



TERMS AND CONDITIONS OF SALE

Governing Documents. These Terms and Conditions of Sale are hereby incorporated into and constitute part of the contract between Neo Broadband, Inc. (the “Seller”) and you (the “Buyer”), which consists of any and all quotes, orders, invoices, or other documents in the Sales Order Process (all of which shall constitute the “Agreement”) pertaining to the sale of goods between Buyer and Seller (collectively, the “Parties”), except as otherwise provided in a written contract signed by the Parties.

Acceptance and Acknowledgment. Acceptance by Buyer is expressly limited to the Agreement or Seller would not otherwise be willing to proceed with the sale of goods pursuant to the governing documents. All sales to the Buyer are expressly conditioned upon Buyer’s assent to the terms of this Agreement, and any acceptance of the goods by the Buyer shall unconditionally and irrevocably operate as an acceptance of this Agreement. To that end, the Seller hereby expressly objects to and rejects any additional or different terms proposed by the Buyer; it is this Agreement, as per the Sales Order Process detailed below, that shall constitute the sole terms and conditions upon which the Buyer and Seller shall contract. Therefore, in the event Buyer and Seller each use forms or other documents that contain different or additional terms, the Parties hereby agree that this Agreement shall be the governing document between the Parties, and any terms to the contrary are hereby superseded by the terms of this Agreement, even if those terms are included in any responsive document by the Buyer to Seller.

Sales Order Process. The Sales Order Process starts with the Sales Quote, which shall constitute the firm offer from the Seller to the Buyer to purchase the goods pursuant to the terms therein and this Agreement. The Parties expressly agree that the Sales Quote shall serve as an offer rather than any invitation to negotiate, and that such offer, or Sales Quote, is ready for acceptance by the Buyer. The Buyer may accept the offer from the Seller by acknowledgment, calling for delivery, or through the issuance of a Purchase Order to Seller from Buyer, although a Purchase Order is not required for acceptance. After the issuance of the Purchase Order, the Seller will issue a Sales Order to Buyer followed by an Invoice for payment. In the event the Purchase Order adds additional or different terms to the Sales Quote and this Agreement, all such terms that conflict with this Agreement are hereby rejected as per Section 2 above. For the avoidance of doubt, any resulting contract shall be determined solely by this Agreement, and Seller shall not be deemed to have enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to Buyer’s terms or conditions; objection may be noted in other documents comprising this Agreement. In the event the Purchase Order changes the price and quantity of the goods listed on the Sales Quote, the Seller’s acceptance of such change is expressly conditioned upon the Buyer’s assent to

these Terms and Conditions and Agreement, assent of which may be by acknowledgment (whether directly or indirectly), calling for delivery, failing to object to the Sales Order or Invoice, through the issuance of an Invoice by the Seller, acceptance of the goods, or otherwise.

Purchase Price. Prices are set forth in the Agreement, which include the Sales Order Documents, and the Buyer shall purchase the goods from the Seller at the price listed in the Sales Quote or, if different, in the Sales Order. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer; the Buyer shall be responsible for all such charges, costs and taxes. The Seller reserves the right to increase prices before delivery of the goods if such increase is due to any governmental regulations, unforeseen events, market conditions, force majeure, labor agreements, changes in manufacturer prices, or otherwise as determined in the sole discretion of the Seller. In the event such price is increased by Seller, this Agreement shall be construed as if the increased price were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased price. Unless otherwise stated in the Sales Order Process documents, Buyer shall additionally be responsible for payment of freight, handling and packaging fees. Should Buyer claim that it is exempt from any taxes, Buyer shall furnish to Seller an exemption or reseller certificate which has been issued by the appropriate governmental authority. Buyer hereby agrees to indemnify and hold Seller harmless for any and all taxes that are the responsibility of Buyer and penalties or fines assessed against Seller or Buyer related thereto, whether or not due to Buyer’s claimed exemption from such imposition. All prices are in United States Dollars.

Payment Terms. Buyer shall pay all invoiced amounts due to Seller on receipt of Seller’s Invoice, unless otherwise indicated in the Sales Order Process documents, which constitute part of this Agreement. Buyer shall make all payments hereunder by wire, bank transfer, check, or other payment as agreed to between the Parties. All payment must be in lawful United States dollars and be derived from lawful activities and sources. To the extent permitted by applicable law, in the event Buyer elects to pay all or any portion of the total purchase price by credit card, Seller shall charge Buyer, and Buyer shall pay Seller, a convenience fee of at least three percent (4%), unless otherwise indicated elsewhere in the Agreement, which include the Sales Order Process documents. In addition to all other remedies available under this Agreement or at law, Seller shall be entitled to suspend the delivery of any goods if Buyer fails to pay any amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof, which may be by e-mail or facsimile. Buyer shall pay interest on all late payments at the greater of one and one-half



percent (1.5%) per month or at the maximum rate permitted by applicable law, calculated daily and compounded monthly, from due date until paid, plus Seller's reasonable costs of collection, including, but not limited to, reasonable attorneys' fees and court costs. Seller reserves all other rights granted under Florida's Uniform Commercial Code for Buyer's failure to pay for goods or any other breach by Buyer of this Agreement. Buyer shall have no right of offset by virtue of any claim against Seller, unless and until such claim has been finally adjudicated in favor of Buyer by a court of competent jurisdiction.

Exchange Rates. All payments due under this Agreement shall be payable in U.S. Dollars, regardless of the currency of the country in which the Buyer is located. Conversion of foreign currency to U.S. Dollars shall be made at the conversion rate existing in the United States (as reported in the Wall Street Journal) on the last working day of the applicable Calendar Quarter. Such payments shall be without deduction of exchange, collection or other charges. If the amount in Dollars received by the Seller falls short of the amount originally due pursuant to the Sales Order Process documents, the Buyer shall pay such additional amounts, in Dollars, as may be necessary to compensate for the shortfall.

Taxes; Duties. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer; the Buyer shall be responsible for all such charges, costs and taxes. Should Buyer claim that it is exempt from any taxes, Buyer shall furnish to Seller an exemption or reseller certificate which has been issued by the appropriate governmental authority. In addition, Buyer acknowledges that the amount of any customs duties or tariffs, if applicable, may fluctuate without notice and to that effect may not be known to Seller until Seller receives an invoice from its third party vendors, suppliers, or manufacturers; Buyer shall be liable for any increases in the invoice due to the foregoing. Buyer hereby agrees to indemnify and hold Seller harmless for any and all taxes, duties, tariffs, or otherwise that are the responsibility of Buyer, including and penalties or fines assessed against Seller or Buyer related thereto, as the case may be.

Delivery. Unless otherwise agreed to in writing, delivery shall be considered completed from such point in time in which the goods are made available EXW, Neo Broadband, Inc., Doral, FL, United States (Incoterms® 2000). Buyer shall pick up the goods within five (5) days of Seller's written notice that the goods are ready for pick up. Any EXW orders not picked up with five (5) days shall result in the Buyer becoming liable for all related costs and expenses for storing the goods, including, without limitation, handling, transportation, storage, insurance, and otherwise,

including shipping the Goods to Buyer, unless otherwise agreed to in writing by the Seller. The Buyer acknowledges that any delivery deadlines and dates shall be approximate and shall not be considered to be legally binding, unless the Agreement expressly includes a binding delivery date; to that effect, time shall not be deemed to be of the essence unless specifically agreed to in writing by the Seller. In the event the goods are made available pursuant to C.I.F., Delivery Point (Incoterms® 2000), the Buyer shall take delivery of the goods within five (5) days of Seller's written notice that the goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the goods at the Delivery Point. In all cases, the goods will be delivered or be made available, as the case may be, within a reasonable time. Seller shall not be liable for any delays, losses, or damages in transit. Delay in delivery shall not relieve Buyer of its obligation to accept remaining installments.

Delivery in Installments. If applicable, Seller shall have the right, in its sole discretion, and without liability or penalty, to make delivery of the goods in installments. Each shipment will constitute a separate sale that will be properly invoiced by Seller, and Buyer shall pay for the goods shipped, whether such shipment is in whole or partial fulfillment of the Sales Order Process documents and Agreement.

Quantity. If Seller delivers to Buyer a quantity of goods of up to fifteen (15%) more or less than the quantity set forth in the Agreement documents, Buyer shall not be entitled to object or reject the goods or any portion thereof by reason of the surplus or shortfall, and as such shall pay for such goods at a price adjusted pro rata.

Inspection and Rejection of Nonconforming Goods. This provision is meant to override anything to the contrary in Florida's Uniform Commercial Code. Buyer shall inspect the goods within five (5) days of receipt (the "Inspection Period"). Buyer will be deemed to have irrevocably accepted the goods unless it notifies Seller in writing of any Nonconforming Goods and furnishes such written evidence or other documentation as required by Seller during the Inspection Period. Seller shall also have the right to fully inspect any good claimed nonconforming or damaged before making a final determination of the claim including restocking fees. The Parties agree that "Nonconforming Goods" shall refer to products shipped that are different than the products contemplated in the Agreement and Sales Order Process documents, or products whose label or packaging incorrectly identifies them. After acceptance, Buyer shall have no right to reject the Goods for any reason or revoke acceptance. If Buyer timely notifies Seller of any



Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with Conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to directly Seller's facility; provided, however, that written consent is required by Seller for Buyer to return said Goods, and no replacement is allowed for nonconforming goods returned without such prior written consent by Seller. If written consent is not obtained prior to shipment, the goods shall be refused and returned to Buyer at Buyer's cost. Buyer's failure to comply with this Section 11 shall result in Buyer's claim for return deemed conclusively abandoned. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, make the replacement goods available EXW, Neo Broadband, Inc., Doral, FL, United States (Incoterms® 2000) to Buyer.

Buyer acknowledges and agrees that the remedies set forth in herein are Buyer's exclusive remedies for Nonconforming Goods. Except as provided under herein, all sales of goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

Termination by Seller. At any time prior to the earlier of the (i) shipment of goods or (ii) payment of the goods, Seller may, without incurring any liability to Buyer, cancel or terminate any order by providing written notice to Buyer of such cancellation or termination. Additionally, Seller may terminate this Agreement for cause upon written notice to Buyer, effective immediately, if the Buyer (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Termination shall not otherwise relieve the Buyer of its obligations under the Agreement.

Termination by Buyer. This Agreement and the purchase of goods contemplated by it are not subject to cancellation or termination by Buyer, except upon Seller's written consent and either (i) payment by Buyer of Seller's cancellation charges of up to twenty (20%) percent of the price of the total order, plus any other related charges; or (ii) upon terms and conditions that will indemnify Seller against any and all loss.

SPECIAL ORDERS. THIS PROVISION IS MEANT TO OVERRIDE ANYTHING TO THE CONTRARY IN FLORIDA'S UNIFORM COMMERCIAL CODE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IF ANY GOODS ARE MANUFACTURED BY OR AT THE REQUEST OF

SELLER TO MEET BUYER'S PARTICULAR SPECIFICATIONS OR REQUIREMENTS, SUCH THAT THE GOODS CONSTITUTE SPECIAL ORDER PRODUCTS, CUSTOM PRODUCTS, PRODUCTS NOT AVAILABLE FOR GENERAL OR UNRESTRICTED DISTRIBUTION, OR PRODUCTS THAT ARE OTHERWISE NOT COMMERCIALY MARKETABLE (THE "SPECIAL ORDERS"), THEN SUCH SPECIAL ORDERS SHALL NOT BE RETURNABLE AND SHALL NOT BE CONSIDERED NONCONFORMING GOODS UNDER ANY CIRCUMSTANCES. TO THAT END, SPECIAL ORDERS ARE BOUGHT "AS IS" AND "WITH ALL FAULTS."

Risk of Loss. Title and risk of loss passes to Buyer at such point in time and place in which the seller completes its performance with reference to its delivery obligations, which shall be, unless otherwise agreed to in writing between the Parties, EXW, Neo Broadband, Inc., Doral, FL, United States (Incoterms® 2000).

Security Interest. As collateral and to secure payment of the purchase price of the goods pursuant to the Agreement, Buyer hereby grants to Seller a purchase money security interest in the goods, which shall include all proceeds therefrom, until payment in full by Buyer is received. Buyer hereby authorizes Seller to file and irrevocably appoints Seller as its agent and attorney-in-fact to execute Buyer's name to a financing statement if necessary or convenient to perfect Seller's security interest.

LIMITED WARRANTY; THIRD PARTY PRODUCTS. THE SELLER DISCLAIMS ALL EXPRESS WARRANTIES NOT MADE A PART OF THE BASIS OF THIS CONTRACT, AND THE BUYER HEREBY AFFIRMS THAT NO SUCH EXPRESS WARRANTIES HAVE BEEN MADE BY SELLER BEYOND THOSE EXPRESSLY AGREED TO IN WRITING BETWEEN THE PARTIES; ANY AND ALL SUCH STATEMENTS REGARDING THE GOODS ARE FOR ILLUSTRATIVE AND REPRESENTATIVE PURPOSES ONLY, AND SHALL NOT BE RELIED UPON. NOTWITHSTANDING THE FOREGOING, THE SELLER WARRANTS TO BUYER (I) FOR A PERIOD OF TEN (10) DAYS FROM THE DATE THE GOODS ARE MADE AVAILABLE FOR DELIVERY, OR (II) DURING THE INSPECTION PERIOD, WHICHEVER IS LATER, THAT THE GOODS WILL CONFORM TO THE SPECIFICATIONS SET FORTH IN THE SELLER'S PUBLISHED SPECIFICATIONS, AS THE CASE MAY BE; PROVIDED, HOWEVER, THAT FOR THIS LIMITED EXPRESS WARRANTY TO APPLY, (I) THE SPECIFICATIONS MUST HAVE BEEN PROVIDED IN WRITING TO THE BUYER AND (II) THE PRODUCTS ARE NOT MANUFACTURED BY A THIRD PARTY. THE LIMITED EXPRESS WARRANTY SET FORTH HEREIN, IF APPLICABLE, SHALL BE INEFFECTIVE AND SHALL NOT APPLY TO ANY



GOODS SOLD BY SELLER TO BUYER THAT HAVE BEEN SUBJECT TO ALTERATION OR REPAIR, MISUSE, ABUSE, NEGLIGENCE, ACCIDENT, DAMAGE OR IMPROPER HANDLING, STORAGE, INSTALLATION OR MAINTENANCE. DISCLAIMER OF IMPLIED WARRANTY; THIRD PARTY PRODUCTS. SELLER DISCLAIMS ALL IMPLIED WARRANTIES OF ITS OWN AND THIRD PARTY PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY; WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WARRANTY OF TITLE; WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; AND WARRANTIES OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. SELLER DOES NOT WARRANT GOODS SHALL COMPLY WITH THE REQUIREMENTS OF ANY SAFETY OR ENVIRONMENTAL CODE OR REGULATION OF ANY FEDERAL, STATE, MUNICIPALITY OR OTHER JURISDICTION BEYOND THE SPECIFIC EXPRESS WARRANTIES IN THIS AGREEMENT.

Limitation of Liability and Damages; Remedies. In no event shall Seller be liable for lost profits, lost revenue, consequential, incidental, exemplary, punitive or special damages, or other economic losses, arising out of or connected with this Agreement. THE LIABILITY OF SELLER AND ITS AGENTS, EMPLOYEES, MEMBERS, SHAREHOLDERS, OFFICERS AND DIRECTORS, FOR ANY CLAIMS, COSTS, DAMAGES, LOSSES AND EXPENSES FOR WHICH THEY ARE OR MAY BE LEGALLY LIABLE, WHETHER ARISING IN NEGLIGENCE, TORT, CONTRACT, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, SHALL BE LIMITED TO THE REPLACEMENT OF THE GOODS OR REFUND OF THE PURCHASE PRICE PAID FOR THE GOODS OR SERVICES,

AS DETERMINED IN SELLER'S SOLE DISCRETION. Seller shall not be liable for any failure to perform its obligations under the Agreement resulting directly or indirectly from or contributed by acts of God, acts of Buyer, acts of civil or military authorities, fires, strikes or other labor disputes, accidents, floods, epidemics, pandemics, war, riot, delays in transportation, lack or inability to obtain raw materials, components, labor, fuel or supplies, or other circumstances beyond Seller's reasonable control. Remedies upon Buyer's Default. In the event Buyer is in default or otherwise breaches this Agreement, the Seller shall be entitled to pursue any and all remedies, legal or equitable, including an

action to recover the total Purchase Price, as well as its costs of enforcing this Agreement, including, without limitation, its attorneys' fees. Seller retains the right upon breach of the Agreement by Buyer to sell any goods in Seller's possession. In effecting any resale based upon breach of the Agreement by Buyer, Buyer shall remain liable for any net deficiency on resale of Goods.

Applicable Law and Jurisdiction. These Terms are governed by and construed in accordance with the laws of the State of Florida, without giving effect to any conflict of law principles. All disputes involving the terms of this Agreement shall be exclusively resolved in the state courts of Miami-Dade County, Florida, and the Parties irrevocably and unconditionally renounce any objection to venue.

Attorneys' Fees. In the event of any litigation arising as a result of or by reason of this Agreement, the prevailing party in any such litigation shall be entitled to, in addition to any other damages assessed, its reasonable attorneys' fees, and all other costs and expenses incurred in connection with settling or resolving such dispute.

Disclaimer of U.N. Convention on Contracts for the International Sale of Goods ("CISG"). PURSUANT TO ARTICLE 6 OF THE CISG, THE PARTIES AGREE THAT THE CISG SHALL NOT APPLY AND THAT THE SAME IS HEREBY EXPRESSLY DISCLAIMED.

Force Majeure. Seller will not be liable for its failure to perform under the Agreement (including, without limitation, the failure to deliver any goods or perform any Services) due to circumstances beyond its control, including, without limitation, fire, flood, earthquake, pestilence or similar catastrophe; war, act of terrorism, or strike; lack or failure of transportation facilities, shortage of suitable parts, materials or labor; any existing or future law, rule, regulation, decree, treaty, proclamation, or order of any governmental agency; inability to secure fuel, materials, supplies, equipment or power at reasonable prices or in sufficient amounts; act of God or the public enemy; or any other event or cause beyond Seller's reasonable control, including, without limitation, epidemics, pandemics, and any delay caused by Buyer (each, a "Force Majeure Event"). If any Force Majeure Event prevents Seller's performance of any of its obligations under the Agreement, Seller will have the right to (a) change, terminate or cancel the Agreement, or (b) omit during the period of the Force Majeure Event all or any portion of the quantity of the Goods deliverable during that period, whereupon the total quantity deliverable under the Agreement will be reduced by the quantity omitted. If Seller is unable to supply the total demands for any goods to be delivered under the Agreement due to a Force Majeure Event, Seller will have the right to allocate its available



supply among its customers in whatever manner Seller deems to be fair and equitable. In no event will Seller be obligated to purchase materials from other than its regular sources of supply in order to enable it to supply goods to Buyer under the Agreement. No change, cancellation or proration by Seller will be deemed to be a breach of any clause, provision, term, condition, or covenant of the Agreement.

Indemnification. Buyer shall indemnify, defend, and hold harmless Seller and its officers, directors, managers, members, shareholders, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all claims, losses, damages, liabilities, taxes, responsibilities and liabilities, judgments, or expenses of whatever kind, including reasonable attorneys' fees (collectively, the "Claims"), existing or that may arise from, or be related to, the Buyer's purchase of products from the Seller, Claims of any third party in connection with this Agreement, the Buyer's use or receipt of the goods, and the Buyer's negligence, willful misconduct, or breach of this Agreement. Buyer shall not enter into any settlement without Seller's or Indemnified Party's prior written consent.

Confidential Information. For purposes of this Agreement, "Confidential Information" means any and all information that is confidential to each Party, that is reasonably understood to be confidential or proprietary, or that which is disclosed by either Party to the other verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary by the nature of the information itself or under the circumstances of disclosure. Confidential Information may include confidential information of a third party that is in the possession of a Party and is disclosed to the other Party under this Agreement. In addition, all non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer is confidential, and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section.

WAIVER OF JURY TRIAL. ALL PARTIES TO THIS AGREEMENT KNOW AND UNDERSTAND THAT THEY HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL. HOWEVER, IN THE EVENT A DISPUTE, CLAIM, OR CONTROVERSY IS FOUND BY A COURT TO BE EXCLUDED BY THESE ARBITRATION PROVISIONS, THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT,

WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Order Process Documents, and also sent by e-mail. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid), including by e-mail. Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

Waiver. No waiver by either party of any breach of any of the terms or conditions contained herein shall be construed as a waiver of any succeeding breach of the same or any other term or condition contained herein.

Relationship of Parties. Seller and Buyer are independent contracting parties and nothing in the Agreement shall make either party the agent, joint venturer or legal representative of the other for any purpose whatsoever, or grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Although third parties may be referenced, there are no third party beneficiaries to the Agreement.

_____ End the document _____