



## General Product Retail Agreement

This agreement ("Agreement") is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE, a District of Columbia corporation ("NRTC" or "Seller"), and \_\_\_\_\_, a \_\_\_\_\_ ("Buyer"). The Seller's address is 2121 Cooperative Way, Herndon, VA 20171 (fax: 703-787-9301) and the Buyer's address is \_\_\_\_\_ (fax: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_).

The parties agree that NRTC desires to sell certain telecommunications-related electronics equipment ("Products") as set forth in Attachment A (which may be amended from time to time by NRTC), and Buyer desires to buy such Products under the terms of this Agreement;

THEREFORE, in consideration of the mutual obligations set forth below, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Buyer and Seller agree to the following:

1. Price and Quantity. Products will be ordered by Buyer and shipped by Seller at prices and quantities as agreed to by the parties and subject to the terms and conditions of sale and shipment established by NRTC from time to time and in effect at the time Seller accepts the order. Seller reserves the right to change prices upon reasonable notice to Buyer. Seller agrees to exercise commercially reasonable best efforts to supply Products to Buyer in a timely fashion.
2. Taxes. The parties agree that payment of any taxes levied on Products (other than taxes based on income) shall be the Buyer's responsibility (including, without limitation, federal, state, local, use or similar taxes), and Buyer shall report and pay such taxes to the appropriate taxing authority as required by law.
3. Payment. Unless otherwise agreed in writing, Buyer shall pay for all Products by a check or electronic bank draft net 15 days from the date of delivery. Subject to applicable law, late payments shall be subject to an additional fee of up to 1.5% per month.
4. Shipping. All Products shall be sent in accordance with NRTC's then current shipping policies, including, without limitation, the use of cartons bearing external art work or labels as designated by NRTC. Buyer agrees to pay for all shipping, handling, and insurance costs. Risk of loss shall transfer from Seller to Buyer either at the point where Seller delivers the goods to a common carrier of its choice or at Seller's shipping dock.
5. Return Policy. All defective products returned to Seller will be replaced and shipped prepaid to Buyer or replaced subject to the manufacturer's warranty. Any Products received by Buyer and held more than 14 days are returnable at the sole discretion of Seller. Buyer agrees to pay a 15% restocking fee for all returned Products which are not defective in the reasonable judgment of Seller. Buyer agrees to obtain a Returned Merchandise Authorization number or to follow similar policies of Seller prior to return.

6. Notices. Any notice given under this Agreement shall be in writing and sent via certified or registered mail or via facsimile to the address or number listed in the first paragraph of this Agreement. Notice shall be deemed sent upon receipt or three days after mailing, whichever happens first.

7. Product modifications. Buyer acknowledges that the manufacturer of Products sold under this Agreement may change Product specifications at any time for various reasons, such as to improve quality, comply with applicable law, or to adopt changes in materials or component sourcing. While Seller shall provide reasonable notice of such changes whenever possible, Buyer agrees that any changes are outside of NRTC's control and do not constitute a breach of this Agreement.

8. Warranty and Liability. ANY PRODUCTS SOLD BY SELLER UNDER THIS AGREEMENT ARE PROVIDED WITH A MANUFACTURER'S WARRANTY. SELLER MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANYONE ELSE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, USE, OR GOODWILL ON A CONTRACT, TORT, OR OTHER LEGAL THEORY. SELLER'S LIABILITY SHALL BE LIMITED TO THE PURCHASE PRICE OF PRODUCTS SOLD.

9. Miscellaneous. This Agreement, including attachments, constitutes the entire agreement between Buyer and Seller with respect to the subject matter contemplated herein, and supersedes all representations, whether express, implied, oral, or written. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia. Any waiver by either party of any right or remedy hereunder shall be effective only if it is in writing and signed by an authorized representative. No delay or omission by a party to exercise any right related to any breach or default of this Agreement will impair any such right or operate as a waiver. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall form one and the same instrument. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable for any reason, such determination shall not affect the remainder of this Agreement, and such remainder shall remain in full force and effect.

10. Force Majeure. The Seller will not be liable for loss, damage or delay caused by strikes or labor difficulties, lockouts, acts or omissions of any governmental authority, insurrection, riot, war or similar hostility, fires, floods, Acts of God, breakdown of essential machinery, accidents, cargo or material shortages, delays in transportation, inability to obtain labor, materials or parts from usual sources or otherwise due to causes beyond the Seller's reasonable control. In the event of any such delay, performance will be postponed by such length of time as may be reasonably necessary under the circumstances.

11. Disputes. The parties agree to make a good faith effort to settle any disputes prior to submission of the matter to arbitration. Any dispute or claim arising out of or related to this Agreement, its interpretation, performance, breach, or rescission shall be decided by final and binding arbitration according to the Commercial Arbitration Rules of the American Arbitration Association. The federal and state courts of the Commonwealth of Virginia shall have exclusive jurisdiction over any matters not resolved by arbitration. The arbitration shall take place in Virginia and be conducted by three (3) arbitrators selected by the American Arbitration Association.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

BUYER:

SELLER:

\_\_\_\_\_

NATIONAL RURAL TELECOMMUNICATIONS  
COOPERATIVE

Phone #: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## **Attachment A**

### **To General Product Retail Agreement**

The products include, but are not limited to, the following:

- A. DIRECTV receivers and related hardware, including, without limitation:
  - 1. Thomson Consumer Electronics-manufactured DBS units;
  - 2. Sony-manufactured DBS units;
  - 3. Uniden-manufactured DBS units; or
  - 4. Hughes-manufactured DBS units.
- B. Util-LINK-manufactured LINK units
- C. DirecPC system
- D. DirecDuo systems
- E. Surge Protection Equipment and Uninterruptible Power Supplies (UPSs)
- F. WebTV
- G. Wireless two-way radios, applications, hardware, and software.
- H. Personal Computers
- I. Consumer electronics
- J. Other products as determined by NRTC

### **Required Accompanying Documents**

- A. Copy of state sales tax exempt certificate
- B. Federal I. D. Number

**NRTC TERMS AND CONDITIONS OF SALE**  
**(LARGE PRINT VERSION AVAILABLE UPON REQUEST)**

**1. General.** The terms and conditions contained herein constitute the complete agreement between NRTC and Purchaser regarding this sales transaction (the "Agreement") and supersede any and all prior communications concerning this specific transaction. No course of prior dealings and no usage of the trade shall be relevant to supplement or explain any terms used in this Agreement. This Agreement is in addition to any relevant NRTC/Member Agreement, and in the event of conflicting provisions, the more restrictive provision shall govern, as determined by NRTC.

Acceptance by NRTC of Purchaser's order is expressly limited to and conditioned upon Purchaser's acceptance of the terms and conditions contained herein, which may not be changed or waived unless signed in writing by a duly authorized representative of NRTC at its home office in Herndon, Virginia. Any additional, inconsistent or different terms and conditions stated by Purchaser or contained in Purchaser's purchase order or other documents supplied by Purchaser are hereby expressly objected to and rejected.

**2. Orders.** All orders are received subject to acceptance by a duly authorized representative of NRTC at its home office in Herndon, Virginia. Typographical and clerical errors in quotations, orders, and acknowledgments are subject to correction by either party if made within fifteen (15) days from the date of the making thereof.

**3. Payment Terms.** Unless specified to the contrary in writing by NRTC's CFO or CEO, payment terms are net fifteen (15) days from the date of the invoice. If payments are not made when due, Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of one and one-half percent (1½%) per month or the highest applicable rate allowed by law on all such overdue amounts. Purchaser shall bear all costs of collection incurred by NRTC for overdue amounts, including attorneys fees.

Unless otherwise specified, all payments of invoices shall be in United States dollars and should be remitted to NRTC by mail at the address indicated on the invoice or by electronic funds transfer to the account and according to the routing on the invoice. Receipt of payment will be determined by the date the payment is received at NRTC's remittance address or when electronic funds have been received in our designated account. If Purchaser delays delivery, date of readiness for delivery shall be the date of delivery for payment purposes.

**4. Prices.** Prices are subject to adjustment to NRTC's prices in effect at the time of shipment. All prices shall be in United States dollars, unless otherwise specified. Unless otherwise specified, prices do not include sales, use, services excise or other taxes of any kind, and Purchaser agrees to pay such taxes upon NRTC's request or to provide NRTC with tax exemption certificate(s) applicable to the taxable transaction(s). Unless specified to the contrary in Section 5, prepaid freight and installation costs (where applicable) will be in addition to the purchase price. Where price expressly includes transportation or other shipping charges, any increase in transportation rates or other shipping charges from date of quotation or purchase order shall be paid by Purchaser.

**5. Shipment.** Unless otherwise specified herein, all orders are delivered F.O.B. point of shipment, with the method of transport and route to be selected by NRTC. Where scheduled delivery is delayed due to causes specified in Section 6 below, NRTC may deliver such product(s) by moving it to storage for the account of and at the risk of Purchaser. NRTC reserves the right to deliver in installments. Any special handling costs and costs of insurance shall be paid by Purchaser. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser and delivery shall be deemed to be complete upon delivery of the product(s) by NRTC to a private or common carrier or upon moving into storage, whichever occurs first, at the point of shipment.

**6. Delivery Dates.** NRTC endeavors to make shipments of orders as scheduled; however all shipment dates are approximate, and NRTC reserves the right to readjust shipment schedules. If NRTC suffers delay in performance or delivery due to any cause beyond its control, including acts of nature, acts or omissions of Purchaser, acts of government, fires, floods, strikes or other labor disturbances, war, riot, sabotage or delays in obtaining from others suitable services, materials, components, equipment or transportation, the time of performance or delivery shall be extended for a period of time equal to the period of the delay and its consequences. NRTC will give to Purchaser notice in writing within a reasonable time after NRTC becomes aware of any such delay.

**7. Order Cancellation.** All orders subject to this Agreement are mutually understood by NRTC and Purchaser to be firm, non-cancelable purchase orders. Notwithstanding the foregoing, NRTC may, in its sole discretion allow Purchaser to cancel an order upon Purchaser's prior written notice and upon Purchaser's payment of reasonable and proper termination charges, including, but not limited to all direct and indirect costs associated with the order incurred prior to the effective date of notice of termination and all charges incurred by NRTC in respect to the termination. In addition, a fixed sum of fifteen percent (15%) of the final total selling price for cancellation of the order will be due from Purchaser to compensate NRTC for disruption in scheduling, restocking and other indirect costs.

**8. Order Modifications/Changes.** Purchaser-requested order changes, including those affecting the identity, scope and delivery of the product(s) must be documented in writing and approved by an officer of NRTC of the senior vice president level (or higher), and NRTC reserves the right to reject any change it deems inadvisable, inconsistent with its policies or incompatible with its capabilities. If any such change causes an increase or decrease in the cost of or the time required for performance of this order, an equitable adjustment shall be made in the order price or delivery schedule or both, and the order shall be modified in writing accordingly.

**9. Claims.** Purchaser's claims for lot shortages, correction of erroneous order charges or other errors must be made in writing and delivered to NRTC at its home office in Herndon, Virginia within fifteen (15) days of Purchaser's receipt of the product(s). Claims outside of this time period will be disallowed.

**10. Returned Goods.** If, upon formal inspection and/or testing of the product(s), Purchaser is of the opinion that the product(s) is defective or otherwise unacceptable, Purchaser shall notify NRTC in writing. Prior to making any return to NRTC, Purchaser must obtain a Return Authorization ("RA") from a duly authorized representative of NRTC. The following conditions also apply to returns: (1) all products returned to NRTC must include the RA and must be properly packed and shipped; delivery of returns without the RA or returns not properly packed and/or shipped will not be accepted; (2) all returns are subject to inspection and/or testing by NRTC as it deems appropriate. If NRTC determines that the returned product(s) appears to be in compliance with order specifications, it shall notify Purchaser; (3) all product(s) must be returned by delivery F.O.B. destination to NRTC-specified locations. Title and risk of loss on all product(s) shall remain with Purchaser until such returned product(s) is received by NRTC; (4) NRTC will allow a credit on all defective product(s) returned in accordance with this paragraph, calculated on a last invoice basis; (5) all product(s) under the warranty of Section 11 will be repaired or replaced at the original invoice price. Purchaser shall not be charged for parts and labor associated with replacement or repair. All returns are subject to the provisions of this Section and Section 9 governing claims. Any product(s), which has been modified, altered, damaged or used by Purchaser, may not be returned.

**11. Limited Warranty.** Unless otherwise provided in a third party warranty or licensing agreement, NRTC warrants that at the time of shipment, the product(s) shall be compatible with and perform with commercially available computer equipment with enclosed power supplies, shall be of marketable quality and free from defects in material and workmanship and shall be of the kind and quality designated or specified by NRTC in writing. This warranty shall only apply to product defects reported in writing to NRTC within ninety (90) days from the latter of the date of shipment or the date of the NRTC invoice. This warranty is strictly limited and does not apply or extend to altered products(s) or damage caused by accident, the elements, abuse, misuse, temporary heat, overloading or by erosive or corrosive substances or the alien presence of contaminants in the product(s).

**EXCLUSIONS FROM WARRANTY: THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES, ORAL OR EXPRESSED OR IMPLIED, INCLUDING ALL WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION OF THE PRODUCT(S). THERE ARE NO EXPRESS WARRANTIES OTHER THAN THOSE CONTAINED IN THIS SECTION 11 AND TO THE EXTENT PERMITTED BY LAW THERE ARE NO IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. THE PROVISIONS OF THIS SECTION 11 AS TO DURATION AND LIMITATION OF LIABILITY SHALL BE THE SAME FOR BOTH IMPLIED WARRANTIES (IF ANY) AND EXPRESSED WARRANTIES.**

Satisfaction of this warranty is limited to: (a) the replacement of the product(s) by NRTC; (b) repair or modification of the product(s) by NRTC; or (c) issuance of a credit for the non-conforming product(s). The foregoing are the Purchaser's exclusive remedies and the extent of NRTC's liability for breach of implied (if any) and express warranties, representations, instructions or defects from any cause in connection with the sale or use of the product(s). **IN NO EVENT WILL NRTC BE LIABLE FOR INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND. NRTC'S MAXIMUM CUMULATIVE LIABILITY RELATIVE TO ALL OTHER CLAIMS AND LIABILITIES, INCLUDING THAT WITH RESPECT TO DIRECT DAMAGES AND OBLIGATIONS UNDER ANY INDEMNITY, WHETHER OR NOT INSURED, WILL NOT EXCEED THE COST OF THE PRODUCTS GIVING RISE TO THE CLAIM OR LIABILITY, REGARDLESS OF ANY ADVICE OR RECOMMENDATION THAT MAY HAVE BEEN RENDERED CONCERNING THE PURCHASE OR USE OF THE PRODUCT(S). ANY ACTION AGAINST NRTC MUST BE BROUGHT WITHIN EIGHTEEN MONTHS AFTER THE CAUSE OF ACTION ACCRUES. THESE DISCLAIMERS AND LIMITATIONS OF LIABILITY WILL APPLY REGARDLESS OF ANY OTHER CONTRARY PROVISION OF THE AGREEMENT AND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT OR OTHERWISE, AND FURTHER WILL EXTEND TO THE BENEFIT OF NRTC'S VENDORS AND OTHER AUTHORIZED RESELLERS AS THIRD-PARTY BENEFICIARIES. EACH PROVISION IN THE AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTY OR CONDITION OR EXCLUSION OF DAMAGES IS SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND IS TO BE ENFORCED AS SUCH.**

**12. Resolution of Disputes.** In the event of a dispute between NRTC and Purchaser arising out of this Agreement, the parties shall meet and negotiate in good faith to attempt to resolve the dispute. In the event the dispute is not resolved within thirty (30) days of the date one party notified the other party in writing of the dispute, and if any party wishes to pursue the dispute, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association. In no event may arbitration be initiated more than one (1) year following the sending of written notice of the dispute. Any arbitration proceeding under this Agreement shall be conducted in the Commonwealth of Virginia in the county designated by NRTC. The arbitrators shall have no authority to award any punitive or exemplary damages, or to vary or ignore the terms of this Agreement, and shall be bound by controlling law.

**13. Licensed Equipment and Software.** Products comprised of licensed equipment or software may be subject to additional terms and conditions set forth in separate agreements that will control to the extent necessary to resolve any conflicts with the warranty terms and conditions stated herein.

**14. Intellectual Property.** NRTC will defend any suit or proceeding brought against Purchaser based on a claim that the design or construction of the product(s) sold or licensed hereunder by NRTC infringe any U.S. Patent, Copyright or Mask Work Registration, provided that Purchaser promptly notifies NRTC of any such claim and resulting suit or proceeding in writing and further provided that, at NRTC's expense: (a) Purchaser gives NRTC the sole right to defend or control the defense of the suit or proceeding, including settlement, and (b) Purchaser provides all necessary information and assistance for that defense. Except for any consequential damages, NRTC will pay all costs and damages finally awarded or agreed upon by NRTC that are directly related to any such claim. In the event of a charge of infringement Seller's obligation under the Agreement will be fulfilled if Seller, at its option and expense, either: (i) procures for Purchaser the right to continue using such products; (ii) replaces the same with noninfringing products; (iii) modifies the same so as to make them noninfringing; or (iv) accepts the return of any infringing products and refunds their purchase price. Notwithstanding the foregoing, NRTC will have no liability with respect to any claim of infringement to the extent based on a configuration or modification incorporated in the products at the request of Purchaser, on any process application into which the products are integrated by Purchaser, or on use of the products in combination with other equipment or products not supplied by Seller. **THIS PARAGRAPH SETS FORTH NRTC'S ENTIRE LIABILITY WITH RESPECT TO INTELLECTUAL PROPERTY AND INFRINGEMENT OF PATENTS BY ANY PRODUCTS (INCLUDING SOFTWARE PROGRAMS, EQUIPMENT OR PRODUCTS THEREOF) OR BY THEIR OPERATION, AND IS IN LIEU OF ALL WARRANTIES OR CONDITIONS RELATING TO INFRINGEMENT OR INTELLECTUAL PROPERTY, EITHER EXPRESS OR IMPLIED.**

**15. Export.** Product(s) purchased for export outside of the United States or its possessions are covered by the respective trade laws or other legal conditions specific to the country or possession in question so understood and agreed to by both parties. Purchaser shall be solely responsible for any permits, licenses, waivers or other requirements necessary to permit movement of any product outside of the United States.

**16. Governing Law.** NRTC does not assume any responsibility for compliance with any foreign or federal, state or local laws and regulations, except as expressly set forth herein, and compliance with any laws and regulations relating to the product(s) is the sole responsibility of the Purchaser. All laws and regulations expressly incorporated herein shall be those in effect as of the date hereof. In the event of any subsequent revisions or changes thereto, NRTC assumes no responsibility for compliance therewith. Nothing contained herein shall be construed as imposing responsibility or liability upon NRTC for the obtaining of any permits, licenses or approvals from any agency or governmental entity, foreign or domestic, which may be required in connection with the supply of the product(s).

All sales and purchases of product(s) from NRTC, including terms and conditions thereof, shall be governed by the laws now prevailing in the Commonwealth of Virginia, without regard to its conflict of laws provisions.

**17. Partial Invalidity.** If any provision herein or portion thereof shall for any reason be held invalid or unenforceable in accordance with prevailing law, such invalidity or unenforceability shall not affect any other provisions or portions thereof, but the terms and conditions herein shall be construed as if such invalid or unenforceable provision or portion thereof had never been contained herein.