



MASTER SERVICES AGREEMENT FOR RETAIL SERVICES

THIS AGREEMENT, made and entered into effective as of the date a signed Service Order ("SO") or Master Service Agreement Addendum ("Addendum"), by and between _____ "**Customer**," and **Douglas Services, Inc. dba Douglas Fast Net (DFN)**, an Oregon company, hereinafter referred to as "DFN". This Agreement becomes legally binding upon signature by both Customer and DFN.

RECITALS

Customer desires to obtain Retail Services on DFN's broadband network; and DFN is agreeable to provide Retail Services and allow Customer to connect to DFN's facilities. Customer may use service only for authorized and lawful purposes.

AGREEMENT

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 or Addendum which will be attached hereto as an addendum 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 a SO or Addendum, Customer agrees to take and pay for, and, by accepting the SO or Addendum, DFN agrees to provide, the service(s) stated herein during the term described on the SO or Addendum. 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. DFN has no obligation to install, maintain or repair any equipment owned or provided by Customer, except as may be specifically provided herein. If Customer'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 System Equipment, whether such DFN System Equipment is 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 commercially reasonable efforts to notify the Customer of the planned timing of such activities and will use commercially 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 10 and 11, the initial term for each service will commence and end on the dates indicated in the applicable SO or 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 SO or Addendum. This Agreement shall continue until so terminated by written notice as provided in Section 25.

Upon termination of this Agreement, all rights of Customer to order new services cease and DFN has no further obligations to furnish any services to Customer. In the event of any inconsistency between the terms contained in this Agreement and any specific provisions of the SO or Addendum, the terms of the SO or Addendum 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 or Addendum. 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 the SO or Addendum. 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, assessments, or fees, including, but not limited to franchise fees, surcharges or other amounts assessed by any government entity or federal or state statute or rule, 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. Additionally, Customers who have defaulted on their accounts, allowing them to transition from a non-pay to permanent disconnect status, will be subject to a one-time administrative and provisioning fee. 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, prorated to the date of payment.

6. **Early Termination Charges:** If (a) Customer terminates this Agreement or any SO or Addendum hereunder for reasons other than Cause (defined below); or (b) DFN terminates this Agreement or any SO or Addendum hereunder pursuant to Sections 10 and 11, 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, plus (iii) a pro rata portion of any and all credits received by Customer. If Customer desires to cancel a SO or Addendum prior to the Firm Order Confirmation the following conditions apply: (I) where a SO or Addendum 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 pursuant to the terms and conditions of this Section 6.

7. **Limitation of Liability:** Unless otherwise provided in a separate 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, pandemic, 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 force majeure event continues for 60 days, the other party may terminate the affected portion of the services.

9. Indemnity: Customer agrees to indemnify, defend and hold harmless DFN and its members, and the 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, 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 gross negligence or willful misconduct of DFN.

10. Termination by DFN: DFN may terminate this Agreement or any SO or Addendum 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 DFN'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.

11. 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.

12. 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. 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.

13. 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 is in the sole discretion of DFN. 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 or interests or units (whether effected in one or more transactions or events occurring over any period of time) shall constitute an assignment for purposes of this Section.

14. EMERGENCY SERVICES – 911 DIALING: See the attached 911 addendum.

15. 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.

16. 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, DFN 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, SYSTEM EQUIPMENT OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.

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

18. Litigation/Limitation of Actions: If either party commences litigation under this Agreement, the substantially prevailing party is entitled to reimbursement of its costs and attorneys' fees from the other party. Any action or claim of any nature whatsoever accruing to Customer must be brought in court no later than two (2) years after it arises or it shall be deemed to have expired and that Customer has waived its right to pursue such action or claim.

19. 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.

20. Entire Agreement: This Agreement and any addendums, attachments, SO 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.

21. Dispute Resolution: Each party to this contract agrees to attempt to resolve any and all Disputes arising hereunder promptly, equitably and in good faith. If a Dispute arises under this Agreement that cannot be resolved by the parties within thirty (30) working days after written notice of the Dispute, the parties agree to submit the Dispute to mediation, as a condition precedent to arbitration, through Arbitration Services of Portland (ASP, Inc.) pursuant to the effective mediation rules of ASP, Inc. The Parties agree to participate in good faith in the mediation for sixty (60) days. If the parties are unsuccessful in resolving their Dispute through mediation, then the parties shall submit to binding arbitration, through ASP, Inc., pursuant to ASP, Inc.'s then effective arbitration rules. Judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. **Each party expressly agrees that the arbitration provisions of this Agreement are its exclusive remedy and expressly waives any right to seek redress in another form or venue.** Venue for any Disputes and all Disputes shall be in Douglas County, Oregon.

22. 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.

23. 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.

24. Confidentiality: Customer shall treat all information made available or disclosed to, or developed or obtained by, 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.

25. 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