

## **Appendix R-3– Maintenance Warranty**

### **Supplier’s USA Maintenance Warranty**

1. This is Supplier’s Maintenance Warranty (this “**Maintenance Warranty**”) for the Device and the Service (both as defined below).

#### **Definitions**

“**Customer**” means the purchaser of Supplier's Device and Service.

“**Device**” means the device or other product provided by Supplier under the instructions or other documentation related thereto.

“**Service**” means the Supplier's proprietary software and related software products and applications, including any amendments, updates, upgrades, enhancements and new versions thereof as well as communication services and any related documentation which are delivered to Customer via information networks.

“**Service Agreement**” means the agreement under which Customer purchases the Device and the Service.

“**Supplier**” means Navigil USA Corp.

#### **2. Warranty of Maintenance**

Supplier warrants that it shall provide maintenance to Devices for a minimum of two (2) years after an end-of-life (“EOL”) notice. This maintenance warranty commitment includes second line support for technical issues after EOL and firmware updates including hot fixes for embedded firmware related issues.

Supplier warrants that it will provide maintenance to Service used by the Devices for a minimum period of two (2) years after an EOL notice. Termination of the Service Agreement may terminate Supplier’s service Maintenance Warranty before the end of the said two-year period. In the event that the Service Agreement termination date is later than the end date of the said two-year period the Maintenance Warranty period is extended until the date of termination of the Service Agreement.

#### **4. Force Majeure**

Neither Party shall be liable for any delays or non-performance (other than with respect to payment obligations) of its obligations or any damages caused by an impediment beyond its reasonable control, which it could not have reasonably taken into account, and whose consequences it could not reasonably have avoided or overcome. Strike, lockout, boycott and other industrial action shall constitute a force majeure event also when Supplier or Customer is the target or party to such action.

#### **5. Governing law and settlement of disputes**

This Maintenance Warranty shall be governed by and construed in accordance with the substantive laws of the State of Florida, excluding its choice of law provisions without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties’ rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. Any dispute, controversy or claim arising out of or relating to the Agreement, or the

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breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Rules of the American Arbitration Association (“**AAA Rules**”). The arbitration will be heard and determined by a single arbitrator. The arbitrator's decision in any such arbitration will be final and binding upon the parties and may be enforced in any court of competent jurisdiction. The parties agree that the arbitration proceedings will be kept confidential and that the existence of the proceeding and any element of it (including, without limitation, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed beyond the arbitration proceedings, except as may lawfully be required in judicial proceedings relating to the arbitration, by applicable disclosure rules and regulations of securities regulatory authorities or other governmental agencies, as specifically permitted by state law, or to the officers, directors, managers, members or lenders of the Parties with a need to know such information. The Federal Arbitration Act and federal arbitration law apply to the Agreement. However, the Arbitrator, and not any federal, state, or local court or agency, shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of the Agreement including, but not limited to, a claim that all or any part of the Agreement is void or voidable. This arbitration agreement does not preclude either party from seeking action by federal, state, or local government agencies. Customer and Supplier also have the right to bring qualifying claims in small claims court. In addition, Customer and Supplier retain the right to apply to any court of competent jurisdiction for provisional relief, including pre-arbitral attachments or preliminary injunctions, and any such request shall not be deemed incompatible with these Terms, nor a waiver of the right to have disputes submitted to arbitration as provided in these Terms. Neither Customer nor Supplier may act as a class representative or private attorney general, nor participate as a member of a class of claimants, with respect to any Claim. Claims may not be arbitrated on a class or representative basis. The arbitrator can decide only Customer and/or Supplier’s individual Claims. The arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated. The arbitrator may award in the arbitration the same damages or other relief available under applicable law, including injunctive and declaratory relief, as if the action were brought in court on an individual basis. Notwithstanding anything to the contrary in the foregoing or herein, the arbitrator may not issue a “public injunction” and any such “public injunction” may be awarded only by a federal or state court. If either party seeks a “public injunction,” all other claims and prayers for relief must be adjudicated in arbitration first and any prayer or claim for a “public injunction” in federal or state court stayed until the arbitration is completed, after which the federal or state court can adjudicate the party’s claim or prayer for “public injunctive relief.” In doing so, the federal or state court is bound under principles of claim or issue preclusion by the decision of the arbitrator. If any provision of this Section is found to be invalid or unenforceable, then that specific provision shall be of no force and effect and shall be severed, but the remainder of this Section shall continue in full force and effect. No waiver of any provision of this Section of the Terms will be effective or enforceable unless recorded in a writing signed by the party waiving such a right or requirement. Such a waiver shall not waive or affect any other portion of these Terms. This Section of the Terms will survive the termination of Customer’s relationship with Supplier.

**THIS SECTION LIMITS CERTAIN RIGHTS, INCLUDING THE RIGHT TO MAINTAIN A COURT ACTION, THE RIGHT TO A JURY TRIAL, THE RIGHT TO PARTICIPATE IN ANY FORM OF CLASS OR REPRESENTATIVE CLAIM, THE RIGHT TO ENGAGE IN DISCOVERY EXCEPT AS PROVIDED IN AAA RULES, AND THE RIGHT TO CERTAIN REMEDIES AND SUPPLIER OF RELIEF. OTHER RIGHTS THAT CUSTOMER OR SUPPLIER WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.**

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