

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 14, 2022 (June 8, 2022)

GOGO INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001-35975

(Commission File Number)

27-1650905

(IRS Employer Identification No.)

**105 Edgeview Dr., Suite 300
Broomfield, CO**

(Address of principal executive offices)

80021

(Zip Code)

Registrant's telephone number, including area code:

303-301-3271

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of Class</u>	<u>Trading Symbol</u>	<u>Name of Each Exchange on Which Registered</u>
Common stock, par value \$0.0001 per share	GOGO	NASDAQ Global Select Market
Preferred Stock Purchase Rights	GOGO	NASDAQ Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

On May 22, 2022, Gogo Business Aviation LLC (“Gogo BA”), a wholly owned subsidiary of Gogo Inc. (the “Company”), announced that it will launch the first global broadband service in business aviation using an electronically steered antenna and a low earth orbit (“LEO”) satellite network. On June 8, 2022, Gogo BA and Hughes Network Systems, LLC (“Hughes”) entered into a supply and product support agreement, dated as of June 6, 2022 (the “SPSA”), providing for Gogo BA’s purchase from Hughes of airborne antennas for use on a LEO satellite network, and the performance by Hughes of services related thereto. Under the SPSA, Gogo BA commits to purchase, over a seven-year period that will begin on completion of a project milestone currently expected to occur at the end of 2024, antennas with an estimated aggregate purchase price of approximately \$170 million. During that seven-year period, Hughes may not sell substantially similar equipment to other purchasers in Gogo BA’s primary target market. The SPSA will remain in effect for a period of ten years, followed by automatic renewal for additional one-year periods unless earlier terminated by either party upon ninety days’ notice to the other party.

The Company believes that its global broadband initiative will significantly accelerate its revenue and free cash flow after launch, which is currently expected to occur in 2025, and generate a very high return on capital relative to the Company’s other capital allocation priorities.

The description of the SPSA contained herein does not purport to be complete and is qualified in its entirety by reference to the full text of the SPSA, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated in this Item 1.01 by reference.

Forward-Looking Statements

Certain disclosures in this report include forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include, without limitation, statements regarding the Company’s business outlook, industry, business strategy, plans, goals and expectations concerning the Company’s market position, international expansion, future technologies, future operations, margins, profitability, future efficiencies, capital expenditures, liquidity and capital resources and other financial and operating information. When used in this discussion, the words “anticipate,” “assume,” “believe,” “budget,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “will,” “future and the negative of these or similar terms and phrases are intended to identify forward-looking statements in this report.

Forward-looking statements reflect the Company’s current expectations regarding future events, results or outcomes. These expectations may or may not be realized. Although the Company believes the expectations reflected in the forward-looking statements are reasonable, the Company can give you no assurance these expectations will prove to have been correct. Some of these expectations may be based upon assumptions, data or judgments that prove to be incorrect. Actual events, results and outcomes may differ materially from the Company’s expectations due to a variety of known and unknown risks, uncertainties and other factors. Although it is not possible to identify all of these risks and factors, they include, among others, our ability to effectively evaluate and pursue strategic opportunities.

Additional information concerning these and other factors can be found under the caption “Risk Factors” in the Company’s Annual Report on Form 10-K as filed with the Securities and Exchange Commission (the “SEC”) on March 3, 2022, and in the Company’s Quarterly Report on Form 10-Q as filed with the SEC on May 5, 2022.

Any one of these factors or a combination of these factors could materially affect the Company’s financial condition or future results of operations and could influence whether any forward-looking statements contained in this report ultimately prove to be accurate. The Company’s forward-looking statements are not guarantees of future performance, and you should not place undue reliance on them. All forward-looking statements speak only as of the date made and the Company undertakes no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

Item 9.01. Financial Statements and Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1*	Supply and Product Support Agreement, dated as of June 6, 2022, by and between Gogo Business Aviation LLC and Hughes Network Systems, LLC.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).
*	Certain portions of the exhibit have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish supplementally an unredacted copy of such exhibit to the SEC upon request; <i>provided, however</i> ; that the Company may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any exhibits or schedules so furnished.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

GOGO INC.

Date: June 14, 2022

By: /s/ Marguerite M. Elias

Marguerite M. Elias

Executive Vice President, General Counsel and Secretary

**THE USE OF THE FOLLOWING NOTATION IN THIS EXHIBIT INDICATES THAT
THE CONFIDENTIAL PORTION HAS BEEN OMITTED PURSUANT TO ITEM
601(b)(10)(iv) WHEREBY CERTAIN IDENTIFIED INFORMATION HAS BEEN
EXCLUDED BECAUSE IT IS BOTH NOT MATERIAL AND WOULD LIKELY CAUSE
COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED: [***]**

**SUPPLY AND PRODUCT SUPPORT AGREEMENT
BETWEEN
GOGO BUSINESS AVIATION LLC
AND
HUGHES NETWORK SYSTEMS, LLC**

NOTICE: The contents of this document are proprietary to Gogo Business Aviation LLC and Hughes Network Systems, LLC and constitute Confidential Information of each Party subject to Section 8 (Confidentiality) of this Agreement.

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Exhibits:

Exhibit A: Product Requirements Document

Exhibit B: Products and Pricing Sheet

Exhibit C: Product Support Assurance

Exhibit D: Definitions

Exhibit E Exceptions and Responses to Rev. P of Gogo's Quality Management Document Number [***]

THIS SUPPLY AND PRODUCT SUPPORT AGREEMENT is made and entered into as of June 6, 2022 (the “Effective Date”) by and between **Gogo Business Aviation LLC**, a Delaware limited liability company, having offices at 105 Edgeview Drive, Broomfield, CO 80021, and its Affiliates (collectively referred to as “Gogo”), and **Hughes Network Systems, LLC**, a Delaware limited liability company, having its principal place of business at 11717 Exploration Lane, Germantown, MD 20876 (“Supplier”), either or both of which may be hereinafter referred to as a “Party” or the “Parties”, respectively.

WITNESSETH

WHEREAS, Gogo and its Affiliates desire from time to time to engage Supplier to purchase certain Products and perform certain Services;

WHEREAS, Supplier is in the business of manufacturing and selling the Products and/or Services itemized in Exhibits A and B and desires to sell the Products to Gogo; and

WHEREAS, Gogo and its Affiliates wishes to purchase certain Product and/or Services from Supplier;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are acknowledged, the Parties hereto hereby agree as follows:

1. INTERPRETATION AND DEFINITIONS.

- 1.1. Interpretation. Unless the context otherwise requires: (i) words importing the singular include the plural and vice versa; (ii) words importing a gender include any gender; (iii) clause headings are for convenient reference only and have no effect in limiting or extending the language to which they refer in this Agreement or any Exhibit or Attachment; and (iv) expressions importing natural persons include any company, partnership, joint venture, association, corporation or other corporate body.
- 1.2. Definitions. All definitions are listed alphabetically in Exhibit D.

2. AGREEMENT APPLICABILITY AND LIMITATION.

- 2.1. This Agreement and the Exhibits contain the general terms and conditions governing Supplier’s Products, Services, and business transactions to this Agreement. The execution of this Agreement alone does not authorize the conduct of any transitional business between the Parties.
- 2.2. The terms and conditions of any Exhibit are supplemented by the terms and conditions of this Agreement according to Section 16.20.
- 2.3. This Agreement will supplement and apply to any Order(s) submitted for Products whether or not this Agreement is referenced in the Order. From the effective date of this Agreement all Products ordered by Gogo shall be covered under this Agreement.

3. TERM.

- 3.1. This Agreement will continue in effect for ten (10) years from the Effective Date and thereafter will automatically renew from year to year unless terminated upon notice at least 90 Days prior to the renewal date. Either Party may terminate this Agreement in accordance with Section 9 of this Agreement.

4. PAYMENT AND PRICES.

- 4.1. Payment Terms.
 - 4.1.1. On or before completion of IDR, Gogo shall issue a purchase order for procurement of advance material in the amount of [***] (the “Advance Materials PO”) to be paid in two installments. Upon receipt of the Advance Materials PO, Supplier shall invoice Gogo for [***] of the Advance Materials PO amount and Gogo shall pay such invoice within [***] of receipt of such invoice. Following completion of CDR, Supplier shall invoice Gogo for the remaining [***] of the Advance Materials PO amount and Gogo shall pay such invoice within [***] of receipt of such invoice. Amounts paid under the Advance Materials PO (a) will be used by Supplier exclusively for the purchase of long lead time components required for the production of the first [***] units of the Product, and (b) will be credited against Gogo’s Orders for the first [***] units of production Products.
 - 4.1.2. With respect to any Orders for Products, Supplier shall issue an invoice to Gogo on or any time after the completion of Delivery and only in accordance with the terms which shall be payable [***] after Gogo’s receipt

of such invoice, except for any amounts disputed by Gogo in good faith. All payments hereunder will be in US dollars unless otherwise agreed to in writing. In the event of a payment dispute, Gogo shall deliver a written statement to Supplier no later than [***] prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 4.1. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Supplier shall continue performing its obligations under the Order notwithstanding any such dispute.

- 4.2. **Price.** All pricing listed on the attached Exhibit B will be held firm and fixed for the duration of the term stated in such Exhibit B. If not listed in Exhibit B, then the pricing shall be as mutually agreed to in the accepted Order.
- 4.3. **Records; Audit.** Supplier shall maintain adequate records of the amounts charged, and quality records inclusive of FAA required documents pertaining to Gogo with respect to the Product and Services under each Exhibit for [***] after the shipment of the Product or provision of the Service. For purposes of clarification, except with respect to cost-reimbursement or time-and-materials based pricing, amounts charged shall not include, and Gogo shall have no right of access to or audit of, Supplier's detailed rate and cost information (of a type that is not ordinarily provided to any other commercial Gogo or third party including the Supplier's process for building up the applicable labor rates, overhead or fixed price elements). Supplier shall make such records available to Gogo during normal business hours upon reasonable advance written notice. Supplier shall cooperate in any audit of such records that Gogo may undertake; provided, however, that any such audit shall be at Gogo's sole expense. [***]
- 4.4. **Taxes.** Gogo is liable to Supplier only for taxes which Supplier is required to collect from Gogo by law. All prices are exclusive of taxes and charges, including without limitation (i) any present or future Federal, State, or local excise, sales, or use taxes (including any VAT); (ii) any other present or future excise, sales or use tax, (including any VAT), or other charge or assessment upon or measured by the gross receipts from the transactions provided by this Agreement; (iii) any import duties, customs charges, tariffs or similar fees and (iv) any present or future property, inventory, or value-added tax or similar charge. Gogo will pay and discharge, either directly to the governmental agency or as billed by Supplier, the foregoing taxes, duties and charges and all assessments and other taxes with respect to the transactions provided in this Agreement and all Products delivered hereunder. Supplier's invoices shall list taxes separately.

5. ORDER AND PRODUCT ADMINISTRATION

- 5.1. **Obligation to Supply during the Term.** Supplier agrees to sell to Gogo the Products ordered by Gogo's duly issued Orders on the terms and conditions provided herein. Each Order shall be deemed to be incorporated as part of this Agreement upon Gogo's issuance thereof.
- 5.2. **Initial Volume Commitment.** Gogo agrees to issue firm, NCNR (Non-Cancellable, Non-returnable) purchase orders for [***] units of product ("Initial Volume Commitment") to be delivered within 7 years of completion of MRR in accordance with a mutually agreed upon delivery schedule based on the forecast set forth in Exhibit B. For the avoidance of doubt, failure by Gogo to issue such purchase orders shall not relieve Gogo of its obligation to purchase the Initial Volume Commitment.
- 5.3. **Order Acceptance.** Gogo and its affiliated companies may place Order(s), from time to time, with Supplier for the Products. Orders are deemed accepted by the Supplier unless Gogo receives written notice of rejection from the Supplier explaining the basis for the rejection within [***] of Gogo's issuance of the Order in accordance with the terms and conditions of this Agreement. All terms and conditions within this Agreement shall govern said Order(s) with the exception of shipping, delivery dates and invoicing address, which will be identified within that Order. Any terms conflicting with or in addition to the terms of this Agreement will not apply unless expressly agreed to in writing by the Parties.
- 5.4. **Order Rejection and/or Changes.** Supplier shall have the right to reject an Order only if the Order does not comply with the express requirements of this Agreement, and then only until Gogo corrects such Order. Supplier shall not reject any Order that is issued in accordance with the terms and conditions of this Agreement. Should Supplier reject an Order based upon the foregoing, Supplier shall notify Gogo in writing within [***] of such rejection and must clearly state the reason(s) Supplier is claiming the Order does not comply with this Agreement or contains additional non-agreed upon terms and any changes or additions thereto that would make the Order compliant with this Agreement. If Gogo does not agree with Supplier's allegation that the Order is non-compliant with this Agreement, Supplier shall accept the Order as originally submitted by Gogo and continue to perform while the Parties negotiate in good faith to resolve such issues. Changes proposed by Supplier shall not be valid or binding on Gogo unless the changes are accepted by Gogo in writing and formally incorporated into the related Order by issuing a Change Order.
- 5.5. **Forecasted Quantities.** Gogo shall make available to Supplier, on a quarterly basis in writing or electronically, a [***], non-binding and information-only rolling forecast as a purchase order estimate including an estimated Product

lead-time (“Forecast”). The quantities listed in any Forecast are for planning purposes only, do not constitute an Order, and shall in no way bind Gogo to actually place orders for any such quantities indicated in the Forecast or otherwise expose Gogo to any form of liability. Supplier shall make available to Gogo, at least monthly in writing or electronically, a [***] material resource plan schedule that reflects Orders received.

6. TARGET MARKET SEGMENTS

- 6.1. **Market Advantage.** In consideration of the Initial Volume Commitment, Supplier will not sell the Product or any product substantially similar to the Product in form and fit to others in the Primary Target Market directly or indirectly, for [***] from the date of issuance of the Parts Manufacturer Approval (PMA) for the STE (“Market Advantage Period”), unless this Agreement is terminated in accordance with its terms. Upon expiration of the Market Advantage Period, on an annual basis, the Parties may extend the Market Advantage Period for additional [***], subject to agreement on an annual volume commitment which shall be memorialized in a binding, non-cancellable Order.
- 6.2. **Ancillary Target Markets.** Gogo shall have the non-exclusive right to sell the Product along with the STE in the Ancillary Target Markets. Supplier shall have the non-exclusive right to sell the STE outside of the Primary Target Markets. Within [***], the Parties will enter into a separate agreement for the supply of the STE and related services to Supplier at preferred pricing.
- 6.3. **Royalties**
 - 6.3.1. During the Market Advantage Period set forth in Section 6.1 of this Agreement, if Supplier sells the Product, or any product substantially similar to the Product in form and fit to third parties outside the Primary Target Market, Supplier shall pay or credit (at its discretion) Gogo a royalty payment in an amount equal to [***] of the purchase price collected per unit sold, up to a total of [***].
 - 6.3.2. In addition, upon the expiration of the Market Advantage Period until the expiration or termination of this Agreement, should Supplier wish to market the Product or any product substantially similar to the Product in form and fit to third parties within or outside of the Target Market Segments, Supplier, at its discretion, shall pay or credit Gogo a royalty payment in an amount equal to [***] of the purchase price collected per unit sold, up to a total of [***].
 - 6.3.3. The sum of all royalties paid or credited by Supplier to Gogo for the sale of the Product to third parties in all cases shall be capped at [***].
 - 6.3.4. Royalty payments or credits shall be settled on a [***].

7. DELIVERY AND TITLE

- 7.1. **Time is of the Essence.** Supplier acknowledges that time is of the essence with respect to its performance under this Agreement. Supplier shall notify Gogo in writing within [***] of any occurrence, event, or circumstance, which may impede the proper and timely execution of Supplier’s obligations hereunder. Such notification by Supplier shall include a detailed preventative/recovery plan for such delay, including the expedited shipment of Product at Supplier’s cost.
- 7.2. **Delivery Terms.** Delivery of Products (“Delivery”) shall be Free Carrier (FCA Incoterms 2020) Supplier’s facility in Germantown, Maryland. Supplier shall deliver Product in accordance with the quantities and date(s), specified on the Order, subject to any mutually agreed lead times. Except for repaired or replaced Products being returned under warranty, the Delivery of any Products will be deemed to have been made on the date such Products are delivered to Gogo at Supplier’s facility (the “Delivery Date”). If Delivery Dates are not stated, Supplier shall offer its best delivery date(s), which will be subject to acceptance by Gogo. Unless otherwise directed, all Product(s) shipped in [***] from and to a single location must be consolidated on one (1) bill of lading or air waybill, as appropriate. Supplier is responsible for creation of shipping documents as per the Order pursuant to the delivery terms stated in this Section 7.2.
- 7.3. **Delivery Notice.** The Supplier shall send detailed a Delivery Notice to Gogo [***] prior to the time of Delivery of the Product to Gogo.
- 7.4. **Risk of Loss and Title.** Supplier bears all risk of loss or damage to Product(s) until Delivery to Gogo at the Delivery location specified in Section 7.2. The title to Product(s) passes to Gogo upon receipt of the Product(s) by Gogo.
- 7.5. **Export License.** Gogo with support from Supplier is responsible for obtaining all necessary export licenses and completing all export clearance documents for the STE incorporating the Product.

- 7.6. Expeditious Shipping. Supplier shall, at Supplier's expense, deliver Product(s) by the most expeditious shipping method if the delivery schedule is endangered for any reason other than Gogo's fault. If Product(s) are delinquent to Gogo's requirements, Supplier will grant Gogo first priority for Product(s) allocation and shipment. Gogo reserves the right to reject, at no expense to Gogo, all or any part of any delivery that materially varies from the quantity authorized by Gogo for shipment. Supplier will not make any substitutions without Gogo's prior written approval. Items shipped in advance of Gogo's delivery schedule may be returned at Supplier's expense. The Order number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading, and air waybills.
- 7.7. Schedule Acceleration/Deceleration. Gogo may revise any delivery schedule without cost or change to the Product price stated in the applicable Order(s) if Gogo provides Supplier with written notice of the revised schedule and (a) the delivery date of the Product(s) under such Order(s) is deferred by no more than [***]; and (b) if the delivery date is accelerated, the accelerated schedule remains compliant with all applicable Product lead times. Upon receipt of written notice of the change, Supplier shall make a good faith effort to meet those requirements as soon as possible, but in no event shall the revised schedule be implemented later than [***] subject to the terms and conditions outlined in Exhibit B.
- 7.8. Packaging. For airborne Product(s) used on or in an aircraft, Supplier will pack such Product(s) in accordance with the ATA-300 specification (Category 3, Class A) and all other Product(s) shall be packed in accordance with standard commercial practices.
- 7.9. Country of Origin. All Product(s), unless specifically exempted by the destination country's governing authorities, must be marked with the country of origin (manufacture) of the Product(s) in a conspicuous place as legibly, indelibly, and permanently as the nature of the article or container permits.
- 7.10. Harmonized Tariff Schedule. Supplier, upon request, shall provide Gogo with (i) the Harmonized Tariff Schedule number, country of origin information or certificates, manufacturer's affidavits, applicable free trade agreement ("FTA") certificates, and any other documents or information that are available to Supplier in the ordinary course as Gogo may require to comply with international trade regulations or to lawfully minimize duties, taxes, and fees, and (ii) FTA certificates for all Product(s) that qualify under one (1) or more FTAs. To the extent available to Supplier in the ordinary course and as reasonably requested by Gogo, Supplier shall provide Gogo all documents, records, and other supporting information reasonably necessary to substantiate the Product(s)' qualification under such FTA. Upon request, Supplier shall exert reasonable efforts to help Gogo to qualify the Product(s) under FTAs.
- 7.11. Shipping Documents. Upon Delivery of the Product(s) to Gogo, Supplier shall send Gogo a complete set of shipping documents including the commercial invoice, packing list, and air waybill or three original parts of the combined through bill of lading, clean without notation, necessary to release the Product(s) to Gogo's custody.
- 7.12. Certification Documents. If specified by Gogo in Exhibit A, for airborne equipment, Supplier shall attach the necessary airworthiness certification document(s), to permit installation of the Product on to an aircraft in accordance with the latest revision of the applicable airworthiness authority regulations. The certification document(s) shall show the configuration / modification status of each Product.
- 7.13. On Time Delivery ("OTD").
- a) Supplier shall achieve an OTD of [***]. In addition, Supplier shall provide an OTD of [***] within [***] of the acknowledged Order delivery date, unless otherwise agreed by the Parties.
 - b) Following Supplier's acceptance of an Order if Supplier fails to meet the agreed upon delivery dates for the Product(s), Gogo may at its sole option and in its sole discretion, claim liquidated damages for the delay in delivery of the Product(s) [***]. Supplier shall apply such amount retroactively to the dates set forth in the applicable Order and issue a corresponding debit note on any payments made. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty.
 - c) In addition to the foregoing, should Supplier fail to meet the OTD, Supplier agrees to take the following corrective actions: Supplier will prepare a corrective action analysis and recovery plan for any Product that fails to meet the OTD. Supplier shall be responsible for funding and absorbing its own costs and expenditures for doing so throughout the period of this Agreement. Supplier's senior management will present the corrective action and recovery plan to Gogo at Gogo's location.
- 7.14. Acceptance.
- a) Following the delivery of each Product by the Supplier, Gogo may conduct acceptance testing to determine

whether the Product was delivered in conformance with the requirements of this Agreement. Gogo may reject (i) any Product that does not conform to any of the Specifications; (ii) any Product that is damaged during shipment to Gogo if Supplier is responsible for shipment; or (iii) any delivery of Products which does not conform with each and every requirement identified in the applicable Order. Nothing herein shall, however, be construed to limit the warranty provisions of this Agreement.

- b) Any Products rejected by Gogo, in accordance with Section 7.14(a), within [***] after Delivery by Supplier may be returned to Supplier, and Supplier shall send a conforming Product as a replacement for each rejected Product.

8. CONFIDENTIALITY.

- 8.1. **Obligations.** Subject to Section 8.2, Recipient agrees that it will only use Discloser's Confidential Information only in the performance of its obligations under this Agreement (the "permitted purpose") and only during the term of this Agreement, and it will hold Discloser's Confidential Information in strict confidence and not disclose it to any third party except as approved in writing by Discloser. Recipient will protect Discloser's Confidential Information using the same degree of care that Recipient uses to protect its confidential materials of a similar nature, but in no case will Recipient employ less than a commercially reasonable degree of care. Recipient will not reverse engineer or attempt to derive the composition or underlying information, structure or ideas of Discloser's Confidential Information. Recipient will only permit access to Discloser's Confidential Information to those of its and its Affiliates' employees, officers, directors, contractors, subcontractors, authorized representatives, or airline partners (collectively, the "Representatives") who have a need to know for the permitted purpose, have been informed of the confidential nature of the Confidential Information, and are bound by written confidentiality obligations no less restrictive than those contained herein. All of Recipient's Representatives shall only use the Confidential Information for the permitted purpose and will be responsible for the disclosure and use of Confidential Information as though they were Recipient, and Recipient will be responsible for all violations of this Agreement resulting from the actions of its Representatives. Recipient will immediately notify Discloser upon discovery of any loss or unauthorized disclosure of Discloser's Confidential Information.
- 8.2. **Exclusions.** Recipient has no obligations under this Agreement with respect to any portion of Discloser's Confidential Information if Recipient can establish that: (a) it was publicly available at the time it was communicated to Recipient by Discloser; (b) it became publicly available subsequent to the time it was communicated to Recipient by Discloser through no fault of Recipient, or Recipient's Representatives; (c) it was in Recipient's possession free of any obligation of confidence at the time it was communicated to Recipient by Discloser; (d) it was rightfully communicated to Recipient free of any obligation of confidence subsequent to the time it was communicated to Recipient by Discloser; or (e) it was developed by employees or agents of Recipient independently of and without reference to Discloser's Confidential Information. In any dispute with respect to these exclusions, Recipient shall have the burden of proof, and such proof shall be by clear and convincing evidence. Recipient will not be in violation of this Agreement with regard to a disclosure that is in response to a requirement of applicable law, an order by a court or other governmental body, or to the extent required by the Securities and Exchange Commission in a securities filing, provided that, if feasible, Recipient provides Discloser with reasonable prior written notice of such disclosure to permit Discloser to seek confidential treatment of such information or otherwise contest or limit the disclosure thereof.
- 8.3. **Restrictions.** Recipient will not reproduce Discloser's Confidential Information in any form except as required to accomplish the permitted purpose. Any reproduction of any Confidential Information will remain Discloser's property and will contain any and all confidential or proprietary notices or legends that appear on the original. Neither Party will communicate any information to the other in violation of its confidentiality obligations to any third party.
- 8.4. Recipient's obligations of confidentiality hereunder will continue in full force and effect for five (5) years from the initial date of disclosure of such Confidential Information, or in the case of any trade secret, for as long as such Confidential Information remains a trade secret. Upon written request of Discloser, Recipient will promptly destroy or return to Discloser all of Discloser's Confidential Information in any form (including electronic media and including Recipient's notes or materials that incorporate any of Discloser's Confidential Information), except as described in the following sentence. Recipient shall not, in connection with the foregoing obligations, be required to delete Confidential Information held electronically in archive or backup systems in accordance with general systems archiving or backup policies, and Recipient's obligations under this Agreement will continue to apply to such Confidential Information.

9. TERMINATION.

- 9.1. **Termination.**
 - a) Supplier may terminate this Agreement in the event Supplier provides written notice to Gogo in accordance with Section 16.5 that Gogo failed to pay an undisputed invoice in accordance with Section 4.1 and Gogo fails to pay the undisputed amounts due within sixty (60) days from receipt of such notice.

- b) Either Party may terminate this Agreement and all Orders hereunder, immediately upon written notice of termination to the other Party, in the event the other Party: (i) becomes insolvent; (ii) makes an assignment for the benefit of creditors; (iii) files a voluntary bankruptcy petition; (iv) acquiesces to any involuntary bankruptcy petition; or (v) is adjudicated bankrupt, and in such Party is unable to or fails to continue to perform all of its obligations under this Agreement.
- c) Either Party may terminate this Agreement, immediately upon written notice of termination, in the event of a material breach of this Agreement by the other Party, if such breach remains uncured for a period of sixty (60) days after written notice of such breach (or such longer period of time that the Parties may, in good faith, agree).
- d) This Agreement will terminate immediately if the SOW is terminated in accordance with the MSA prior to the achievement of MRR as defined in the SOW.

9.2. Consequences of Termination. Upon the termination of this Agreement:

- a) Within [***] after the effective date of such termination (and if applicable, without prejudice to Section 9.2(c)), a final invoice including all fees and charges for Products and Services performed and expenses incurred prior to and including the effective date of termination shall be generated by Supplier as set forth in each applicable Exhibit, provided that the prices to be paid for Ordered Products shall be those set forth in Exhibit B, and Gogo shall pay such invoice in accordance with Section 4.1.
- b) Supplier shall deliver all Ordered Products to Gogo. Upon Gogo's compliance with its obligations pursuant to Sections 4.1 and 9.2(a), Gogo shall be deemed to have paid Supplier for the applicable Products.
- c) Subject to Gogo's compliance with its obligations pursuant to Sections 4.1 and 9.2(a), Supplier's warranty and Product Support obligations shall survive the termination of this Agreement.
- d) If the Agreement is terminated by Gogo under Sections 9.1(b) and 9.1(c) (a "Triggering Event"), Supplier will [***].
- e) Each Party shall return to the other Party all Confidential Information of the other Party (including all copies thereof) and all other papers, materials and other property of the other Party in such Party's possession, and certify that it has deleted such Confidential Information from all of its electronic media, provided, however, that both Parties may retain whatever Confidential Information of the other Party that is necessary to exercise any of such Party's surviving rights or obligations hereunder. Supplier may retain one copy of such Confidential Information, as required, for archival purposes only.

10. INSURANCE.

10.1. [***]

- 10.2. The [***] insurance coverage in Section 10.1(a) above shall include a waiver of subrogation against Customer. Insurance coverage in Section 10.1 (b) above shall (i) name Customer, its parent, subsidiaries and Affiliates as additional insured; (ii) designate Customer as primary with respect to, and not contributing to or in excess of, any other similar insurance maintained by Customer; and (iii) include a waiver of subrogation against Customer. Insurance coverage in Section 10.1(c) and Section 10.1(d) above shall (i) name Customer, its parent, subsidiaries and Affiliates as an additional insured; and (ii) include a waiver of subrogation against Customer.
- 10.3. For all above mentioned policies such endorsements shall be evidenced on a certificate of insurance furnished to Customer and must provide [***] written notice in the event of cancellation of any such policy.
- 10.4. Supplier will use commercially reasonable efforts to cause any company, vendor or subcontractor being engaged for work under this Agreement, including without limitation under any Order, is bound to substantially similar terms under this Section, as appropriate or applicable, and that appropriate Certificates of Insurance or other evidence of such insurance coverage shall be provided to Supplier.

11. INDEMNIFICATION.

11.1. Indemnification by Supplier.

- 11.1.1. Supplier shall indemnify, defend (at Supplier's expense) and hold Gogo, its Affiliates and their respective officers, directors, agents and employees harmless from and against any court costs, reasonable attorneys' fees

and expenses, settlement expenses, court-awarded damages and reasonable costs of investigation arising out of or resulting from: [***].

11.1.2. [***]

- 11.2. **Indemnification by Gogo.** Gogo shall indemnify, defend (at Gogo's expense) and hold Supplier, its Affiliates and their respective officers, directors, agents and employees harmless from and against any court costs, reasonable attorneys' fees and expenses, settlement expenses, court-awarded damages and reasonable costs of investigation arising out of or resulting from (i) any bodily injury or real or tangible personal property damage arising out of Gogo's negligence or willful misconduct; and (ii) any third-party claim that such third party's patent, trademark, trade secret, copyright or trade dress right is infringed, misappropriated or violated by any Gogo Materials.
- 11.3. **Indemnification Procedures.** Promptly after receipt by an indemnified party of a notice of any claim or the commencement of any action, such indemnified party shall: (a) notify the indemnifying party in writing of any such claim; (b) provide the indemnifying party with reasonable assistance to settle or defend such claim, at the indemnifying party's own expense; and (c) grant to the indemnifying party the right to control the defense and/or settlement of such claim, at the indemnifying party's own expense; provided, however, that: (i) the failure to so notify, provide assistance and grant authority and control shall only relieve the indemnifying party of its obligation to the indemnified party to the extent that the indemnifying party is prejudiced thereby; (ii) the indemnifying party shall not, without the indemnified party's consent (such consent not to be unreasonably withheld or delayed), agree to any settlement that: (A) makes any admission on behalf of the indemnified party; or (B) consents to any injunction against the indemnified party (except an injunction relating solely to the indemnified party's continued use of any infringing Product or Gogo Materials); and (iii) the indemnified party shall have the right, at its expense, to monitor any legal proceeding through legal counsel of its choosing, but shall have no right to settle a claim without the indemnifying party's written consent.

12. LIMITATION OF LIABILITY.

- 12.1. EXCEPT IN CONNECTION WITH (a) SECTION 8, (b) SECTION 11, AND (c) EITHER PARTY'S INFRINGEMENT OR VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, OR THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, SUBCONTRACTORS OR EMPLOYEES, BE LIABLE TO THE OTHER PARTY FOR ANY REASON, WHETHER IN CONTRACT OR IN TORT, FOR ANY DIRECT DAMAGES ARISING OUT OF OR BASED UPON THIS AGREEMENT (INCLUDING ALL ORDERS) EXCEEDING [***] REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT.
- 12.2. **No Consequential Damages.** EXCEPT IN CONNECTION WITH (a) SECTION 8, (b) SECTION 11, AND (c) EITHER PARTY'S INFRINGEMENT OR VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, OR THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, SUBCONTRACTORS OR EMPLOYEES, BE LIABLE TO THE OTHER PARTY UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR EXEMPLARY, PUNITIVE, INDIRECT, SPECIAL, LOST PROFITS, ECONOMIC, CONSEQUENTIAL, LOSS OR DAMAGE TO DATA OR SIMILAR DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. PRODUCT MANAGEMENT.

- 13.1. **Obsolescence.** Supplier shall maintain an obsolescence management program throughout the life cycle of a Product whereby Supplier shall undertake an obligation to [***].
- 13.2. In accordance with Section 13.1, Supplier shall provide Gogo with written notification of an obsolescence issue [***].
- 13.3. **Product Change.** The Supplier shall not make a Change to the Product affecting the form, fit or function of the Product, including (a) applying a Change to the design or modification of the Product; and (b) discontinuing or removing any of the Products covered under this Agreement. Either Party may submit proposals for Changes. For every request for a Change, the Supplier shall submit to Gogo a proposal identifying: (1) a detailed technical explanation of and justification for the contemplated Change; (2) where relevant, a fully itemized and detailed cost explanation of any potential associated costs of Change, as defined below, that Supplier believes should be charged to Gogo; and (3) any impact to the schedule, milestones, guarantees, production rates, forecasts or logistic conditions for the Product. This proposal shall be submitted within twenty-one (21) calendar days from receipt of or need for any request for a Change. Any information or additional cost not contained in the submitted proposal will be deemed waived by the Supplier for consideration of approval of the request for Change.

- 13.4. Gogo commits to review any proposals for Change issued by the Supplier. Gogo shall reserve the discretionary right to refuse a request for Change submitted by the Supplier, with such rejection being reasonably justified in writing by Gogo. In the event that Gogo rejects the proposed Change, which cannot be circumvented by the Supplier, then Gogo shall have the option to make a last time buy of the Product.
- 13.5. For all Costs of Change associated with all reasons other than a change in Regulation: (a) the Supplier shall bear the Costs of Change deriving from all minor Changes implemented by the Supplier at any time during the Agreement, and (b) Cost of Change related to Commercial Off The Shelf (“COTS”) based equipment which are requested by Gogo in the specification shall be mutually agreed by the Parties.

14. PERFORMANCE REQUIREMENTS.

- 14.1. **Change in Supplier’s Manufacturing Locations.** In the event that Supplier intends to close or change the manufacturing locations of any Product delivered under this Agreement, Supplier shall, at a minimum, give Gogo [***] advance notice in writing of its intent to close or change the current manufacturing locations. Upon receipt of written notification from Supplier, Gogo may request at its option, and Supplier shall provide, adequate assurances, including a comprehensive plan, detailing how Supplier intends to meet its performance obligations and delivery of conforming Product as required under this Agreement. In the event that Supplier fails to provide such written notification and adequate assurance that Supplier does not intend to breach its obligations, Gogo at its option may terminate this Agreement in whole or in part without obligation or liability of any kind whatsoever to Supplier and without waiving any other rights or remedies under this Agreement, at law or in equity. Gogo shall be entitled to recover all costs it reasonably incurs as a result of Supplier’s breach of its obligations hereunder.
- 14.2. **Personnel.** While at a Gogo facility, Supplier’s personnel, and subcontractors shall comply with reasonable requests and standard procedures and policies of Gogo. Supplier’s personnel and subcontractors will conduct themselves in a businesslike manner. If Gogo determines in good faith that a particular Supplier employee or agent is not conducting him or herself in accordance with this Agreement, then Gogo may provide Supplier with notice thereof and Supplier shall remove and replace such individual. Gogo reserves the right to deny access to its premises to any such individual.
- 14.3. **Proprietary Rights.**
- 14.3.1. With respect to any Intellectual Property developed in connection with this Agreement, the provisions of Section 2.9 of the MSA will be apply, *mutatis mutandis*, and are incorporated herein by this reference.
- 14.3.2. **Prohibited Acts.** Each Party shall not:
- a) take any action that may interfere with the other Party’s Intellectual Property rights, including such other Party’s ownership or exercise thereof;
 - b) challenge any right, title or interest of the other Party in such other Party’s Intellectual Property rights;
 - c) make any claim or take any action adverse to such other Party’s ownership of its Intellectual Property rights;
 - d) register or apply for registrations, anywhere in the world, the other Party’s Trademarks or any other Trademark that is similar to such other Party’s Trademark[s] or that incorporates such Trademarks in whole or in confusingly similar part;
 - e) use any mark, anywhere, that is confusingly similar to the other Party’s Trademarks;
 - f) misappropriate any of the other Party’s Trademarks for use as a domain name without such other Party’s prior written consent; or
 - g) alter, obscure or remove any of the other Party’s Trademarks or trademark or copyright notices or any other proprietary rights notices placed on the products purchased under this Agreement (including Products), marketing materials or other materials.
- 14.4. **Quality Assurance.** Supplier will comply with Rev. P of Gogo’s Quality Management Document Number [***], which is herein incorporated into this Agreement by reference and which the Supplier acknowledges having received and understood. Exhibit E hereto sets forth exceptions and responses to Rev. P of Gogo’s Quality Management Document Number [***] as agreed to by the Parties.
- 14.5. **Export Control Compliance.** Prior to the first shipment to Gogo of each unique part number of any of the Products, and

prior to the first shipment following a change to the export classification of any Products, Supplier shall provide to Gogo written certification for each such part number of the following: for each Product supplied from the United States, its EAR Export Control Classification Number (“ECCN”); and (b) for each Product supplied outside of the United States, its Harmonized Tariff Schedule (“HTS”) number.

- 14.6. Documentation. Supplier shall provide to Gogo all technical manuals applicable to the Products as outlined in Exhibit A and Exhibit C.
- 14.7. Configuration Management. Supplier shall:
- a) make provisions for the identification, control, monitoring and reporting of the Configuration Management (“CM”) activities using the configuration management system referenced in Section 15.2 of the SOW;
 - b) ensure that the Design Data under Supplier’s Design Authority is created, submitted and can be readily integrated or incorporated into the Gogo Configuration Management Database (“CMDB”);
 - c) be given restricted access, when required or where applicable, to the Gogo CMDB;
 - d) assure that any Supplier employees receiving access to the CMDB shall be notified of the confidentiality obligations of Section 8 of this Agreement; and
 - e) notify Gogo within [***] following employment termination of employees who have access to the Gogo CMDB.
- 14.8. Hazardous and Conflict Minerals. Upon Gogo’s request, Supplier shall provide to Gogo written certifications of Supplier’s compliance with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and Rule 13p-1 and Form SD under the Securities Exchange Act of 1934.

For each shipment of Products, Supplier shall provide Gogo, in writing, sufficient advance warning and notice (in addition to including appropriate labels on Products, containers and packing) of any hazardous or restricted material that is an ingredient or a part of the shipment, together with such special handling instructions as may be necessary to advise logistics providers, handlers of the Products and personnel of how to exercise that measure of care and precaution that will comply with any applicable Laws and prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Products, containers and packing.

- 14.9. Mean Time Between Failures (“MTBF”) Guarantee. In addition to the warranties and obligations contained herein, Supplier warrants that the Products shall meet the MTBF guarantees as specified in the Agreement.
- a) MTBF Analysis & Reporting. The Parties agree as follows: (i) Gogo may, at its discretion, provide periodic reports of Supplier’s MTBF performance with respect to the Products; and (ii) Supplier shall provide Gogo with access and available data required to analyze MTBF of Products for the returned/repaired Products including but not limited to:
 - i. Analysis of MTBF; and
 - ii. Analysis reports including but not limited to summary of warranty returns, confirmation of fault or no fault found, root cause analysis and corrective actions.Supplier shall, on the [***], provide Gogo with an electronic copy report detailing the required information as specified above, throughout the applicable Warranty Period.
 - b) MTBF Remedies. In the event the Products (hardware and software) do not meet the MTBF Guarantee as specified under the terms of this Agreement, Supplier shall provide: (i) within [***] following Gogo notice, mutually agreed to quantity spares to meet the availability criteria to Gogo on a loan basis until the MTBF Guarantee Values are met; (ii) Immediate technical support for investigation via telephone and email; (iii) Supplier will work with Gogo to achieve a recovery plan. Supplier agrees to extend the Warranty Period for all effected components until such time as the quality or workmanship are corrected to Gogo’s satisfaction, which shall be reviewed in a timely manner and not be unreasonably withheld. If the MTBF problem continues to persist beyond a period of [***] and in the event that Gogo receives a reimbursement claim for labor associated with the removal of the Defective Product, then the Supplier will reimburse Gogo amount of such claim.
 - c) Measured MTBF = Cumulative Flight Hours x Product Quantity / Number of Verified Failures. MTBF will be measured at the [***]. MTBF measurements will begin [***]. A “Verified Failure” means a failure corrected by (i) pulling and replacing a Product which has been verified as a failure by Supplier or (ii) download of a critical

15. REPRESENTATIONS AND WARRANTIES.

Supplier represents and warrants to Gogo that as of the date of this Agreement and at all times after the Effective Date of this Agreement that:

- 15.1. Supplier is duly organized and validly existing and has the power and authority to execute and deliver, and to perform its obligations under, this Agreement;
- 15.2. Supplier’s performance under this Agreement does not and shall not violate any law, rule, or regulation;
- 15.3. All Services will be performed in a good and workmanlike manner in accordance with applicable industry standards and practices and the Products will comply with the Specifications for such Services and Products set forth in Exhibit A;
- 15.4. Supplier possesses the necessary equipment, personnel, and other expertise necessary to provide the Services and Products as set forth herein; and
- 15.5. The Product delivered to Gogo under this Agreement will be free from any viruses, disabling programming codes, instructions, or other such items that may interfere with or adversely affect Gogo’s permitted use of the Product.

16. GENERAL.

- 16.1. **Language and Measurements.** The Parties hereto have agreed that this Agreement be drafted in English only. All contractual documents and all correspondence, invoices, notices and other documents shall be submitted in English. Any necessary conversations shall be held in English. Gogo shall determine whether measurements will be in the English or Metric system or a combination of the two systems. Supplier shall not convert measurements, which Gogo has stated in an English measurement system into the Metric system in documents furnished to Gogo.
- 16.2. **Assignment.** Neither Party may assign or transfer its rights or obligations in this agreement (by operation of law or otherwise), in whole or in part, to any person or entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that a Party may assign such rights or obligations upon written notice to the non-assigning Party to (a) a successor or surviving corporation resulting from a merger, consolidation, sale of assets or stock or other corporate reorganization, or (b) its parent or Affiliate, in each of (a) and (b) upon conditions that the assignee will assume all of the Party’s obligations hereunder, is fully capable of fulfilling the assignor’s obligations under this Agreement, and does not engage in a business that is competitive with the business of the non-assigning Party. Any attempt to assign or delegate in violation of this clause will be void.
- 16.3. **Force Majeure.** Either Party hereto shall be excused for delays or interruptions in the performance of its obligations under this Agreement or applicable SOW to the extent such delays or interruptions are otherwise not foreseeable and beyond the reasonable control of such Party, including but not limited to delays or interruptions due to war (whether or not actually declared), sabotage, insurrection, rebellion, riot or other act of civil disobedience, act of a public enemy, failure of or delay in transportation, any governmental act, judicial action, priorities given U.S. Government procurements, labor dispute, shortage of labor, fuel, raw material or machinery, fire, accident, explosion, epidemic, pandemic, quarantine, storm, flood, earthquake, or other Acts of God (“Force Majeure”). The Parties specifically agree that rain, snow or other ordinary weather conditions (excluding tornadoes, hurricanes, and other major storms) do not constitute Force Majeure conditions. If any such Force Majeure occurs, the Party affected by such Force Majeure shall promptly notify the other Party in writing and use its best efforts to abate the effect of such Force Majeure and restore compliance with the terms of an Agreement as soon as possible.
- 16.4. **Severability.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the remaining provisions of this Agreement shall be enforceable to the maximum extent possible.
- 16.5. **Notices.** Each Party must provide notices or other communications to the other Party in writing by: (a) certified mail, hand delivery or delivery by a courier service to the address below set forth (or such other address as may have been furnished by or on behalf of such Party by like notice), (b) facsimile with receipt of a “transmission ok” acknowledgement, or (c) e-mail. Communications sent by facsimile or e-mail shall be deemed effectively served upon dispatch, if receipt is confirmed electronically. Communications sent by certified mail or courier service shall be deemed effectively served [***] after deposit. All other general correspondence may be communicated by electronic means (e-mail).

Gogo

Gogo Business Aviation LLC
105 Edgeview Drive
Broomfield, CO 80021
Attn: General Counsel, legalnotices@gogoair.com

Supplier

Hughes Network Systems, LLC
11717 Exploration Lane
Germantown, MD 20876
Attn: General Counsel, legalnotices@hughes.com

- 16.6. **Waiver.** No waiver by either Party of a breach of any term, provision or condition of this Agreement by the other Party shall constitute a waiver of any succeeding breach of the same or any other provision hereof. No such waiver shall be valid unless executed in writing by the Party making the waiver.
- 16.7. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.
- 16.8. **Headings.** The section and subsection headings used in this Agreement are intended for reference purposes only and shall not affect the interpretation or construction of any provision of this Agreement.
- 16.9. **Construction.** Each Party acknowledges that this Agreement was drafted jointly by the Parties, and it shall be construed neither against nor in favor of either Party. The term “including” or “include”, as used in this Agreement, shall mean “including, but not limited to”.
- 16.10. **Third Party Beneficiaries.** Nothing contained in this Agreement is intended to confer nor shall confer upon any person (other than the Parties hereto and their permitted assigns) any rights, benefits or remedies of any kind or character whatsoever, and no such person shall be deemed a third party beneficiary under or by reason of this Agreement.
- 16.11. **Accrued Rights.** The termination or expiration of this Agreement shall not affect or prejudice either Party’s accrued rights hereunder.
- 16.12. **Governing Law, Venue and Language.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS AGREEMENT. VENUE FOR ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE EXCLUSIVELY THE STATE OR FEDERAL COURTS LOCATED IN DENVER, COLORADO. THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF SUCH COURTS. NOTHING IN THIS AGREEMENT AFFECTS ANY STATUTORY RIGHTS OF CONSUMERS THAT CANNOT BE WAIVED OR LIMITED BY CONTRACT. THE PARTIES WAIVE JURY TRIAL WITH RESPECT TO ANY DISPUTE UNDER THIS AGREEMENT.
- 16.13. **Dispute Resolution.** Prior to either Party initiating a formal dispute resolution procedure with respect to any dispute, that Party shall attempt to resolve such dispute informally, as follows: (a) the Parties’ respective project managers for the applicable Exhibits shall attempt in good faith to resolve all disputes. If the Project Managers are unable to resolve a dispute in an amount of time that both Parties deem reasonable under the circumstances, then upon written notice to the other Party, either Party may refer the dispute to the applicable senior corporate executives for resolution pursuant to Section 16.13(b); (b) within [***] after receipt of a written notice under Section 16.13(a), the designated senior corporate executives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal dispute resolution proceeding. All negotiations shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for these proceedings shall not be used as evidence by the other Party in any subsequent litigation, provided, however, the underlying facts supporting such materials may be subject to discovery. Notwithstanding the foregoing, each Party shall be entitled to injunctive relief from a court of competent jurisdiction without the need to post any bond or demonstrate actual damages in the event of a breach or anticipatory breach by the other Party that would cause irreparable injury and damage.
- 16.14. **Jury Trial Wavier.** Each Party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.
- 16.15. **Retention of Records.** For purchases supporting Gogo, Supplier’s quality assurance, development and production records shall be maintained on file at Supplier’s facility and available to the relevant Aviation Authority (or equivalent governmental agency in Supplier’s country that has been granted jurisdiction by the FAA) and Gogo’s Authorized Representatives. Supplier shall retain such records for a period of not less than the required retention of the Aviation Authority or ten (10) years from the date of final payment under the applicable Order for all Products unless otherwise

specified on the Order.

- 16.16. Relationship of the Parties. The relationship between the Parties to this Agreement is and shall be that of independent contractors. It is expressly agreed that nothing in this Agreement shall be construed to create or imply a partnership, joint venture, agency relationship or contract of employment. Neither Party shall have the authority to make any statement, representation nor commitment of any kind, or to take any action that shall be binding on the other Party except as authorized in writing by the Party to be bound. Personnel supplied by each Party hereunder are not the other Party's employees or agents, and each Party assumes full responsibility for: (a) its own acts, (b) compensation of its personnel, and (c) the payment of worker's compensation, disability benefits, or unemployment insurance or for withholding or paying employment related taxes for any its personnel.
- 16.17. Press Releases. Neither Party shall issue any press release concerning this Agreement without the other Party's consent. Neither Party may use the name, trade name, trademark, logo, acronym or other designation of the other in connection with any press release, advertising, publicity materials or otherwise without the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed.
- 16.18. Third Party Code of Conduct. Supplier shall comply with Gogo's Third Party Code of Conduct in the performance of the Services hereunder. The Third Party Code of Conduct is located at <http://www.gogoair.com/policies>.
- 16.19. Survival. The following Sections of this Agreement shall survive termination or expiration of this Agreement: 1, 4.3, 4.4, 8, 9.2, 11, 12, 14.3 and 16; Exhibit C with respect to any Products sold prior to termination or expiration; and Exhibit D.
- 16.20. Order of Precedence. Any inconsistency in the provisions of this Agreement will be resolved by giving precedence in the following order: (1) The applicable Amendment that gives rise to the inconsistency in provisions, (2) the Agreement, (3) Exhibits, and (4) any other document incorporated by express reference as part of the Agreement; such that the provision in the higher ranked document, to the extent of the inconsistency, will prevail.
- 16.21. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect the supply of Products to Gogo and Product Support and supersedes any prior representations or agreements, oral or written, and all other communications between the Parties relating to the supply of Products to Gogo and Product Support. Notwithstanding the foregoing, this Agreement shall not void or modify any transfers, warranties, or indemnities of Supplier to Gogo contained in any prior agreements that relate to the Products. This Agreement will not be varied except in writing signed by an Authorized Representative of each Party.

IN WITNESS WHEREOF the Parties hereto, by their duly Authorized Representatives, have executed this Agreement as of the date first set forth above.

GOGO BUSINESS AVIATION LLC

By: /s/ Mike Begler
Name: Mike Begler
Title: SVP, Production Operations

HUGHES NETWORK SYSTEMS, LLC

By: /s/ Sean P. Fleming
Name: Sean P. Fleming
Title: VP and Associate General Counsel

