing by an officer of NFDS, and an officer of Customer. This Agreement, and the application or interpretation thereof, will be governed exclusively by its terms and by the laws of the State of Texas.