

North American Satellite Corporation (“NASCorp”) Business Rules

1. AUTHORIZED DEALER AND NATURE OF RELATIONSHIP - The person or entity (“Dealer”) ordering the merchandise/service set forth on the reverse (“Order”) is authorized to be a non-exclusive retail Dealer of NASCorp for said merchandise/service. This relationship shall be referred to as the “Business Relationship.” The Order and these Business Rules collectively shall be known as the “Agreement.” The Dealer shall be an independent contractor. Nothing contained in this Agreement is intended to create, or shall be construed to create, any partnership, franchisee/ franchiser, agency, or employment relationship between the Parties to this Agreement. Dealer hereby acknowledges and agrees that NASCorp makes absolutely no promises, representations or warranties as to the potential amount of business as a result of participation in this program.
2. CONDUCT OF BUSINESS – As an authorized representative of NASCorp merchandise and services to customers the Dealer solicits (“End-User” or “End-Users”), the Dealer and its employees, agents or contractors (“Agents”) agree to comply with all applicable federal, state and local laws (including all state and local retail sales and use tax laws, truth in advertising and other consumer protection laws, export control laws, laws requiring the maintenance of insurance, employment laws, etc.) and will otherwise conduct business in a manner that does not adversely impact NASCorp’s business. The Dealer will honor any obligations that pertain to NASCorp merchandise or service it chooses to undertake and shall maintain adequate facilities to handle inquiries and requests from actual and potential End-Users. If the Dealer; i) abandons or stops providing service to an End-User who has been provided NASCorp equipment or services, or ii) fails to cure a breach of this Agreement after thirty (30) days’ notice to cure, NASCorp shall have the right, but not the obligation, to provide merchandise/services, collect amounts owed for the same and solicit future monitoring business from the End-User.
3. CONFIDENTIALITY – Except as provided in the NASCorp Confidentiality Policy which is incorporated herein by reference as if fully set forth herein (a copy of which may be obtained from the documents section of the NASCorp website, www.nascorp-skytracker.com, or any NASCorp representative), neither Party shall disclose the “Confidential Information” of the other Party without the other Party’s written consent and shall only be used for the purposes of the Business Relationship. NASCorp merchandise and processes are deemed to be “Confidential Information.” Any information disclosed by one Party to the other Party shall be presumptively deemed to be “Confidential Information.” In addition, the Dealer agrees to maintain adequate controls to prevent any NASCorp merchandise from being reverse engineered. The Dealer agrees not to loan, sell or otherwise transfer any NASCorp merchandise to any person or entity outside the Dealer’s country of purchase of the merchandise NASCorp’s express written consent.
4. TERMINATION – Either party may terminate this Agreement upon Thirty (30) day written notice to the other. Termination will not affect any rights under this Agreement with respect to acts or omissions before termination. The provisions with respect to the paragraphs titled “Conduct of Business,” “Confidentiality,” “Breach of Contract and Legal Proceedings,” “Limited Warranty/Liability Exclusion,” “Freedom of the Airways,” and “Periodic Maintenance and Testing” shall survive termination of the Agreement.
5. LIMITED WARRANTY/LIABILITY EXCLUSION AND INSURANCE – NASCorp merchandise is warranted to be free from defects in material and/or workmanship under normal use and service for a period of three years for merchandise other than the Hall Sensor Cable which is warranted for a period of one year and batteries which are warranted for up to two hundred transmissions. NASCorp will repair or replace any equipment found to be defective that is returned to NASCorp with a valid Return Merchandise Authorization (RMA) obtained from NASCorp within the term of the warranty. If NASCorp determines that repair of the equipment is not practical or feasible and replacement equipment is no longer available, NASCorp, at its election, may substitute similar equipment or pay a refund equal to the original purchase price of the merchandise less a pro-rated share of said amount to be pro-rated over the warranty term. **There are no other warranties whatsoever with respect to NASCorp merchandise, services or notification processes. This warranty is expressly in lieu of all other warranties, expressed or implied, including warranties of merchantability or fitness for a particular purpose, all such other warranties being hereby expressly excluded.** NASCorp makes no representations whatsoever with respect to its services or notification processes or that injury, death or damage to property may be averted by the use thereof. This limited warranty will be void if the equipment bears any sign of misuse or if the device has been opened (other than the battery door) without the written consent of NASCorp. The provisions of this paragraph are NASCorp’s sole obligation and the sole remedy for any breach of warranty claim. In no event shall either party ever be liable for any incidental or consequential damages for any cause. NASCorp shall not be responsible for damage of any type in an amount greater than the purchase price set forth on the Order. Dealer shall be solely responsible for any loss or injury claimed by its own End-Users unless the gross negligence of NASCorp is the sole cause of such damage or injury. Dealer shall hold harmless and indemnify NASCorp (including its directors, officers, employees, agents, and assigns) from any claim whatsoever by any End-User of the Dealer for any cause whatsoever and shall reimburse NASCorp for reasonable expenses, including attorney fees, incurred for defending any claim brought by Dealer’s End-User. Each party shall maintain such liability insurance as it is required to maintain by law and shall name the other party as an additional insured. Both parties shall provide one another a Certificate of Insurance upon request.
6. BREACH OF AGREEMENT AND LEGAL PROCEEDINGS – This Agreement and the relationship between the Parties shall be governed by and construed in accordance with the laws of the State of Tennessee without giving any effect to its conflict of law provisions. Dealer agrees that any breach of Dealer’s representations, warranties, covenants, agreements and/or obligations pursuant to the Agreement will cause substantial and irreparable harm and injury to NASCorp, for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Dealer agrees that NASCorp shall have the right, in addition to any other remedies available, to obtain immediate injunctive relief (without the necessity of posting or filing a bond or other security) to restrain the threatened or actual violation of this Agreement by Dealer, its employees or Agents. Dealer acknowledges and agrees that any breach or default of this Agreement committed by Dealer shall constitute a material breach or default under this Agreement and any other agreement between Dealer and NASCorp. In the event of any suit or action to enforce or interpret this Agreement or any provision thereof, the winning party shall be entitled to recover its costs, expenses and reasonable attorney fees, both at trial and on appeal, in addition to all other sums allowed by law. Any dispute arising out of, or in connection with this Agreement or in any way related to this Agreement or the relationship of the Parties hereto shall be litigated solely and exclusively before the federal and state courts located in the State of Tennessee and the parties hereby waive any objection as to venue or jurisdiction of said courts.
7. FREEDOM OF THE AIRWAYS - To promote the free exchange of ideas and information, NASCorp claims “freedom of the airways” which shall mean that it reserves the right to an easement to any excess capacity and data transport capabilities of any NASCorp product. Should NASCorp elect to utilize the excess capacity of any of its products owned or rented by the Dealer for third party use then NASCorp shall annually pay Ten Percent (10%) of the gross profit/margin (defined as gross receipts less cost of goods sold) derived from such utilization to the Dealer. If Dealer is indebted to NASCorp pursuant to this paragraph or for any other reason, Dealer acknowledges and agrees that NASCorp shall have the right, but not the obligation, to offset said indebtedness from monies due Dealer from NASCorp. Furthermore, NASCorp’s right to money due and to become due shall not be subject to any defense (except payment), offset, or counterclaim of the Dealer whatsoever, other than credits authorized by NASCorp.
8. PERIODIC MAINTENANCE AND TESTING - It shall be the responsibility of the Dealer to use its best effort(s) to perform an annual inspection of any NASCorp merchandise (and connected devices) sold, rented or otherwise provided to Dealer including any equipment the Dealer has resold, rented or otherwise provided to any End-User. Such inspection shall be conducted according to the procedures provided from time to time by NASCorp and shall particularly include a check that all sensors or other devices connected to any NASCorp merchandise are functioning properly. Dealer shall notify its End-Users of the annual inspection at or before the time the Dealer delivers merchandise to the End-User. The Dealer may charge the End-User a reasonable fee for the inspection. If the Dealer is unable to access merchandise due to the act or omission of the End-User or the End-User does not pay the inspection fee, the Dealer is relieved of the obligation to inspect the merchandise in the possession of that End-User. NASCorp may request Dealer to provide documentation of compliance with this paragraph but is not obligated to do so. NASCorp is not obligated to perform a Dealer check or review of Dealer’s compliance with this paragraph. Such election does not excuse the Dealer from the obligation to inspect and does not transfer any additional liability or obligation to NASCorp.
9. ASSIGNABILITY – NASCorp has chosen Dealer to be its non-exclusive authorized retail Dealer based upon Dealer’s unique qualities particularly including its business reputation, financial status and ability to represent NASCorp to its End-Users. Accordingly, any assignment or transfer of the Agreement or any portion thereof by the Dealer is strictly prohibited. NASCorp may assign this Agreement or any portion thereof provided that the rights of the Dealer are not materially affected by the assignment and NASCorp gives the Dealer notice.
10. ENTIRE AGREEMENT, SEVERABILITY AND MODIFICATION – The Order and Business Rules (collectively “Agreement”) constitute the entire, complete and final agreement between the Parties hereto with respect to the merchandise and/or services specified therein and replaces all prior and contemporaneous negotiations, agreements and commitments, whether written, oral or implied, with respect thereto. Invalidity or unenforceability of one or more provisions of the Agreement shall not affect any other provision of the Agreement. NASCorp reserves the right to modify the Agreement with respect to advertising policies, procedures, and the rates for monitoring. The rates for monitoring are subject to modification only if our operating expenses increase. Such increase, if any, shall not be more than five percent (5%) per year. Otherwise, any modification to the Agreement or waiver of our rights shall be void unless it is in writing and signed by the parties. No modification of the Agreement shall be established by conduct, course of dealing, or custom. Any failure by either Party to this Agreement to enforce at any time any term or condition under this Agreement shall not be considered a waiver of either Parties’ right thereafter to enforce each and every term and condition of the Agreement.
11. MISCELLANEOUS PROVISIONS – A facsimile or electronic signature shall be deemed an original signature for the Order and any other document submitted by one Party to the other Party. The person executing the Order on behalf of each Party warrants and represents that he/she has been duly authorized to do so, that any prerequisite action such as approval of the Board of Directors, etc. has taken place, and that the execution of the Agreement will not violate any agreement or pre-existing obligation of the party. Unless advised otherwise, notices to NASCorp should be sent to North American Satellite Corporation at 304 Space Park North, Post Office Box 1778, Goodlettsville, Tennessee 37070-1778, Attention: Director of Wholesale Marketing. Unless advised otherwise, notices to Dealer will be sent to the address set forth on the most recently executed Order received by NASCorp from the Dealer. Neither Party shall be liable for any loss, damage, cost or failure to perform in whole or in part resulting from causes beyond such Party’s reasonable control, including but not limited to, acts of God, fires, strikes, labor disputes, acts of war, insurrections, riots, or requirements of any governmental authority.