

## NOW MICRO PURCHASE AGREEMENT

This **PURCHASE AGREEMENT** ("Agreement"), is by and between NOW Micro, Inc. ("NOW Micro") and the entity purchasing goods from NOW Micro and identified on the Invoice on the reverse side of this agreement ("Customer").

**General Purpose of this Agreement:** This agreement contains the terms and conditions under which Customer agrees to purchase certain computer hardware and related equipment (collectively, the "Equipment") from NOW Micro. The invoice on the reverse-side of this Agreement describes the Equipment being purchased, the related sales price, and the location to which Customer would like the equipment shipped ("Invoice"). Any installation, configuration, integration, consulting, or other services described on the Invoice or otherwise provided by NOW Micro in connection with the Equipment are also governed by the terms and conditions of this Agreement.

**Installation:** Customer is solely responsible for installing the Equipment at the location indicated on the Invoice.

**Payment of Purchase Price:** All equipment shall be paid in full upon delivery unless NOW Micro has otherwise previously agreed in writing. Unless NOW Micro agrees to other terms, Customer shall pay a late payment charge of one-and-a-half (1.5%), or the highest rate allowed by law, of the invoice amount due for all payments that are not paid within five (5) days of due date. In the event that Customer's draft is dishonored, Customer shall pay to NOW Micro an additional \$25.00.

**Returns:** The equipment may be returned to NOW Micro only with NOW Micro's prior consent and only for defects covered by the warranties described in this Agreement. All returns of the Equipment will be for repair or exchange only. Neither cash refunds nor in-house credit will be issued for returned Equipment. Returned Equipment must be accompanied with a copy of the original Invoice and must be shipped in the original packing materials. NOW Micro will accept returns only if they are in a like-new, re-sellable condition.

**Shipment, Risk of Loss and Title:** Shipment of the Equipment shall be FOB NOW Micro. Risk of loss or damage to the Equipment shall pass to Customer upon delivery by NOW Micro to the carrier. Title to the Equipment shall pass to Customer upon Customer's payment of the Invoice related to such Equipment.

**Excusable Delay:** NOW Micro shall not be responsible for any delay or failure to perform the tasks described in this agreement if such delay or failure is caused by fire, strikes, embargoes, explosions, earthquakes, floods, wars or any other similar causes beyond its control.

**Warranties:** The only warranties received by a customer with respect to any Equipment manufactured by third parties will be those warranties, if any, granted by the manufacturer of such Equipment. NOW Micro warrants that the Frontier and Medius branded equipment manufactured by NOW Micro will be free from defects in material and workmanship and operate in substantial conformance with the product literature provided by NOW Micro for a period of one year from the date of the Invoice reflecting the purchase of such Equipment, except that the period of warranty applicable to any processor or processing gait shall be thirty (30) days. In the event that the Frontier or Medius branded Equipment fails to meet the above warranties, NOW Micro shall, at no additional cost, correct any such defect or failure of the Equipment. NOW Micro will have no obligation to correct any defect found during the warranty period if: the Equipment was modified or repaired by any party other than NOW Micro; such defect was the result of Customer's abuse or misuse of the Equipment; or such defect was the result of damage by fire, explosion, power failure or any other act of nature or force beyond NOW Micro's reasonable control. EXCEPT AS SET FORTH IN THIS PARAGRAPH, ALL EQUIPMENT AND/OR SERVICES FURNISHED OR TO BE FURNISHED BY NOW MICRO UNDER THIS AGREEMENT IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTY WHATSOEVER. THE REMEDIES LISTED IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

**Limitation of Liabilities:** IN NO EVENT SHALL NOW MICRO BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUES OR LOSS OF DATA. CUSTOMER WILL, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFY AND HOLD NOW MICRO HARMLESS AGAINST ALL CLAIMS, EXPENSES (INCLUDING ATTORNEYS' FEES), DAMAGES OR LIABILITY FOR DAMAGES, RESULTING FROM ANY CLAIM BY ANY THIRD PARTY ARISING OUT OF OR RELATED TO THE EQUIPMENT, THE SERVICES OR CUSTOMER'S USE OF OR INABILITY TO USE THE EQUIPMENT AND/OR SERVICES.

**Waiver and Severability:** No covenant, condition or other term or provision of this Agreement shall be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by NOW Micro and customer. Any provision of this agreement that is found to be prohibited or unenforceable shall not affect any other provision of this Agreement.

**Assignment:** Customer shall be allowed to assign its rights and interest in this Agreement only with NOW Micro's prior written consent. NOW Micro will not unreasonably withhold such consent.

**Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any dispute arising under or related in any way to this Agreement shall be venued in a state or federal court located in Ramsey County, Minnesota.

**Security Interest:** NOW Micro reserves and customer agrees that NOW Micro shall have a purchase money security interest in the Equipment until such time as Customer has paid in full for the Equipment. Upon the request of NOW Micro, Customer shall execute and deliver a financing statement or such other documents necessary for NOW Micro or its assignee(s) to perfect, or maintain the perfection of, its security interest, and Customer authorizes NOW Micro to file the same. NOW Micro may file a copy of this Agreement and any equipment schedule, which is a part hereof as a financing statement, if Customer fails to execute any financing statement of other document within ten (10) days of NOW Micro's request. NOW Micro shall be, and hereby is, irrevocably appointed as Customer's attorney-in-fact, acting alone and with full power of substitution to prepare, execute, deliver, file or endorse in the name and on behalf of Customer, any and all financing statements, amendments, continuations, assignments, security agreements and other schedules and instruments which NOW Micro requires hereunder. Customer shall pay all costs of filing such financing statements and termination and any extensions, renewals, amendments and releases thereof and shall pay all reasonable costs and expenses of any record searches for financing statements NOW Micro may reasonably require. If Customer breaches any covenant or agreement contained in this Agreement; including the covenant to pay when due all sums owing to NOW Micro pursuant to this Agreement, NOW Micro shall have all the remedies of a secured party under the Uniform Commercial Code. In exercising any of said remedies, NOW Micro may proceed against the Equipment separately or together and in any order whatsoever, without in any way affecting the availability of NOW Micro's other remedies under Minnesota law or this Agreement. The agreements contained in this section are irrevocable by Customer and shall survive the execution of the Agreement indefinitely.

**Representation:** Customer represents and warrants to NOW Micro that the exact legal name of Customer is set forth on this Agreement, that Customer is organized or incorporated under the laws of the state set forth on this Agreement, and that Customer is an organization of the described on this Agreement. Customer covenants that Customer will not cause or permit any change to be made in its name, identity or corporate or partnership structure unless Customer shall have first notified NOW Micro in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by NOW Micro for the purpose of perfecting or protecting the lien and security interest of NOW Micro. Customer's principal place of business and chief executive office, and the place where Customer keeps its books and records, is the same address as set forth in this Agreement. If Customer does not now have an organizational identification number and later obtains one, Customer promptly shall notify NOW Micro of such organizational identification number.

**Entire Agreement:** This agreement and each Invoice filled out and signed pursuant to this Agreement constitutes the entire agreement between Customer and NOW Micro with respect to the Equipment and services and supersedes all prior understandings, communications and negotiations. This Agreement may not be modified or amended except by a writing signed by an authorized representative of both parties. Any contrary or additional terms set forth in any purchase order or other document presented by Customer are expressly rejected and shall not form a part of this Agreement.