

ARRIS Corporate Terms and Conditions of Sale (FRM0122_Issue19)

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 ("Agreement"). This Agreement supersedes any prior or contemporaneous agreements or representations written or oral. This Agreement may be modified only in writing signed by both parties.

1. CUSTOMER REPRESENTATIONS. Customer represents and warrants that (i) the Products and/or Services purchased hereunder will not be used, directly or indirectly, to further the illegal theft of services or any other unauthorized receipt, interception, publication, distribution of, or interference with any privately owned transmission of information and (ii) except as otherwise agreed to by the parties under a separate written agreement, Customer will not act as a reseller of any Products and/or Services provided hereunder.

2. DEFINITIONS. "ARRIS" means ARRIS Solutions, Inc., a wholly owned subsidiary of ARRIS Group, Inc. and/or its designated affiliates (including, without limitation, ARRIS Global Services, Inc. ("AGSI")). Professional Services (as defined herein) may be performed by AGSI employees and contractors; however, another ARRIS affiliate may invoice and accept purchase orders on behalf of AGSI in order to assist and facilitate the Customer's interaction with ARRIS; "Customer" means the person or entity however constituted to whom the Products or Services are provided directly by ARRIS; "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 designed and manufactured by ARRIS, or other manufacturer's equipment offered for sale by ARRIS to Customer; "Order Acknowledgment" means a document furnished by ARRIS acknowledging the receipt of Customer's Purchase Order and ARRIS's agreement to supply the Products and/or Services stated therein under the terms and conditions stated herein; "Open Source Software" means any software that: (a) contains or is derived in any manner (in whole or in part) from software that is distributed under license terms where any party can be a licensee without notice to the licensor with a right to modify, including without limitation distribution models similar to the GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); the Artistic License (e.g., PERL); the Mozilla Public License; the Netscape Public License; the Sun Community Source License (SCSL); the Sun Industry Source License (SISL); and/or the Apache Software License; or (b) software that is licensed pursuant to any of the following terms (i) any requirement for licensee to distribute source code, including without limitation derivatives or modifications thereof, to non-licensor third parties, (ii) any requirement for any patent non-assert or patent license be conferred by ARRIS to non-licensor third parties, or (iii) any requirement to provide licensor attribution(s) to non-licensor third parties; "Products" means the Hardware and/or Software offered for sale or licensed to Customer at time of sale; "Professional Services" means site engineering, system integration, product installation, implementation, training or other professional services; "Purchase Order" means Customer's document for the acquisition of Products and/or Services, exclusive of all printed terms and conditions contained therein; "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 Professional Services and Technical Services, excluding Annual Technical Support, as provided by ARRIS to Customer. Services are not Products; "Shipment Date" means the date on which ARRIS has scheduled shipment of Products to Customer; "Software" means ARRIS-licensed software, including any updates provided, and any other enhancements, modifications, and bug fixes provided thereto, in object code form only (unless otherwise specified), and any full or partial copies thereof. Software does not include software created or owned by third parties, including but not limited to Mediaroom Client and related supporting software (including, but not limited to operating system, conditional access, and drivers) ("Mediaroom Software") created or owned by Microsoft or its affiliates or any related future Mediaroom Software ("Ericsson Software"). Additional terms and conditions related to Ericsson Software are set forth in Section 25 below; "Statement of Work" means any document agreed to and executed by the parties, incorporated by reference, detailing the work or Services to be performed and Products to be supplied (if applicable); "Technical Services" means support services, as offered for all ARRIS Products, which include warranty repair, return and annual support contracts supporting Product software upgrades and maintenance. Annual contracts for non-warranty Technical Services ("Annual Technical Support") are not subject to the terms and conditions of this Agreement. If available, Annual Technical Support may be purchased separately subject to ARRIS' Technical Services terms and conditions which will be made available upon request to services.orders@arris.com.

3. PURCHASE ORDER ACCEPTANCE; MODIFICATION. ARRIS' acceptance to supply Products and/or Services, as identified in Customer's Purchase Order, shall be (i) in writing and at ARRIS' sole discretion (regardless if accepted elsewhere by a salesperson, selling agent or representative); (ii) subject to the terms and conditions herein; and (iii) evidenced by the issuance of an Order Acknowledgment ("Acceptance of Customer's Purchase Order"). A Customer Purchase Order will not be binding until ARRIS issues a written Order Acknowledgment. Acceptance of Customer's Purchase Order shall be subject to the following minimum thresholds: subscriber terminal devices of \$20,000; addressable computer equipment of \$10,000; supplies, repair parts and subassemblies of \$250; all other products of \$5,000; and Services of \$300. Purchase Orders are binding and non-cancellable upon ARRIS' Acceptance of Customer's Purchase Order.

Customer agrees that the fees and timeline provided in an SOW may be subject to change if Customer's responsibilities and assumptions as set forth in an SOW are not fulfilled. A valid modification to a Purchase Order requires ARRIS' prior written consent. A requested modification 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 change. Customer's oral request for Services shall be binding on Customer and deemed by ARRIS as a valid Customer Purchase Order, governed by this Agreement. 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 unless a shorter period is stated. 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. ARRIS shall select the method of performance of the Services, including without limitation the right, in its sole discretion to use agents or subcontractors to perform the services to be rendered. 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 or Statement of Work. 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 9 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 terms are EXWORKS, designated location determined by ARRIS (Incoterms 2010), unless restated otherwise by an ARRIS Quotation, confirming Customer Purchase Order and ARRIS Order Acknowledgment.

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 ARRIS until 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 delivery of Product to 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) ("Acceptance Period"). Acceptance of Products and Services by Customer shall be deemed to have occurred 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. Annual Technical Support 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. All amounts due shall be payable in United States dollars unless otherwise specifically agreed upon in ARRIS' Order Acknowledgment. Customer's payment obligations, as stated on ARRIS' invoices, are thirty (30) days, unless otherwise agreed in writing by both parties. 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. Customer shall also be responsible to reimburse ARRIS for all costs associated with ARRIS' attempt to collect amounts due from Customer, including reasonable attorney's fees and collection agency fees. If Customer fails to pay such sums as are due to ARRIS, in addition to any other remedies that ARRIS may have hereunder, ARRIS shall have the right to pursue any and all remedies available to it at law or in equity.

If, in ARRIS' judgment, Customer's financial condition or payment history 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. The prices for Products and Services exclude all levies (including, but not limited to copyright levies) and duties relating to the Products and/or Services, all of which are the Customer's responsibility.

14. PRODUCT AND SERVICES WARRANTY. ARRIS warrants from the date of shipment to Customer that Products, which ARRIS manufactures and supplies, 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 packed securely and shall be shipped freight prepaid (with duties, taxes and brokerage fees, (if applicable), risk of loss and all other charges associated with the return of such Products being the responsibility of the Customer), together with a statement setting forth the claimed defect.

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 AND SERVICES DELIVERED TO CUSTOMER 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 CUSTOMER 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. FOR ANY THIRD PARTY PRODUCTS SOLD UNDER THIS AGREEMENT, SUCH THIRD PARTY VENDOR WILL PROVIDE DIRECTLY TO CUSTOMER THE RESPECTIVE WARRANTIES, SOFTWARE LICENSE AND INDEMNIFICATION.

ARRIS EXPRESSLY DISCLAIMS ALL WARRANTIES FOR ANY SOFTWARE AND/OR COMPONENTS OF THE SOFTWARE CREATED OR OWNED BY ANY THIRD PARTY INCLUDING WITHOUT LIMITATION ERICSSON SOFTWARE, AND 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.

Unless otherwise specified in ARRIS Standard Product Warranty Schedule (available at <http://www.arris.com/globalassets/resources/company-overview/standard-tssc-warranty-table.pdf>), the warranty period for ARRIS' hardware products is one (1) year from the date of shipment, and ninety (90) days for Software. The warranty period for Services is 30 days from the date the performance of such Services has been rendered. 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.

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 purchased from ARRIS or its authorized reseller(s) or 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) Customer does 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) the Products have had their serial numbers or other identifying marks removed, obliterated or altered; or (vi) ARRIS demonstrates that the alleged error or defect in the Software or Hardware does not exist or was caused by Customer 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 or its licensed marks.

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, 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 make available for Customer to purchase spare parts and support services for any discontinued ARRIS Product (other than Category I, P, Q, R and S Products) for a period of five (5) years from the date on which such Product is discontinued. For Category I, P, Q, R and S Products, ARRIS shall use reasonable commercial efforts to continue to make available spare parts and support services to Customer for a period of three (3) 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. Risk of loss, damage and insurance responsibilities for the Products shall not pass from Customer to ARRIS until delivery of the Products to ARRIS' designated location.

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, PUNITIVE, 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 AND EXPORT RESTRICTIONS. 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.

Customer understands that certain Products furnished may be subject to export control laws or regulation. Customer agrees that it will comply with all international, national, federal, state and local laws, as well as all ordinances, orders, rules, regulations and requirements relating to the export or other regulation of all Products provided to Customer, including but not limited to checking all officially posted restricted party lists, and deny access to any Products by those individuals included on any such list(s). Customer undertakes to comply with the export laws and regulations of the United States, including but not limited to the Foreign Corrupt Practices Act and the Export Administration Act, and agrees that, without obtaining the necessary license or approval from the United States government, Customer will not knowingly (i) export, directly or indirectly, any United States origin technical data or software acquired from ARRIS (including without limitation the Software), or any direct product of that technical data, to any country for which the United States government or any agency thereof at the time of export requires an export license or other governmental approval, or (ii) disclose any United States origin technical data or software acquired from ARRIS (including without limitation the Software) to any national of any country for which the United States government or any agency thereof requires an export license or other governmental approval. Customer indemnifies and holds ARRIS harmless from and against any and all loss, damage or liability whatsoever arising out of Customer's failure to comply with the provisions of this section.

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 recopying and use such Confidential Information only in connection with fulfilling its obligations under Customer's Purchase Order, including Product and Services pricing, programs, methods of processing, program design and structure, and the interaction and unique programming techniques of ARRIS. Customer shall take all reasonable steps necessary to abide by the provisions of ARRIS' security programs in effect from time to time, a copy of which will be provided to Customer upon request. 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 section will entitle the other party to obtain or 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/all Customer Purchase Orders. The provisions of this Section 20 shall survive the performance, termination or cancellation of Customer's Purchase Order.

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, including Product documentation, 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 ("ARRIS IPR") will be and remain the sole property of ARRIS (or its licensors, if any). Customer agrees not to modify or reverse engineer any ARRIS IPR or Products purchased hereunder.

22. INDEMNIFICATION. ARRIS will indemnify, defend and hold Customer and its respective officers, directors, agents, subsidiaries, affiliates, subcontractors, assignees and employees (collectively "Customer Indemnified Parties") harmless against damages and to the extent applicable any reasonable court costs and expenses (including reasonable attorney fees), excluding consequential and exemplary damages, finally awarded against Customer (collectively, "Damages") and, will, at ARRIS' expense, defend any third party 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 infringes a valid patent or copyright. ARRIS will pay Damages as the result of the Claim provided that (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.

In no event shall ARRIS be liable to Customer or any third party for any: (i) infringement arising from (a) use of the Product in a manner other than for which it was intended; (b) use of the Product with other products or devices not furnished or approved by ARRIS; (c) addition to or modification of the Products which are not authorized by ARRIS; (d) use of a version of a Software or a Product other than the current version, if the current version would be non-infringing (e) ARRIS' compliance with Customer's specifications, in which case Customer shall defend, indemnify and hold ARRIS harmless against any claim of infringement of any copyright or patent; (f) infringement by Products manufactured and/or supplied by third parties; (iii) any royalties payable, other than a reasonable royalty based upon revenue derived by ARRIS from Customer from sales or license of the infringing Products or associated Software; (iv) royalties payable, or intellectual property claims related to compliance with the Moving Picture Experts Group's ("MPEG") MPEG-2 specification of Generic Coding of Moving Pictures and Associated Audio: Video (ISO/IEC 13818-2) and the Transport Stream defined in the MPEG-2 Systems specification (ISO/IEC 13818-1) ("MPEG-2 Standards"), the MPEG-4 Visual and MPEG-4 Systems standards defined in ISO/IEC 14496-2 and ISO/IEC 14496-1, respectively, and the AVCHD 264 Standard, defined in ISO/IEC 15446-10; the MPEG HEVC standard (defined in ISO/IEC 23008-2 MPEG-H Part 2 and ITU-T H.265); or VP8 or VP9 by Google, Inc.; (v) royalties payable, or intellectual property claims related to compliance with or implementation of standards issued by other public or private standards bodies (including ITU, IEEE, ANSI, ISO/IEC, WiFi and Cable Labs standards), as well as third party private standards such as 5G Digital Transmission Content Protection, DVB and Dolby Digital Audio; (vi) infringement by the Ericsson Software; or (vii) infringement arising from any user interface (including but not limited to KreaTVGo and/or KreaTVUI, Rovi guides (including but not limited to Rovi i-Guide, Passport Guide, and DTA guides) or PVR functionality included and/or made available in the Products, which is manufactured and/or supplied by a third party. Without limiting the foregoing, (a) ARRIS' liability under (i)(b) shall be limited to ARRIS' pro rata share of its contribution to the infringement, and (b) ARRIS shall not be liable for an infringement claim to the extent that such claim could have been avoided by Customer obtaining Content Provider Licenses (as defined herein) under patents offered to providers of audio, video or data content to end user subscribers by entities that offer licenses for such patents on reasonable and non-discriminatory bases. For purposes hereof, "Content Provider License" means a license intended solely for use by the entity that provides audio, video or data content to an end user subscriber and does not include any licenses ordinarily imposed on, or available to, manufacturers or distributors of equipment, software or middleware.

In no event shall ARRIS be liable to Customer or any third party and Customer shall indemnify ARRIS and ARRIS' respective officers, directors, agents, subsidiaries, affiliates, subcontractors, assignees and employees (collectively "ARRIS Indemnified Parties") against any losses, damages, liabilities, expenses, costs (including court costs and attorney's fees), claims, suits, demands, actions, causes of actions, proceedings, judgments, assessments, deficiencies and charges caused by, relating to or arising from (i) it's intentional misconduct, (ii) the programming services offered by Customer or Customer's programmers which are authorized for using or which use the Products and/or Software, including any assertion that any such programming services involve tortious conduct or the infringement of any third-party rights, (iii) any disputes between Customer and any of its program distributors or other distributors or affiliates and (iv) any disputes or claims involving the subscribers for the programming services of Customer, including, but not limited to, a subscriber altering or modifying programming content, a subscriber streaming, transmitting, downloading, storing, viewing or playing programming content to/on other devices which may be located within or outside subscriber's premises. This paragraph of Section 22 shall survive termination or expiration of Customer Purchase Order.

In the event of an infringement allegation for which ARRIS is obligated to indemnify Customer, ARRIS may at its discretion satisfy its indemnification obligation by doing one of the following: (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. The above shall be Customer's sole and exclusive remedy for infringement of any Product provided by ARRIS hereunder, whether direct or contributory, and is in lieu of all warranties, express, implied or statutory, including without limitation, the warranty against infringement specified in the Uniform Commercial Code.

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 the Customer has paid all applicable fees to ARRIS, and assuming that the Customer has not negotiated a separate specific agreement or been granted a third-party license with the Software, then 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. Use of the Software is limited to the internal business operations of Customer. Customer is responsible for its agents, contractor's outsourcers, customer's and supplier's use of the application package and their compliance with this Agreement. All rights, title 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 assign or transfer any intellectual property rights in the Software in contravention of ARRIS' or its licensors 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. The Customer agrees that its use of the Software is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public or private comments made by ARRIS regarding future functionality or features, except as mutually agreed upon in writing by the parties.

Customer shall not modify, create derivative works, reverse engineer, decompile, disassemble or in any manner attempt to derive the source code from the Software (including but not limited to review of data structures or similar materials produced by 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. Unless otherwise agreed to in writing, Customer shall not otherwise use, copy, modify, lend, share, lease, rent, assign, sub-license, provide service bureau, time-sharing, hosting, outsourcing or subscriptions services, or distribute or transfer the Software or any copies thereof, in whole or in part, or make the Software available in any manner to any third party for use in the third party's business operations (unless such access is expressly provided in this Agreement). The publication or disclosure of any results of benchmark tests run on the Software is prohibited. Customer shall not remove, obscure or alter any markings or notice of copyright, patent, trade secret, trademark or other proprietary right or disclaimer appearing in or on any Software or accompanying materials. All rights not expressly granted hereunder are reserved by ARRIS.

Customer will not subject ARRIS' proprietary software or proprietary derivative works in whole or in part to any of the terms of an Excluded License. "Excluded License" means any license that requires (as a condition of use, modification and/or distribution of software) such software or other software combined and/or distributed with such software be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge. Loadable Kernel Modules are subject to the GPL, as derivatives of the Linux Kernel, and are considered licensed under an Excluded License.

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 this Agreement. The licensors of such Embedded Third-party Software shall not be liable or responsible for any of ARRIS' covenants or obligations under this Agreement, and Customer's rights or remedies with respect to any Embedded Third-party Software under this Agreement 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 Software is used, upon written request from Customer, ARRIS will make available the appropriate Open Source Software as per the applicable Open Source Software license terms. To the extent any license to any Open Source Software requires ARRIS provide customer the rights to copy, modify, distribute or otherwise use any Open Source Software that are inconsistent with the limited rights granted to Customer under this Agreement, then such rights in the applicable Open Source Software license shall take precedence over the rights and restrictions granted under this Agreement, but solely with respect to such Open Source Software. Customer acknowledges that unless otherwise required by the applicable Open Source Software license, each Open Source Software license is solely between Customer and the applicable licensor of the Open Source Software. Customer shall fully comply with the terms of all applicable Open Source Software licenses, if any. Customer shall not use any Open Source Software in such a way that would cause the non-Open Source Software portions of the Software to be subject to any Open Source Software licensing terms and obligations.

Customer agrees to inform ARRIS promptly if it becomes aware of any breach of the Software license and Customer agrees to enforce the terms of this Agreement against its customers and if ARRIS requires Customer to do so to protect its interest, at ARRIS' request, Customer shall assign to ARRIS or its designee the right to enforce the Agreement. Upon termination of the Software license resulting from any Customer breach of the terms and conditions of this Agreement, Customer shall discontinue use and destroy or return to ARRIS all copies of the Software and related documentation and provide ARRIS written declaration of compliance.

25. PROVISIONS RELATING TO ERICSSON SOFTWARE. The provisions set forth in this Section 25 are applicable only to ARRIS' Settop Box Products ("STBs") that include Ericsson Software.

(a) Certificate Revocation. Customer acknowledges that Ericsson may revoke the Ericsson IPTV/CA Certificate and the associated signed ARRIS CA Certificate. Further, ARRIS shall, upon Ericsson's request, revoke a Device Certificate: (a) upon Ericsson's (or ARRIS' reasonable knowledge or suspicion of a compromise of the "Private Key" (as defined herein) or a private key associated with such Certificate; or (b) if Ericsson or ARRIS determines that the Device Certificate was not properly used. Private Key means the private key generated by ARRIS that is cryptographically related to the public key contained in an OEM CA Certificate and used to sign device certificates. ARRIS shall have no liability of any kind associated with the expiration or revocation of Ericsson or ARRIS CA Certificate as set forth herein.

(b) Supplemental Code. Customer acknowledges and agrees that Ericsson may periodically provide required or optional Supplemental Code, as defined herein, to the STBs (including bug fixes, patches and other updates), which ARRIS shall (if required) or may (if optional) incorporate into the STBs. Supplemental Code is defined as additional or replacement code of any portion of the Ericsson Software as Ericsson may provide from time to time. Any additional license rights or limitations related to the Supplemental Code provided to Customer by ARRIS will be described in a letter from ARRIS to Customer accompanying the Supplemental Code. In the event that Customers receives Supplemental Code from Ericsson without express approval from ARRIS, ARRIS shall have no liability or obligations for additional license rights, fees or obligations incurred by the Supplemental Code.

The following shall apply to Supplemental Code: (i) The Supplemental Code letter or documentation accompanying the Supplemental Code may have additional or different terms and conditions than under this Agreement; (ii) If Customer does not use the Supplemental Code, these additional or different terms and conditions shall not apply to it; and, (iii) If Customer uses the Supplemental Code, then Customer shall comply with the additional or different terms and conditions as set forth in the Supplemental Code letter.

(c) Notices; Injunctions. Customer agrees that ARRIS may provide Customer with forty-five (45) days prior written notice of Ericsson's recommendation that Customer should cease use, sale, offer for sale, importation or other disposition or promotion of one or more STBs or trademark(s) due to a claim with respect to the Ericsson Software. Customer agrees that Customer shall reimburse ARRIS for any and all damages, costs, and expenses (including reasonable attorneys' fees) incurred resulting from Customer conducting any activities contrary to such recommendation after the effective date of such notice. Without limiting the foregoing, if in connection with a Ericsson Software claim a court enjoins Customer or ARRIS from distributing STBs in its inventory and (i) such injunction is not lifted within sixty (60) days, (ii) Ericsson has not procured a license that enables Customer or ARRIS to distribute the enjoined Ericsson Software; or (iii) Ericsson has otherwise notified Ericsson Software to make it non-infringing within such sixty (60) day time period, then such Ericsson Software will no longer be available for incorporation into the STBs under this Agreement. ARRIS shall have no liability to Customer or any third party and shall not be in breach of this Agreement if it decides to make further shipments of STBs due to an injunction regarding the Ericsson Software.

In the event of STB supply discontinuance under this Section 25, Customer shall be responsible for payment for all STBs and accessories previously ordered or forecasted for delivery for the 120 day period following the effective date of such notice.

26. AUDIT. ARRIS shall have the right, upon reasonable notice, to audit the Customer usage of the Software to ensure compliance with applicable terms and conditions. Audits will not occur more frequently than once per quarter. Customer shall provide reasonable assistance and access to information in the course of such audit and shall permit ARRIS to report the audit results to the applicable third party licensor. If any audit reveals any underreported, unpaid or unauthorized use of the Software, then Customer shall promptly pay to ARRIS the then current fee representing the underreported, unpaid or unauthorized use of the Software and Customer will be responsible for the costs and expenses of the inspection and audit if such inspection and audit reveals that the then current fee representing the underreported, unpaid or unauthorized use of the Software is equal to or greater than 5% of the amounts actually paid by Customer.

27. 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.

28. 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.

29. CANCELLATION. 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; (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; or (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. Any cancellation pursuant to this section 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.

30. 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.

31. 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.

32. 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 termination without proper cause.

33. 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.

34. 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.

35. SEVERABILITY. If any provision of this Agreement 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 this Agreement but rather this Agreement 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.

36. SET-OFF. Customer may not set-off any amount owing from ARRIS to Customer against any amount payable by Customer to ARRIS, whether or not related to the same Customer Purchase Order.

37. 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.

38. GOVERNING LANGUAGE AND CERTAIN REFERENCES. 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. The headings and titles are for convenience and are not intended to affect the meaning of the text. Reference to a party means ARRIS and Customer exclusively. In the event of a conflict between Customer's Purchase Order or associated documents and this Agreement, this Agreement, including the Order Acknowledgment shall govern.

39. GOVERNING LAW/VENUE. The contract, as created by ARRIS' Order Acknowledgment, and all disputes arising hereunder shall be governed by, and interpreted in accordance with the laws of the State of Georgia, of the United States of America, excluding its conflict of laws principles and excluding the provisions of the UN Convention on Contracts for the International Sales of Goods and the Uniform Computers Information Transactions Act. The Parties hereto shall be subject to the exclusive venue of jurisdiction of the State and Federal Courts of the State of Georgia. Should any term or provision hereof be held wholly or partly invalid or unenforceable said applicable laws, the remainder of this Agreement shall not be affected. If Customer institutes any legal proceeding in any other court, the prevailing Party shall assume all costs in connection therewith, including reasonable attorney's fees.

40. NOTICE. Any notice required or permitted to be given shall be in writing, sent by express, registered or certified mail, return receipt requested, courier service or personal delivery, and shall be effective upon receipt or refusal. For the purpose of receiving notices under this Agreement, either party may change its address by giving the other party fifteen (15) days prior written notice of its new address.

Notices to ARRIS must be sent to:

ARRIS Group, Inc. 101 Tournament Drive Horsham, PA 19044 Attention: Legal Department	With a copy to: ARRIS Group, Inc. 3871 Lakefield Drive Suwanee, GA 30024 Attention: Legal Department
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41. 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.

42. 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 this Agreement, which by their nature, survive, notwithstanding such termination, cancellation, delivery or performance.