



## **Corporate Terms and Conditions of Sale**

All Customer Purchase Orders are subject to these terms and conditions and all additional terms and conditions presented on or accompanying an ARRIS Quotation or ARRIS Order Acknowledgment. ARRIS specifically rejects and Customer disclaims all printed provisions in Customer's printed Purchase Orders including associated forms and/or documents. These terms and conditions, together with the ARRIS Order Acknowledgment shall constitute the entire agreement between ARRIS and Customer with respect to any Customer Purchase Order and the Products and/or Services provided hereunder. These terms and conditions supersede any prior or contemporaneous agreements or representations written or oral. Any amendment of these terms and conditions must be in writing and signed by ARRIS to be binding on ARRIS.

### **1. DEFINITIONS AND INTERPRETATION**

Within this document definitions are defined as follows:

"ARRIS" means ARRIS Solutions, Inc., a wholly owned subsidiary of ARRIS Group, Inc. and/ or its designated affiliates.

"Customer" means the person or entity however constituted to whom the Products or Services are provided.

"Delivery" means the date of Customer's receipt of Products or completion of Services at Customer's designated location.

"GPL" means the General Public License relating to software modification.

"Hardware" means equipment of ARRIS design and manufacture, or other manufacturer's equipment offered for sale by ARRIS to Customer.

"Order Acknowledgment" means a document furnished by ARRIS or acknowledging the receipt of Customer's Purchase Order and ARRIS' agreement to supply the Products and/or Services stated therein under the terms and conditions stated herein.

"Products" means the Hardware and/or Software offered for sale or licensed to Customer at time of sale.

"Purchase Order" means Customer's document for the acquisition of Products and/or Services, exclusive of all printed terms and conditions contained thereon.

"Quotation" means either ARRIS' offer to sell Services and/or Products or ARRIS' document that provides a summary of the Statement of Work and pricing corresponding to the Statement of Work.

"Services" means various types of services as provided by ARRIS to Customer covering items such as training, maintenance services, on-site support, applications engineering, site engineering and installation. Services are not Products.

"Service Contract" means an annual fee based contract for technical and or repair services provided by ARRIS to Customer.

"Shipment Date" means the date on which ARRIS has scheduled shipment of Products to Customer.

"Software" means ARRIS-licensed software, including updates, and any other enhancements, modifications, and bug fixes thereto, in object code form only, and any full or partial copies thereof. Software is licensed by ARRIS separately or as part of a Product sale.

"Statement of Work" means ARRIS' document which de-scribes in detail the work or Services to be performed and any Products to be supplied.

Interpretation within this document is defined as follows:

- (i) headings are for convenience only and do not affect interpretation;
- (ii) the singular includes the plural and conversely;
- (iii) reference to a party means ARRIS and Customer exclusively; and
- (iv) in the event of a conflict between Customer's Purchase Order or associated documents and the terms and conditions herein, the terms and conditions herein including the Order Acknowledgment shall govern.

### **2. ACCEPTANCE OF PURCHASE ORDERS**

As used herein, "Acceptance of Customer's Purchase Order" shall mean ARRIS' agreement, as evidenced by the issuance of an Order Acknowledgment, to supply the Products and/or Services identified in Customer's Purchase Order under the terms and conditions herein. All Customer Purchase Orders are subject to written acceptance by ARRIS, at its sole discretion, even if received elsewhere by a salesperson, selling agent or representative. Furthermore, Acceptance of Customer's Purchase Order shall be subject to a minimum order amount of two hundred fifty dollars (\$250.00). No Customer Purchase Order will be binding upon ARRIS until ARRIS issues its written Order Acknowledgment.

### **3. PURCHASE ORDER CHANGES**

Customer may not change its Purchase Order without ARRIS' written consent. Any revision in drawings, designs, specifications, shipment completion dates or Purchase Order termination requested by Customer may result in additional cost to Customer. Any additional cost to Customer will be at ARRIS' standard rates in effect at the time of Customer's request. ARRIS' performance of Customer's request shall commence only upon the issuance of a new Purchase Order or written amendment to an existing Purchase Order authorizing the applicable charge.

Customer's oral requests for Services shall be binding on Customer and deemed by ARRIS as valid Customer Purchase Orders, governed by these terms and conditions. Customer further agrees, as a result of any request made hereunder to pay any and all charges associated with such Service request. Customer requested changes in performance of Services shall be reviewed upon ARRIS' receipt of Customer's request to determine if additional charges are applicable.

#### 4. PRICE OF PRODUCTS AND/OR SERVICES

The price for Products and Services are based on ARRIS' published list prices in effect at time of ARRIS' receipt of Customer's Purchase Order unless otherwise set forth in the Order Acknowledgment, or a valid issued Quotation, Statement of Work or proposal. A Quotation, Statement of Work or proposal is valid for a period of sixty [60] days from date of issue. Errors or omissions in price are subject to correction by ARRIS.

All published list prices (in US dollars) are subject to change by ARRIS without notice. ARRIS retains all rights to change the Products and/or Services or may discontinue any Products and/or Services at ARRIS' sole discretion.

#### 5. PRICES; ADJUSTMENTS

The price of Products and Services may subsequently be adjusted to reasonably reflect the adverse cost impact to ARRIS of:

- (i) Customer changes or delays which are outside of the scope of Services;
- (ii) legal/regulatory changes which occur after the issuance of the Quotation and/or Statement of Work for the particular Services in question; or
- (iii) the failure of Customer to perform its obligations under Sections 6, 7, and 8.

ARRIS will provide a written notice and reason for an adjustment to the price within a reasonable period of time after ARRIS becomes aware of an event under which ARRIS intends to request an adjustment. The parties will then determine, in a commercially reasonable manner, the price adjustment that is appropriate. Pending such agreement, ARRIS will continue to perform the Services specified in the Purchase Order for ten (10) business days or such other greater time that may be agreed to in writing by ARRIS, unless Customer fails to pay amounts due to ARRIS when due, an event specifically identified in the Quotation and/or Statement of Work permitting suspension or termination of the Services occurs, or Customer is otherwise in breach.

In the event an adjustment to the price has not been made within the aforementioned ten (10) business days, ARRIS shall have the right to terminate this Purchase Order, in whole or in part and in addition to any other remedy available to ARRIS, Customer shall make immediate payment to ARRIS on account of all Products delivered and/or Services rendered.

#### 6. SCHEDULE FOR PERFORMANCE OF SERVICES

ARRIS will perform the Services in accordance with the schedule stated in the Quotation and/or Statement of Work. Both parties agree to adhere to the schedule, however, each party will give due consideration to any reasonable proposal by the other party regarding changes in the schedule which, if agreed upon, will be recorded in a written modification to the applicable Purchase Order. Dates for performance of Services are estimated by ARRIS in good faith but not guaranteed by ARRIS. Except as otherwise set forth in the Quotation and/or Statement of Work, ARRIS will have unrestricted access to Customer's site and any other locations at which Services are to be performed at all times (including overtime hours, Saturdays, Sundays and holidays) for the purpose of performing the Services.

#### 7. SITE PREPARATION AND CONDITION FOR SERVICES

Customer will be responsible for preparation of the site, at which ARRIS will perform the Services, to the specifications and in accordance with the time schedule stated in the Quotation and/or Statement of Work. Customer warrants to ARRIS that each such site is in compliance with all applicable health and safety regulations and is free from all friable asbestos and hazardous contamination or pollutants, as further provided in Section 8 below.

#### 8. HAZARDOUS MATERIALS

Prior to the date specified in the Quotation and/or Statement of Work for the performance of Service, Customer will take any and all steps needed to assure that each site is free from all friable asbestos and hazardous contamination or pollutants. If contamination is found to be present at a site, ARRIS will have no further obligations under any Quotation and/or Statement of Work (other than with respect to any software licenses or confidentiality obligations), until such contamination is removed.

#### 9. PACKAGING, SHIPMENT, AND SERVICE DATES

All Products shall be suitably packed for shipment. ARRIS may charge for packing and/or packaging including special documentation to comply with Customer requirements.

Shipment within the continental United States are made FOB shipping location under the UCC and all shipments outside of the continental United States are made EXW shipping location (Incoterms 2000).

Shipment Date for Products or date for performance of Services is estimated by ARRIS but is not guaranteed by ARRIS. Catalog items normally in stock are sold subject to prior sale, and ARRIS reserves the right to establish shipping schedules in accordance with current stock levels. ARRIS will adhere as closely as possible to the Customer's requested shipping schedule and will exercise diligence in meeting the desired shipping dates. HOWEVER, ARRIS WILL NOT BE RESPONSIBLE FOR DELAYS IN SHIPMENT OR PERFORMANCE OF ANY SERVICE. Customer, regardless of the circumstances, will not hold ARRIS liable for any liabilities, penalties, or charges of any nature due to the late performance of any Service date. ARRIS assumes no liability for any direct or liquidated damages during shipment or delivery of Products.

Unless otherwise expressly stated, ARRIS shall have the right to make delivery of goods and data in installments. All installments shall be separately invoiced and paid as billed without regard to subsequent deliveries. Failure to pay for any installment when due shall excuse ARRIS from making further deliveries. Delay in delivery of any installment shall not relieve Customer of its obligation to accept remaining installments. ARRIS shall have the right to ship any material and data to Customer in advance of the shipping date agreed upon by the parties, and Customer agrees to accept without recourse any such shipments shipped in advance of the agreed upon shipping date.

In the event of shipment delay requested by Customer or a delay caused by lack of shipping instructions, ARRIS will store all Products covered thereby at Customer's risk and expense. ARRIS will invoice the Customer at the full price for the Products including an additional storage fee.

## 10. TITLE, RISK OF LOSS, AND INSURANCE

Title, risk of loss, damage, and insurance responsibilities for the Products pass from ARRIS to Customer upon acceptance of Product by the shipping agent or carrier. Title to all Software shall remain with ARRIS or its licensors, but risk of loss, damage and insurance responsibilities shall pass to Customer at ARRIS' shipping location.

To secure full and prompt payment hereunder, Customer hereby grants to ARRIS the right to a security interest in the Products acquired by Customer.

## 11. ACCEPTANCE OR REJECTION OF PRODUCTS/SERVICES

After the delivery of the Products or the performance of Services, Customer shall have five (5) business days in which to inspect the Products and/or Services for conformity to the Purchase Order, statement of work or ARRIS quotation (as applicable) (hereinafter "Acceptance Period"). Acceptance of Products and Services by Customer shall automatically occur at the expiration of the Acceptance Period unless ARRIS is advised otherwise in writing within the Acceptance Period or upon Customer's commercial use of the Products and/or Services. **Technical support and repair service contracts are expressly excluded from this section.**

IF ANY PRODUCT OR SERVICE DOES NOT SUBSTANTIALLY CONFORM TO THE APPLICABLE PURCHASE ORDER, STATEMENT OF WORK OR QUOTATION (AS APPLICABLE) CUSTOMER SHALL NOTIFY ARRIS IN WRITING OF THE NONCONFORMANCE, AND FOR PRODUCTS, OBTAIN AN AUTHORIZATION FOR RETURN, AND RETURN SUCH PRODUCTS TO ARRIS FOR CORRECTION OR COMPLETION AS REQUIRED. WITH RESPECT TO SERVICES, ARRIS SHALL, AT NO ADDITIONAL CHARGE (IF DETERMINED BY ARRIS TO BE ARRIS' FAULT), TAKE PROMPT ACTION TO CORRECT SUCH UNSATISFACTORY SERVICES.

## 12. PAYMENT TERMS

Customer's payment obligations, as stated on ARRIS' invoices, are thirty (30) days, unless otherwise stated. Invoices for Services will be rendered in accordance with an established milestone schedule or upon completion of any Services. Late charges of one and one-half percent (1 1/2%) per month on outstanding balances, or the maximum permitted by law, whichever is less, may be charged. All amounts due shall be payable in United States dollars unless otherwise specifically agreed upon in ARRIS' Order Acknowledgement.

If, in ARRIS' judgment, Customer's financial condition does not justify continuation of the existing payment terms, ARRIS may:

- (i) require full or partial payment of Customer's account;
- (ii) require payment in advance of Products shipment;
- (iii) require payment in advance for performance of any Services;
- (iv) change Customer's credit terms; or
- (v) any combination of the above.

## 13. TAXES

In addition to the Price for Products or Services paid by Customer, Customer will pay ARRIS the amount of all taxes, excises, or other governmental charges that ARRIS may be required to pay with respect to the production, sale, license, or transportation of any Products delivered hereunder, including the performance of any Services, except taxes on or measured by ARRIS' net income. If Customer claims exemption from any taxes, Customer will provide ARRIS with documentation required by the taxing authority to support the exemption.

## 14. PRODUCT AND SERVICES WARRANTY

ARRIS warrants from the date of shipment to customer that Product bearing the ARRIS or C-COR name will substantially conform to ARRIS specifications in effect as of the date of shipment and will be free from substantial defects in material and workmanship under normal use (within published specifications), given proper installation and maintenance, for the specified warranty period for the Product. ARRIS further warrants to Customer that all Services performed by ARRIS for customer will be provided in a workmanlike manner.

Customer must promptly notify ARRIS of any claimed defect in the Product and/or Services. ARRIS or its agent may inspect the Product or workmanship on Customer's premises. Product returned to ARRIS under warranty must be shipped prepaid by Customer.

**EXCEPT AS AGREED TO IN A SEPARATE WRITING BETWEEN THE PARTIES, THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE GOODS DELIVERED TO YOU HEREUNDER, WHETHER STATUTORY, BY OPERATION OF LAW, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE AND ANY WARRANTIES ARISING OUT OF USAGE OR TRADE. THIS WARRANTY IS APPLICABLE SOLELY TO YOU AND NOT TO ANY SUCCESSOR IN INTEREST OR ANY OTHER THIRD PARTY. NO WAIVER, ALTERATION, OR MODIFICATION OF THIS WARRANTY SHALL BE BINDING AGAINST ARRIS UNLESS IN WRITING AS A SEPARATE AMENDMENT HERETO AND SIGNED BY AN ARRIS AUTHORIZED EXECUTIVE. IF A PRODUCT IS NOT LISTED IN THE BELOW TABLE, THEN ARRIS DISCLAIMS ALL WARRANTIES OF ALL TYPES.**

ARRIS EXPRESSLY DISCLAIMS ALL WARRANTIES FOR ANY THIRD PARTY EQUIPMENT AND SOFTWARE PURCHASED AND LICENSED BY CUSTOMER DIRECTLY FROM ANY THIRD PARTY VENDOR, EVEN IF RECOMMENDED FOR USE BY ARRIS WITH THE PRODUCTS. ANY AND ALL WARRANTIES FOR SUCH THIRD PARTY EQUIPMENT AND SOFTWARE SHALL BE PROVIDED UNDER THE TERMS AND CONDITIONS OF THE AGREEMENT(S) BETWEEN CUSTOMER AND THE THIRD PARTY VENDOR FOR SUCH THIRD PARTY EQUIPMENT AND SOFTWARE.

Other than as expressly stated, the ARRIS warranty shall not cover components subject to normal wear and tear, such as fuses, batteries except as otherwise provided herein, and lamps.

The warranty period for ARRIS' primary products is as noted in the following table.

ARRIS Product Categories	Warranty Period from Shipment Date* Domestic US	Warranty Period from Shipment Date* Outside the US
<b>Category A Products</b> ARRIS CMTS Products, WIDOX CMTS, Universal Edge QAM , Universal CPE Test Station, CXM Client Modem and T1 /E1 Circuit Emulation Services	Hardware One (1)Year Software Ninety (90) Days	One (1) Year Software Ninety (90) Days
<b>Category B Products</b> Touchstone Telephony and Cable Modem, WIDOX Telephony and Cable Modem Products	One (1)Year	Two (2) Years for European Countries
<b>Category C Products</b> TTM Batteries, LPSUs and Telco IF Package for Multiline TTMs	One (1)Year	One (1)Year
<b>Category D Products</b> ARRIS Third Party OEM Products	Pass Through from OEM	Pass Through from OEM
<b>Category E Products</b> Telewire Supply Distribution Products	Pass Through from OEM	Pass Through from OEM
<b>Category F Products</b> C-COR® CHP Max 5000 series Head-end optic platform equipment (including optical accessories such as multiplexers and demultiplexers) and all Opti Max nodes (including equalizers, attenuators, multiplexers and demultiplexers)	Five (5) Years	Two (2) Years
<b>Category G Products</b> All C-COR® Flex Max® Series RF Distribution equipment including accessories	Five (5) Years	Two (2) Years
<b>Category H Products</b> On-Demand Products: Video-On-Demand, Ad Insertion and Switched Digital Video, including n5 server, nABLE Software, and SkyVision Software	Hardware One (1)Year Software Ninety (90) Days	Hardware One (1)Year Software Ninety (90) Days
<b>Category I Products</b> Assurance Software Products: WorkAssure, ServAssure Enterprise, ServAssure Advanced, and ServAssure Policy	Hardware One (1)Year Software Ninety (90) Days	Hardware One (1)Year Software Ninety (90) Days

\*For Category H and Category I Products only, if ARRIS is engaged by Customer to provide Services for the implementation of the purchased Products, Warranty Period for such Products shall commence upon Customer Acceptance of the Products and Services.

#### 15. WARRANTY LIMITATIONS

ARRIS does not warrant (i) that the operation of the Product will be uninterrupted or error-free; (ii) that the functions of the Product will meet Customer's requirements; or (iii) that the Product will operate in combination with non-ARRIS products selected by Customer for its use. In addition, ARRIS does not warrant physical damage to the surface of the products, including cracks or scratches on the casing or damage caused by unauthorized attempts to open, repair or modify the products, or any other cause beyond the range of the intended use.

ARRIS shall be relieved of all obligations and liability under the Warranty provisions set forth herein, if:

- (i) The Hardware or Software is operated with, or the error or defect is due to, any accessory, equipment, software or part not approved or sold by ARRIS; or
- (ii) The Hardware or Software was not installed, operated and maintained in accordance with ARRIS' instructions and documentation; or
- (iii) The Hardware or Software has been repaired, altered or modified by someone other than ARRIS or approved by ARRIS; or
- (iv) You do not notify ARRIS in writing of the error or defect within the applicable Warranty Period with sufficient information for ARRIS to identify and reproduce such error or defect, or fail to return the defective Hardware or Software according to the terms of this Agreement; or
- (v) ARRIS demonstrates that the alleged error or defect in the Software or Hardware does not exist or was caused by Your or any third party's misuse, neglect, improper installation or testing, or any other cause beyond the range of the intended use, or by accident, fire, lightning, terrorism or other hazard or act of God.

ARRIS' entire liability and Customer's exclusive remedy whether in contract, tort or otherwise, for any claim related to or arising out of breach of the warranty covering Product or Services shall be correction of defects by repair, replacement, re-performance of service or credit, at ARRIS' discretion. Refurbished Product may be used to repair or replace the Product. Customer shall have no claim to Product which was replaced or the components

therein which were replaced. ARRIS has no liability with respect to claims relating to or arising from the use of equipment not bearing the ARRIS or C-COR name.

No agent, distributor, or representative is authorized to make any warranties on behalf of ARRIS or to assume for ARRIS any other liability in connection with any Product or Services.

#### **16. PRODUCT SUPPORT AND DISCONTINUED PRODUCTS**

ARRIS shall use reasonable commercial efforts to make available to Customer repair and spare parts for all ARRIS Products furnished under this agreement for a period of five (5) years. ARRIS, in its sole discretion, shall have the right to modify or discontinue ARRIS Products at any time during the term of this agreement, including any revised or additional specifications. For discontinued product, ARRIS will give ninety (90) days prior written notice to Customer of such discontinuance. Except for orders accepted by ARRIS prior to the date of such notice, ARRIS shall be under no obligation to continue the production of any ARRIS Product. Provided, however, ARRIS shall use reasonable commercial efforts to continue to provide spare parts and maintenance and support services to Customer for any discontinued ARRIS Product for a period of five (5) years from the date on which such product is discontinued.

#### **17. RETURNS**

Products may not be returned to ARRIS without prior authorization. Customer must contact ARRIS to obtain an authorization number and return the Products to the location designated by ARRIS with all transportation charges paid by Customer. ARRIS may charge Customer certain fees for Products returned to ARRIS. Any Products returned to ARRIS without proper authorization will be returned to Customer at Customer expense.

#### **18. DISCLAIMER OF LIABILITY**

ARRIS WILL NOT BE LIABLE FOR INJURIES OR DAMAGES TO PERSONS OR PROPERTY RESULTING FROM ANY CAUSE WHATSOEVER. THIS LIMITATION APPLIES TO ALL PRODUCTS AND SERVICES PERFORMED DURING AND AFTER THE WARRANTY PERIOD.

IN NO EVENT SHALL ARRIS BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF DATA, LOSS OF USE OR LOSS OF REVENUE OR PROFIT AND ARRIS FURTHER DISCLAIMS ANY AND ALL LIABILITY FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES. The Products are not specifically designed, tested, manufactured or intended for operation or use in any inherently dangerous, life endangering or life support applications where any failure of the Products could lead to death, personal injury or significant physical or environmental damage (High Risk Activities). If Customer uses the Products in High Risk Activities, including but not limited to nuclear facilities or the flight, navigation or communication of aircraft, Customer agrees that neither ARRIS nor its third party licensors are liable in whole or in part, for any claims or damages arising from such use, and that Customer shall indemnify and hold ARRIS and its third party licensors harmless from any and all claims for loss, cost, damage, expense or liability arising out of or in connection with any use of the Products in High Risk Activities.

IF ANY REMEDY HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE, OR IN ANY OTHER EVENT, ARRIS' AGGREGATE LIABILITY HEREUNDER SHALL NOT EXCEED THE DEPRECIATED VALUE OF THE AFFECTED PRODUCT OR THE ACTUAL AMOUNT PAID TO ARRIS FOR SERVICES.

#### **19. COMPLIANCE WITH APPLICABLE LAWS**

The Customer will comply with all applicable laws affecting the purchase and use of Products. Customer agrees to maintain all registrations with governmental agencies, commercial registries, chambers of commerce, or other offices which may be required under law in order to properly conduct commercial business.

Prior to the date specified in the Quotation and/or Statement of Work for the performance of Service, Customer will (i) obtain and pay for all governmental or third party consents, permits, approvals, licenses and public and private easements necessary for ARRIS' unrestricted access to any site or location needed for performance of the Services and delivery of the Products, and (ii) will notify ARRIS in advance of any requirements including all local laws, regulations, ordinances and the like to which ARRIS is or will be required to comply in the rendering of Services and in the supplying of Products hereunder.

When required, Customer will comply with United States laws applicable to the use, sale or license of Products, including but not limited to the Foreign Corrupt Practices Act and the Export Administration Act.

#### **20. CONFIDENTIAL INFORMATION**

Neither party will disclose to any third party or entity any information or data fixed in a tangible medium and marked as the confidential or proprietary information (hereinafter referred to as "Confidential Information") of the other party, or if provided orally, confirmed in writing to be confidential or proprietary within twenty (20) calendar days after its disclosure.

Notwithstanding the provisions herein, if Customer receives Confidential Information it shall treat such Confidential Information as confidential, prohibit copying and use such Confidential Information only in connection with fulfilling its obligations under Customer's Purchase Order. Customer will return all Confidential Information to ARRIS upon completion of such obligations for its use, or upon the request of ARRIS.

The parties recognize and agree that the unauthorized use or disclosure of the Confidential Information would cause irreparable injury to the other party for which it would have no adequate remedy at law, and that any actual or contemplated breach of this clause will entitle the other party to obtain seek injunctive relief prohibiting such breach, in addition to any other rights and remedies available to it. The obligations herein contained will expressly survive the final payment of any/or all Customer Purchase Orders.

## 21. INTELLECTUAL PROPERTY RIGHTS

All drawings, data, designs, tooling, equipment, procedures, engineering changes, inventions, trade secrets, copyrights, mask works, source code, object code, patents, patent applications, know-how, computer and/or Software and all parts thereof, trademarks and all other information, technical or otherwise which was developed, made or supplied by or for ARRIS in the production of any Products or the performance of any Service sold, rendered or licensed hereunder will be and remain the sole property of ARRIS (or its licensors, if any). Customer agrees not to reverse engineer any Products purchased hereunder.

## 22. PROPRIETARY RIGHTS INDEMNIFICATION

ARRIS will indemnify, defend and hold Customer harmless against damages, liabilities and costs, excluding consequential and exemplary damages, finally awarded against Customer and will, at ARRIS' expense, defend any claim, suit or proceeding ("Claim") brought against Customer insofar as such Claim is based on an allegation that a Product as provided to Customer directly infringe a United States patent or copyright. ARRIS will pay those costs and damages, including settlement costs awarded or agreed-upon, as applicable, as the result of the Claim, provided (i) Customer promptly notifies ARRIS of the Claim, (ii) Customer gives ARRIS all applicable evidence in Customer's possession, custody or control, and (iii) Customer gives ARRIS reasonable assistance in and sole control of the defense and all negotiations for its settlement or compromise.

ARRIS shall have no liability for any claim of patent or copyright infringement if the infringement is caused by: (i) the use of the Product in a manner other than for which it was intended; (ii) the use of the Product with other products or devices not furnished or approved by ARRIS; (iii) modifications or changes made to the Product which are not authorized by ARRIS; (iv) the use of a version of a Software Product other than the current version, if the current version would be non-infringing; and, (v) ARRIS' compliance with Customer's designated designs, material usage or specification furnished by Customer, in which case Customer shall defend, indemnify and hold ARRIS harmless against any claim of infringement of any copyright or patent.

In the event of an infringement allegation for which ARRIS is obligated to indemnify Customer, ARRIS may at its discretion: (i) obtain a license that allows Customer to continue to use the accused Product, (ii) replace or modify the accused Product with changes that reasonably meet the ARRIS specification, so as to be non-infringing, or (iii) if (i) and (ii) are not commercially reasonable, repurchase ARRIS' provided Product at its depreciated value based on a three-year amortization schedule. ARRIS liability for infringement indemnification in this section shall not exceed the actual amount Customer paid to ARRIS during the three years preceding the filing of the law suit for the Product finally found to infringe a US patent or copyright. The above states Customer's sole and exclusive remedy for infringement of any Product provided by ARRIS hereunder

## 23. PUBLICITY

Except for Customer's internal use of ARRIS' trademarks, Customer will not use any ARRIS trademark or trade name for any other purpose whatsoever without the express written consent of ARRIS.

## 24. SOFTWARE LICENSE

Unless specified in a separately negotiated agreement or if a third party license is provided with the Software, provided that Customer has paid all applicable license fees to ARRIS, ARRIS grants to Customer a limited, royalty-free, nonexclusive and nontransferable, non-sublicensable license limited solely to the use of the Software's application with the Hardware, if applicable, sold in conjunction with the Software for its intended purposes, which purposes preclude Customer's provision of any product or service to a third party that would alleviate any third party from the obligation or need to obtain a separate license to the Software. All rights, title to and ownership of all applicable intellectual property rights in the Software, including but not limited to patents, copyrights and trade secrets remain with ARRIS and its licensors. Customer shall not attempt to acquire any other rights or transfer any ownership rights in the Software in contravention to ARRIS' rights. ARRIS' rights extend to any accompanying printed materials and online or electronic documentation and any authorized copies of the above materials. The Software as used herein includes unpublished software, trade secret and confidential or proprietary information of ARRIS or its licensors and is developed at private expense. Customer may use third party software products or modules supplied by ARRIS solely with the Products, unless the licensing terms of the third party software specify otherwise.

Customer shall not modify, create derivative works, reverse engineer, decompile, disassemble or in any manner attempt to derive the source code from the Software, in whole or in part, except and only to the extent that such activity is expressly permitted by applicable law. Customer is entitled to make a single copy of the Software solely for backup or archival purposes and all title, trademark, copyright, restricted rights or any other proprietary notices shall be reproduced in such copy. Customer shall not otherwise use, copy, modify, lend, share, lease, rent, assign, sub-license, provide service bureau, hosting or subscriptions services, or distribute or transfer the Software or any copies thereof, in whole or in part, except as expressly provided in these terms and conditions. Customer further agrees not to publish or disclose any benchmark tests run on the Software. Customer shall not remove, obscure or alter any notice of copyright, patent, trade secret, trademark or other proprietary right or disclaimer appearing in or on any Software Products or accompanying materials. All rights not expressly granted hereunder are reserved by ARRIS.

The Software may contain embedded third party software ("Embedded Third Party Software"). The licensors of such Embedded Third Party Software shall be third party beneficiaries entitled to enforce all rights and obtain all benefits which relate to such licensors under these terms and conditions. The licensors of such Embedded Third Party Software shall not be liable or responsible for any of ARRIS' covenants or obligations under these terms and conditions, and Customer's rights or remedies with respect to any Embedded Third Party Software under these terms and conditions shall be against ARRIS. Customer shall not directly access or use any embedded third party software independently of the Software unless Customer obtains appropriate licenses. Under certain circumstances, ARRIS will advise that Customer needs to obtain a license for other third party software ("Third Party Software") for use in conjunction with the Software. Customer agrees that the terms and conditions agreed to between Customer and such Third Party Software vendor, including but not limited to warranties, indemnification and support shall be solely between Customer and the Third Party Software vendor, and ARRIS shall not have any responsibility or liability for such Third Party Software. ARRIS Products may contain Open Source software. If Open Source is used, upon written request from ARRIS' customer, ARRIS will make available the appropriate Open Source software as per the applicable GPL.

## 25. ASSIGNMENT

Customer may not assign its rights nor delegate its obligations under any or all of its Purchase Orders unless ARRIS' written consent is obtained prior thereto and any such assignment or delegation without such consent shall be void.

## 26. INDEPENDENT CONTRACTOR STATUS

ARRIS and Customer understand and agree that ARRIS is an independent contractor with respect to all work performed pursuant to this agreement. ARRIS assumes no obligation of Customer under any federal, state, or local law, statute or ordinance relating to workmen's compensation, disability, old age benefit, industrial safety, or other similar matters.

## 27. CANCELLATION

Customer may cancel all or any part of a Product or Services Purchase Order or for convenience subject to the following terms:

- (i) For standard Products, Customer may cancel all or any part of a Purchase Order without penalty only if notice of the cancellation is more than thirty (30) days from the confirmed shipping date, as specified in ARRIS' order acknowledgement or other document ("Confirmed Shipping Date"). Cancellations for which the notice is received within thirty (30) days of a Confirmed Shipping date must be approved in writing by ARRIS and will be subject to a cancellation fee equal to 20% of the cancelled Purchase Order or portion thereof.
- (ii) For nonstandard Products, Products configured to order or other special orders as specified in a valid ARRIS quotation, cancellation of all or any part of a Purchase Order shall be subject to ARRIS' prior written approval and to a cancellation fee equal to thirty percent (30%) of the cancelled Purchase Order or portion thereof.
- (iii) For Services, unless otherwise stated in a separate written Services agreement executed by the Parties, Customer may cancel all or any part of a Services Purchase Order upon written notice to ARRIS. Customer shall pay all fees for Services performed through the effective date of such notice. In addition, in the event that Customer cancels all or any part of a Services Purchase Order with less than thirty (30) days notice to ARRIS, ARRIS shall have the right to charge Customer a cancellation fee equal to 20% of the cancelled Purchase Order or portion thereof. **Technical support and repair service contracts are expressly excluded from this section.**

Customer may, upon written notice to ARRIS, cancel any and/or all Purchase Orders if ARRIS fails to perform any material obligations and such failure is not remedied within thirty (30) days after the date of the written notice. Any cancellation pursuant to this clause will be in addition to and will not be exclusive of or prejudicial to any other rights or remedies at law or in equity available to Customer.

ARRIS may, upon written notice to Customer, cancel any and/or all Customer Purchase Orders effective immediately if:

- (i) Customer makes an assignment for the benefit of creditors, is unable to pay its debts as they become due; files a voluntary petition in bankruptcy; is adjudicated to be a bankrupt or an insolvent debtor; files a petition seeking for itself any reorganization; or consents to or acquiesces in the appointment of a trustee, receiver or liquidator;
- (ii) Any proceeding seeking involuntary reorganization, or similar relief is filed against Customer which is not dismissed within one (1) month after filing, or if any trustee, receiver or liquidator of Customer or any substantial part of its business assets, or properties is appointed without ARRIS' consent or acquiescence and such appointment is not vacated within one (1) month after such appointment;
- (iii) Customer ceases doing business as a going concern or it or its share-holders take any action looking to its dissolution or liquidation; or
- (iv) Customer fails to perform any material obligations and such failure is not remedied within fifteen (15) calendar days after notice has been given Customer.
- (v) Customer fails to pay for any Purchase Order in accordance with the invoice payment terms;
- (vi) Any change occurs in the direct or indirect ownership of Customer if, in ARRIS' opinion, such change may be detrimental to ARRIS' interest hereunder; or

Any cancellation pursuant to this clause will be in addition to and will not be exclusive of or prejudicial to any other rights or remedies at law or in equity available to ARRIS.

## 28. RESCHEDULING

Customer may reschedule delivery of any Product or the performance of Services one time for a period of up to thirty (30) days beyond the original Confirmed Shipping Date or the Services performance date agreed to in writing by the Parties. Any subsequent rescheduling of the same Purchase Order or portion thereof shall be deemed a cancellation, and subject to cancellation provisions set forth herein.

## 29. MATERIAL FURNISHED BY CUSTOMER

If Customer is to furnish any material or equipment to ARRIS for the purpose of performance and completion under this agreement, Customer shall be liable to ARRIS, without any restrictions on Customer's liability, for any loss, damage, or expense resulting directly or indirectly from any delay in delivery of such material or property or any defects therein.

## 30. TOOLS

Unless otherwise agreed upon, all tools required for production, or engineering advances developed by ARRIS as a result of producing items in an order, are to remain the property of ARRIS to be used or sold to any person by ARRIS in its sole discretion and without restriction.

## 31. MANUFACTURE OF SPECIALTY ITEMS

On goods classified as specially manufactured, that is, goods fabricated to individual customer requirements, drawings, specifications, and/or Customer design, as contrasted to standard items offered by ARRIS for general sale, ARRIS shall have the right to manufacture or fabricate the entire quantity ordered in one production run, although shipments will be made in accordance with Customer's requested schedule. Customer understands and agrees that the value of any components, subassemblies, and/or finished assemblies for specially manufactured goods shall be considered as a part of damages payable by Customer in the event of a wrongful cancellation.

### **32. INSPECTIONS AND CERTIFICATES OF CONFORMANCE**

Inspections required by the Customer at the time of manufacture of goods shall be limited to the electrical tests only and Customer shall pay ARRIS a service charge for such inspection. Certificates of conformance relating to materials used in manufacture must be requested prior to shipment of the goods.

### **33. DATA AND INFORMATION ON FINISHED PRODUCTS**

The amount and type of data and information furnished to Customer concerning items purchased hereunder shall be determined by ARRIS.

### **34. SEVERABILITY**

If any provision of these terms and conditions is held by a court, government agency or other legal authority of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not invalidate, void or render unenforceable any other portion of these terms and conditions but rather these terms and conditions shall be construed as if it did not contain the particular invalid, illegal or unenforceable provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

### **35. FORCE MAJEURE**

ARRIS is not liable for failure or delay in fulfilling its obligations due to any causes beyond its control. In the event of any such delay, the date for shipment or performance of Services will be extended correspondingly. ARRIS retains the right to determine the allocation of its inventory of Products among itself, its present and future customers and Customer. In the event ARRIS partially fills Customer's Purchase Order, Customer shall, nonetheless, continue to make payments on ARRIS' invoices during the period in which the delay is in effect for those Products and/or Services delivered. If an event of Force Majeure prevents or delays ARRIS' performance for more than six (6) months, ARRIS shall have the right to terminate the applicable Purchase Order, with immediate effect.

### **36. GOVERNING LANGUAGE**

The parties hereby confirm that they have agreed that all written documents between them be prepared in the English language only and such language shall be the governing language.

### **37. GOVERNING LAW/VENUE**

The contract created by the issuance of an Order Acknowledgment shall be construed, interpreted and applied in accordance with the internal laws (but not the law of conflicts) of the jurisdiction in which is located the main office of the ARRIS affiliate which is authorized to issue the Order Acknowledgment and any applicable law of that jurisdiction and the United States of America. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the sale of Products hereunder.

Customer hereby irrevocably consents to the exclusive personal jurisdiction of any state court of general jurisdiction of the jurisdiction in which is located the main office of the ARRIS affiliate which is authorized to issue the Order Acknowledgment. If Customer institutes any legal proceeding in any other court, it shall assume all of ARRIS' costs in connection therewith, including reasonable attorney's fees. Registered or certified mail of any legal process shall constitute lawful and valid service of process in any such proceeding, suit or controversy.

### **38. WAIVER**

No waiver will be valid unless in writing, signed by an authorized representative of ARRIS and no waiver granted will release Customer from subsequent strict compliance herewith.

### **39. SURVIVAL OF TERMS**

The termination or cancellation of any Customer Purchase Order or any relationship created hereunder between the parties or the delivery of Products or performance of Services under Customer's Purchase Order shall not affect each party's obligations and rights under these terms and conditions, which by their nature, survive, notwithstanding such termination, cancellation, delivery or performance.