



MASTER SERVICES AGREEMENT FOR COMMUNICATION TRANSPORT SERVICES

THIS AGREEMENT, made and entered into effective as of the date signed on the Service Order, by and between "**Customer**," and **Douglas Services, Inc. dba Douglas Fast Net (DFN)**, an Oregon company, hereinafter called "DFN". This Agreement becomes legally binding upon signature by both parties.

RECITALS

Customer desires to obtain Communications Transport Services ("CTS") on DFN's optical network; and DFN is agreeable to provide CTS services and allow Customer to connect its signal cable to DFN's facilities. Customer may use service only for authorized and lawful purposes.

NOW, THEREFORE, Customer and DFN, in consideration of mutual conditions and covenants hereinafter described, do agree as follows:

- 1. Overview:** This Agreement states the general terms and conditions by which DFN will deliver and Customer will receive any or all of the services provided by DFN. The specific services and/or products to be provided and the procedure for obtaining services shall be detailed in an associated (**SO**) Service Order or Master Service Agreement Addendums which will be attached hereto as an addendum and incorporated herein by reference. If Customer is a (CLEC) Competitive Local Exchange Carrier, it is anticipated that additional addenda will be attached hereto and incorporated herein by reference. This Agreement is intended to cover any and all services ordered by Customer and provided by DFN. Customer may use services only for authorized and lawful purposes.
- 2. Delivery of Services:** By submitting an (**SO**) Service Order or agreeing to a Master Service Agreement Addendum, Customer agrees to take and pay for, and, by accepting the (**SO**) Service Order or Master Service Agreement Addendum, DFN agrees to provide, the service(s) during the term described on the Service Order or Master Service Agreement Addendums. DFN has the right to limit the manner in which any portion of its network and facilities ("network") is used to protect the technical integrity of the network. DFN is not liable or responsible for content, errors in transmission, or failure to establish connection.
- 3. Installation and Interconnection of Services:** Other than the facilities, termination equipment or other devices provided by Customer, and unless otherwise provided elsewhere in this Agreement or any attachments hereto, DFN will pay for, provide, install, maintain, operate, control and own any equipment, cable or facilities connected to the Network ("System Equipment"), which equipment at all times remains DFN's personal property, regardless of where located or attached. DFN may change, replace or remove the System Equipment, regardless of where located, so long as the basic technical parameters of the service are not altered, and this Agreement constitutes Customer's consent to such change, replacement or removal. Customer may not rearrange or move or disconnect the System Equipment, and is responsible for any damage to or loss of System Equipment caused by Customer's negligence or willful misconduct or that of its end users. DFN has no obligation to install, maintain or repair any equipment owned or provided by Customer, except as may be specifically provided herein. Each party will be responsible for responding to trouble reports or service calls from their respective suppliers, customers and/or end users. If Customer's or an end user's equipment is incompatible with service, Customer is responsible for any special interface equipment or facilities necessary to ensure compatibility. Customer is responsible to ensure that its equipment does not interfere with the provision of or functionality of services to Customer or other parties with whom DFN contracts. If, in responding to a Customer initiated service call, DFN reasonably determines that the cause of such service call is a failure, malfunction or inadequacy of Customer-provided equipment or software, Customer will pay DFN for such service call at DFN's then prevailing rates. DFN may reconfigure, reprogram, substitute, rearrange or otherwise change any DFN Facilities, whether such DFN Facilities are on the Customer's premises or otherwise, at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the Customer without the Customer's knowledge. Although no specific advance notification period is applicable, DFN will use its best efforts to notify the Customer of the planned timing of such activities and will use reasonable efforts to perform such activities at a time that is agreeable to the Customer (except where emergency conditions exist or where such change is required by a governmental agency or other authority to take place immediately).
- 4. Term:** Subject to the provisions of Sections 12 and 13, the initial term for each service will commence and end on the dates indicated in the applicable (**SO**) Service Order or Master Service Agreement Addendum. Thereafter, the service automatically continues unless terminated by either party upon no less than 30 days written notice, or unless otherwise specified in the Service Order or Master Service Agreement Addendums. This Agreement shall continue until so terminated by written notice as provided in Section 26. Upon termination of this Agreement, all rights of Customer to order new services cease and DFN has no further obligations to furnish new services to Customer. In the event of any inconsistency between the terms contained in this Agreement and any specific provisions of the Service Order or Master Service Agreement Addendums, the terms of the Service Order or Master Service Agreement Addendums shall prevail. References herein to exhibits mean exhibits to this Agreement unless the context indicates otherwise.
- 5. Fees and Payment Terms:** Customer shall pay all fees due for services according to the prices and terms listed in the (**SO**) Service Order or Master Service Agreement Addendums. Upon completing provisioning, installation and testing of the System Equipment needed to provide services ordered by Customer, DFN will notify Customer that the services are available for Customer's use. These services are subject to, but are not limited to a Monthly Recurring Charge ("MRC") as set forth in Service Order or Master Service Agreement Addendums. DFN reserves the right to change the MRC for such services at any time, after the initial term hereof, upon 25 days prior written notice to Customer. The MRC does not include any governmental taxes or tax-related charges, fees, including, but not limited to franchise fees, surcharges or other amounts assessed by any government, which may be incurred in connection with services to be provided hereunder or in connection with the facilities used to provide said services all of which shall be paid by Customer. Any installation charges or other non-refundable Non-Recurring Charge ("NRC") to be billed one time will appear on the first monthly invoice. DFN reserves the right to recover any additional installation charges accrued during installation. Any payment not received within thirty (30) days

of the invoice date will accrue interest at a rate of one and one-half percent (1½%) per month, or the highest rate allowed by applicable law, whichever is lower.

6. Early Termination Charges: If (a) Customer terminates this Agreement or any Service Order or Master Service Agreement Addendums hereunder for reasons other than Cause; or (b) DFN terminates this Agreement or any Service Order or Master Service Agreement Addendums hereunder pursuant to Sections 12, and 13, then Customer will pay, within thirty (30) days after such termination: (i) all accrued but unpaid charges incurred through the date of such termination, plus (ii) an amount equal to one hundred percent (100%) of the "MRC" for each term (and any pro rata portion thereof for any partial initial term) remaining in the un-expired portion of the term on the date of such termination **or** an Early Termination Fee of \$150.00 for a Residential Customer, whichever is less, plus (iii) a pro rata portion of any and all credits received by Customer. If Customer desires to cancel a Service Order or Master Service Agreement Addendums prior to the Firm Order Confirmation the following conditions apply: (I) where a Service Order or Master Service Agreement Addendums is canceled by the customer prior to the start of any design work or installation of facilities, no charge applies; (II) when a service that requires special design work is canceled after the design work has begun, DFN may collect charges equal to the cost incurred for the associated design work time and materials to date; and (III) if cancellation is requested after completion of an installation, it will be treated as an early termination of service and is pursuant to the terms and conditions of Section 6.

7. Limitation of Liability: Unless otherwise provided in a Service Level Agreement entered into between the parties subsequent hereto, the total liability of DFN to Customer in connection with this agreement, for any and all causes of actions and claims, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts, shall be limited to the lesser of: (a) direct damages proven by customer; or (b) the amount paid by Customer to DFN under this agreement for the one (1) month period prior to accrual of the most recent cause of action. In no event shall DFN be liable for special, punitive, consequential or incidental damages, including without limitation, lost revenue, profits or other benefit whether by tort, contract, or otherwise.

8. Force Majeure: Neither party is liable for any failure of performance if such failure is due to any cause or causes beyond such party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, cable cut, adverse weather conditions, governmental action, labor difficulties, war, and supplier failures. Customer's invocation of this clause shall not relieve Customer of its obligation to pay for any services actually received. In the event such failure continues for 60 days, the other party may terminate the affected portion of the Services.

9. Assumption of Risk: Customer recognizes that use of the DFN POP and DFN system shall be at its own risk, and therefore, expressly assumes any risk arising from the exercise of any rights, privileges or obligations identified herein, including but not limited to loss of or damage to Customer's personal property situated at any DFN POP or on the DFN system, losses incurred with online transactions, or losses incurred during periods of network interruption or failure.

10. Indemnity: Subject to the provisions of Section 7, Customer agrees to indemnify, defend and hold harmless DFN and its members, and the commissioners, officers, directors, employees, agents and other representatives of DFN and its members. Customer must indemnify, defend and hold harmless DFN from all losses or damages arising from Customer's breach of this Agreement, violation of any third party intellectual property right, all claims of any kind by customer's end users, or any act or omission of Customer in connection with any service provided hereunder and any negligent or intentional act of Customer that causes damage or loss to any other Customer or Customer's equipment. DFN agrees to indemnify, defend and hold harmless Customer from all losses or damages arising from or related to personal injury or property damages caused by the negligence or willful misconduct of DFN.

11. Colocations: In the event Customer executes a Service Order that includes collocation at a DFN POP, Sections 9 and 10 and the following additional provisions apply. Customer agrees to pay in advance for the installation costs, and to pay monthly for collocation services, with the first payment due the first month following completion of installation and subsequent payments due by the 16th of each month. DFN reserves the right to recover any additional installation charges accrued during installation. DFN reserves the right to determine Customer's collocation space, including the right to relocate Customer's space. Customer will have unlimited access by key to its collocation space; will not make any duplicate keys; and will return all keys furnished by DFN upon termination of the collocation term. Customer will ensure that the exterior door to its collocation space is locked prior to exiting the space, to notify DFN: immediately upon entry if Customer discovers that the collocation space is not locked; and immediately upon exiting if Customer discovers that the collocation space does not lock automatically. Customer agrees that DFN is not responsible for the safety or security of Customer's equipment; assumes the risk of any loss or damage to its equipment by third parties including other customers of DFN; and waives any claim against DFN for loss or damage to Customer's equipment. Customer shall indemnify, defend and hold harmless DFN for any claims against DFN for the loss or damage to any equipment belonging to any third party allegedly caused by Customer's intentional or negligent act.

12. Termination by DFN: DFN may terminate this Agreement or any Service Order or Master Service Agreement Addendums hereunder, or suspend services, with prior notification, upon (a) failure of Customer to pay any amounts as provided herein within thirty (30) days of invoice date; or (b) Customer's breach of any provision of this Agreement or any law, rule or regulation governing the services; or (c) if Customer provides false information to DFN regarding the Customer's identity, creditworthiness, or its planned use of the services; or (d) if DFN deems it necessary to take any reasonable and lawful action to protect the property and rights of DFN and existing and potential customers of DFN's services; or (e) violating DFN's Acceptable Use Policy as posted on the company's web site and which is incorporated herein by this reference. Furthermore, DFN may terminate the Agreement immediately with written notification for any abusive behavior whether it's verbally, physically or implied.

13. Termination for Cause: Either Party may terminate this Agreement for Cause. "Cause" shall mean a breach by the other party of any material provision of this Agreement, provided that written notice of the breach has been given to the breaching party, and the breach has not been cured within thirty (30) days after delivery of such notice.

14. Resale of Products or Services: Subject to compliance with any applicable laws or regulations, any products or services provided under this Agreement may not be resold to or shared with other persons or entities as described in the Service Order or Master Services Agreement Addendums hereunder, so long as such products or services are resold or shared under Customer's own name and not identified as DFN products or services. The Customer remains solely responsible for all services ordered by it or billed to its account, for determining who is authorized to use its services and taking appropriate actions to enforce such a determination, and for immediately notifying DFN of any unauthorized use. DFN has no obligation to provide notice to or otherwise communicate with the users or customers of Customer.

15. Assignment: Customer shall not assign, pledge, transfer or otherwise convey all or any part of the rights and privileges granted by this Agreement in any manner without prior written consent of DFN, which consent it will not unreasonably withhold. Any transfer of this Agreement by merger, consolidation or liquidation of Customer, or any change in the ownership of or power to vote the majority of its outstanding voting stock (whether effected in one or more transactions or events occurring over any period of time) shall constitute an assignment for purposes of this Section. Customer may enter into agreements with other parties for transport circuits on terms consistent with this Agreement.

16. EMERGENCY SERVICES - 911 DIALING: You should be aware that there are some circumstances under which your E911 service may not be available or may be limited in some way. Examples of the limitations of your E911 service when compared to a traditional telephone service are listed in this section. You are strongly advised to familiarize yourself with this section and discuss it with your DFN representative if there is anything you find confusing or you do not understand.

16.1 911 Dialing: All of our voice customers have access to either basic 911 or Enhanced 911 (E911) service. With E911 service, when you dial 911, your telephone number and registered address are simultaneously sent to the local emergency center assigned to your location, and emergency operators have access to the information they need to send help and call you back if necessary. Customers have basic 911 in locations where the emergency center is not equipped to receive your telephone number and address. With basic 911, the local emergency operator(s) answering the call will not have your call back number or your exact location, so you must be prepared to give them this information. Until you give the operator(s) your phone number, he/she may not be able to call you back or dispatch help if the call is not completed or is not forwarded, is dropped or disconnected, or if you are unable to speak.

You authorize us to disclose your name and address to third-parties involved with providing 911 Dialing to you, including, without limitation, call routers, call centers and local emergency centers.

16.2 Notify All Users: You should inform any customers, employees, guests, or other third persons who may be present at the physical location where you utilize the service of the important difference in and limitations of, DFN's 911 dialing as compared with traditional basic 911 or E911.

16.3 Location of Service: This Service is provided at a specific permanent address and not available as a nomadic offering. Before you move to another location, you must notify DFN to determine if service can be provided at your new permanent address. If you attempt to use the Service without notifying DFN and receiving our permission, emergency personnel may not be able to locate you to adequately respond to an emergency. Even with E911, emergency personnel may be dispatched at the address listed with us and not the address where you use the service if you fail to follow the requirements of this paragraph.

16.4 Service Outages:

- (a) **Service Outages Due to Power Failure or Disruption:** Dependent upon your location, network backup power systems may be in place during the event of a power failure. The equipment provided may also provide limited battery backup. Consult with DFN to determine whether or not your equipment has battery backup.
 - i. Equipment with battery backup. Battery backup on qualifying equipment is limited. Excessive use during a power outage will result in shortened life of the internal battery. The equipment may provide indication of low battery voltage. Customer should contact DFN for instructions or replacement. Failure of network power backup systems or the internal backup system during a power failure or disruption will prevent all Service, including 911 dialing, from functioning.
 - ii. Equipment without battery backup. Equipment that does not have a battery backup cannot support 911 dialing in event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 dialing will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure the equipment prior to utilizing the Service, including 911 Dialing.
- (b) **Service Outages Due to Internet Outage or Suspension or Disconnection of Broadband Service or ISP Service:** Service Outages due to Internet Outage or Suspension or Disconnect of Broadband Service or ISP will prevent all Service, including 911 dialing, from functioning. You understand you must obtain your own Internet connection, or obtain service from us (where available) to use the Service. We may not control your Internet access or the quality of your Internet connection.
- (c) **Service Outage Due to Disconnection of Your DFN Account:** Service outages due to disconnection of your account will prevent all Service, including 911 Dialing, from functioning.
- (d) **Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts:** Your ISP or broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. In that event, provided that you alert us to this situation, we will attempt to work with you to resolve the issue. During the period that the ports are being blocked or your Service is impeded, and unless and until the blocking or impediment is removed or the blocking or impediment is otherwise resolved, your Service, including the 911 Dialing feature, may not function. You acknowledge that DFN is not responsible for the blocking of ports by your ISP or broadband provider or any other impediment to your usage of the Service, and any loss of Service, including 911 Dialing, which may result. In the event you lose Service as a result of blocking of ports or any other impediment to your usage of the Service, you will continue to be responsible for payment of the Service charges unless and until you disconnect the Service in accordance with this Agreement.
- (e) **Other Service Outages:** If there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons including, but not limited to, those reasons described elsewhere in this agreement.

16.5 Network Congestion; Reduced Speed for Routing or Answering 911 Dialing Calls: There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks.

16.6 Disclaimer of Liability and Indemnification: We do not have any control over whether, or the manner in which, calls using your 911 Dialing service are answered or addressed by any emergency response center. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. NEITHER DFN NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, OR AGENTS MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, OR LOSS, AND YOU HEREBY WAIVE ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION, ARISING FROM OR RELATING TO OUR 911 DIALING SERVICE. You shall defend, indemnify, and hold harmless DFN, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection with the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

16.7 Alternate 911 Arrangements: If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or disconnecting the Service.

16.8 Non-exclusive, Non-transferable License; Retention of Rights: The right to use any of the Service granted to the Customer is nonexclusive and nontransferable, and Customer shall prohibit use of the Service by any third party other than Customer for such Customer's internal business purposes. It is expressly understood that title to the Service, any trade names, trade dress, trademarks, service marks, commercial symbols, copyrightable material, designs, logos and/or any other intellectual property belong to DFN or its underlying providers and does not pass to the Customer.

Restrictions: Customer shall not:

- (a) copy or adapt the Service for any purpose, except as specifically permitted under this Agreement;
- (b) use the Service except in accordance with all applicable laws and regulations, and except as set forth in any documentation or instructions provided by DFN;
- (c) reverse engineer, translate, decompile, or disassemble the Service;
- (d) use the Service in any outsourcing, application service provider, time-sharing or service bureau arrangement, including, without limitation, any use to provide Service or process data for the benefit of, or on behalf of, any third party other than the Customer;
- (e) cause or permit the disabling or circumvention of any security mechanism contained in or associated with the Service; or
- (f) delete, alter, cover, or distort any copyright or other proprietary notices or trademarks.

17. Taxes: Customer agrees that if there is any tax payable by it, but which is to be collected by DFN which DFN does not collect for any reason, upon assessment thereof by the applicable taxing agency, and demand by DFN, Customer shall immediately remit the same to DFN or the agency, as directed by DFN, even if such assessment arises after the termination of this Agreement.

18. Representations and Warranties: Each party represents and warrants that it has full power and authority to execute, deliver, and perform its obligations under this Agreement. DFN represents and warrants to Customer that any services provided hereunder will be performed in a manner consistent with that of other reputable providers of the same or similar services in the same locality. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT OR IN A SERVICE LEVEL AGREEMENT ENTERED INTO SUBSEQUENT TO THIS AGREEMENT AND SPECIFICALLY INCORPORATED BY REFERENCE INTO THIS AGREEMENT, DOUGLAS FASTNET MAKES NO WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF ANY PORTION OF THE NETWORK OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.

19. Governing Law: This Agreement is governed by and subject to the laws of the State of Oregon, excluding its principles of conflicts of law.

20. Litigation: If either party commences litigation under this Agreement, the prevailing party is entitled to reimbursement of its costs and attorneys' fees from the other party.

21. Remedies not Exclusive: The remedies provided in this Agreement shall be in addition to all other remedies to which DFN may be entitled at law or in equity, including without limitation the right to recover unpaid amounts with interest at the applicable statutory judgment rate, but accruing from the date initially due.

22. Jurisdiction; Venue: The parties consent to the personal jurisdiction of the courts of the State of Oregon and federal courts located in Oregon so that any litigation concerning or arising out of this Agreement shall be brought in Oregon. The parties agree not to claim that Oregon is an inconvenient place for trial. The venue of any such legal action shall be in Douglas County, Oregon.

23. Entire Agreement: This Agreement and any addendums, attachments, Service Order and other documents incorporated herein constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other representations, understandings or agreements that are not expressed herein, whether oral or written. Except as otherwise set forth herein, no amendment to this Agreement shall be valid unless in writing and signed by both parties.

24. Waivers: No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

25. Use of Name and Trademarks: Neither party shall use any name, logo or service mark of the other party in marketing services to others without the express written consent of the other party.

26. Confidentiality: Customer shall treat all information made available or disclosed to, or developed or obtained by, Douglas Fast Net

Customer as the result of or related to this Agreement ("Confidential Information") as confidential, and shall not disclose or use Confidential Information for the benefit of any person other than DFN; provided however, that Customer shall have no obligation with respect to that portion of Confidential Information which is disclosed by DFN to others without any restriction on use or disclosure, or which must be disclosed to others under law. If Customer received a request for Confidential Information from a third party, Customer shall promptly notify DFN in writing of such request, and if Customer in good faith believes it is obligated to disclose the requested Confidential Information, DFN shall be given the opportunity to seek judicial or other protection of such Confidential Information, with the cooperation of Customer.

27. Notices: All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if personally delivered by hand, (ii) upon the third day after such notice is (a) deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (b) sent by a nationally recognized overnight express courier, or (iii) by facsimile upon written confirmation (other than the automatic confirmation that is received from the recipient's facsimile machine) of receipt by the recipient of such notice.

Acknowledgement, by signing below, customer acknowledges that they have received and reviewed a copy of the Master Service Agreement and to the terms and conditions set forth in the Master Service Agreement.

Signature

Date