

# DOMESTIC AND INTERNATIONAL EQUIPMENT AND SERVICES AGREEMENT

This Equipment and Services Agreement (the "Agreement") which incorporates the attached order form (the "Order Form") is entered into by and between **SHARED DATA NETWORKS LLC, a limited liability company organized and existing under the laws of North Carolina** ("SDN") and the Customer indicated on the Order Form (the "Customer").

PLEASE CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS OF THIS AGREEMENT. BY SIGNING OR INITIALING OR ELECTRONICALLY ACCEPTING THE ORDER FORM, YOU, THE CUSTOMER (AND/OR YOUR ORGANIZATION, IF APPLICABLE) AGREE TO BECOME LEGALLY OBLIGATED BY THIS AGREEMENT.

YOU (AND/OR YOUR ORGANIZATION, IF APPLICABLE), THE CUSTOMER, ARE AGREEING TO PURCHASE COMMERCIAL SATELLITE SERVICES AT A DESIGNATED LOCATION OR LOCATIONS FOR THE TERM INDICATED ON THE ORDER FORM. IF YOU CANCEL THESE SERVICES OR REQUEST LOWER PRICED SERVICES BEFORE THE APPLICABLE TERM ENDS, YOU MAY BE REQUIRED TO PAY A DISCONNECTION AND/OR DOWNGRADE CHARGE. IN THE EVENT CUSTOMER TERMINATES THIS AGREEMENT FOR REASONS OTHER THAN THOSE SET FORTH IN SECTION 5.5, CUSTOMER SHALL PAY A PENALTY EQUAL TO EITHER (A) THE TOTAL OF THE MONTHLY AMOUNTS AS SET FORTH IN THE ORDER FORM FOR THE BALANCE OF THE TERM OR (B) THE TOTAL AMOUNTS DUE FOR TEN MONTHS OF SERVICE, WHICHEVER IS LESS. IN ADDITION, YOU ARE EITHER PURCHASING OR RENTING, AS YOU HAVE INDICATED ON THE ORDER FORM, EQUIPMENT NECESSARY FOR THE SERVICES

In consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **Article 1. Definitions**

"Activated NM" means a Netmodem Router Solution (hereinafter defined) which has been installed by SDN and is capable of (i) providing access to SDN's satellite transponder bandwidth and (ii) transporting Customer's data. After SDN has received written notice by facsimile or otherwise from Customer that Customer would like to activate specific NM(s), SDN will use its best efforts to activate the NM(s) indicated in the notice within a commercially reasonable time. Activated NM(s) will be deactivated 30 days after a written request for deactivation is received by SDN from the Customer. Deactivation of NM(s) does not affect the term or pricing provisions of this Agreement.

"Customer Premises" means the location described in Section III of the Order Form where Customer will receive its commercial satellite services from SDN

"Delivery" means when the Equipment has been delivered to a third-party for shipping to the Customer or is otherwise made available to the Customer.

"Equipment" means the NM(s) and any optional items of equipment purchased by the Customer as indicated on the Order Form.

"Host" means any Customer owned central processing equipment, such as a mainframe, a front-end processor, a mid-range, a communications processor or a local area network.

"Netmodem Router Solution" ("NM") means the (i) iDirect Netmodem equipment which consists of hardware, circuit boards, components, assemblies (collectively the "Indoor Unit"), (ii) block-up converter ("BUC"), (iii) the very small aperture terminal or satellite dish (the "VSAT"), and (iv) the nonpenetrating mount (the "Mount" and together with the BUC and VSAT, the "Outdoor Unit"). The NM will be installed at the Customer Premises.

"Network" means, collectively and as a combined operation, the NM(s) and other Equipment purchased by the Customer, functioning together with the HUB as a communications network in accordance with the manufacturer's specifications.

"SDN Hub Earth Station" (hereinafter "HUB") means the satellite earth station facility, commonly referred to as a hub, which will function as the central earth station in a satellite communications network and which is owned by and located at the facilities of SDN.

## **Article 2. Installation, Inspection, Test and Acceptance**

2.1 Except in cases where the Customer elects to install the Equipment, SDN shall install the Equipment in accordance with SDN standard installation procedures. Standard installation shall include the following four items: (1) 1.2 meter antenna, (2) a non-penetrating roof mount with ballast ("NPRM"), (3) 150 feet of inter-facility link cable ("IFL"), and (4) 25 feet of grounding wire number 6. Any additional items of material, equipment, or labor will be billed on a time and material basis. Examples of items that are not parts of standard installation include, but are not limited to conduit, trenching soil, concrete or asphalt, and core drilling. Installation of the Equipment shall be accomplished as soon as practical, but in any event in accordance with the then-prevailing installation schedule. Provided, however, that if installation is requested for any location outside of the forty-eight (48) contiguous states of the United States, SDN shall use reasonable efforts, but shall not be obligated, to install Equipment or cause Equipment to be installed, and additional costs/fees may apply.

2.2. SDN shall test the Equipment during, and immediately following, the installation to ensure the Equipment performs in accordance with the Specifications.

2.3. Upon the installation and successful testing by SDN of an NM, the NM shall be deemed to be finally accepted by the Customer for all purposes under this Agreement. All other Equipment purchased hereunder will be deemed accepted by the Customer, unless rejected

in writing by Customer within five (5) days of receipt of such Equipment. Rejected Equipment must be replaced or repaired by SDN, to the satisfaction of Customer, within fifteen (15) days of SDN's receipt of such rejection.

2.4. With respect to any Equipment installed by SDN, which, in the opinion of the Customer, fails to perform in accordance with the Specifications, the Customer shall deliver to SDN within 15 days following such installation a written explanation of the deficiencies the Customer believes to exist. SDN shall investigate the alleged deficiencies within 15 days of SDN's receipt of the Customer's written explanation and remedy any such deficiencies within 30 days of SDN's discovery thereof. If the Customer believes any deficiencies have not been so remedied, any disagreement between the Customer and SDN shall be resolved either by (i) mutual agreement or (ii) in accordance with the arbitration procedures set forth herein. SDN shall be under no obligation of performance with respect to Equipment installed by the Customer, or Equipment, which has been in any way modified, adjusted, maintained or otherwise serviced at any time by any party other than SDN.

2.5 SDN may permit Customer to install Customer-provided equipment to operate in conjunction with its Network; provided, however, that such equipment must be approved in writing by SDN and maintained according to SDN requirements; provided further that SDN is under no obligation to approve such Customer-provided equipment, but will not withhold approval unreasonably. All decisions regarding approval of Customer-provided equipment are solely and finally SDN's.

2.6 SDN may permit Customer to provide its own installation and maintenance services in conjunction with its Network; provided, however, that such Customer provided field installers and service personnel must be approved in writing by SDN; provided further that SDN is under no obligation to approve such Customer-provided personnel, but will not withhold approval unreasonably. All decisions regarding such use of Customer provided personnel are solely and finally SDN's.

2.7 In addition to the equipment and services provided for elsewhere in the Agreement, SDN also offers other network services such as voice and internet access; the cost for such additional services shall be contained in the Order Form.

### **Article 3. Network Services**

3.1 Subject to the terms and conditions set forth below and on the Order Form, SDN shall provide satellite transponder bandwidth to the Customer. The space segment to be provided by SDN includes outlinks which allow for the transmission of data from the HUB to the NM(s) and return links which allow for the transmission of data from the NM(s) to the HUB.

3.2 SDN or the satellite vendor may, upon reasonable notice and at a mutually agreeable time, make such tests, adjustments, and inspections as may be necessary to maintain SDN's or the satellite vendor's facilities in satisfactory operating condition and to determine that the requirements of this Agreement concerning interface and interconnection with the space segment service provided hereunder are being complied with by the Customer.

3.3 Through the use of the HUB and associated monitoring tools and systems owned and operated by SDN, SDN shall monitor the operational integrity of the HUB and all associated Equipment. Except as otherwise agreed upon with Customer, this service shall be provided 24 hours per day, 365 days per year. The services to be provided by SDN pursuant to this Agreement (hereinafter referred to collectively as "Network Monitoring Services") are listed below, and SDN shall have no network monitoring service obligations beyond those set forth below:

3.3.1 SDN will provide surveillance of all Equipment and HUB components. Detailed escalation procedures, Customer contacts, network design and customization for each site or network of sites may be developed and agreed to by SDN and Customer.

3.3.2 SDN will provide any dispatch and tracking of any field service representatives that SDN deems necessary.

3.3.3 SDN will provide spectral assessment of performance of satellite transponder and initiation of dialog with transponder operator regarding any variance in performance.

3.3.4 SDN will make available to Customer toll free telephone access to the Network Operations Control Center ("NOC") operations group 24 hours per day for routine inquiries and single point of contact for administrative purposes.

3.3.5 SDN will provide up to one hour of NOC services for each commissioning of a new NM free of charge; SDN may, in its sole discretion, provide limited additional NOC services free of charge on a case-by-case basis.

3.3.6 SDN will make available additional NOC services for \$100 per hour. SDN will also make available additional NOC Engineering time at \$175 per hour and Senior Engineering time for \$225 per hour.

### **Article 4. Hardware Maintenance**

4.1 Subject to the terms and conditions set forth below and on the Order Form, SDN shall provide remedial maintenance services as described herein for a period of twelve (12) months after purchase and installation for all Covered Items. "Covered Items" means the NM(s) and the Host NAM, if any, which are (i) purchased from SDN as indicated on the Order Form, (ii) installed, maintained and serviced exclusively by SDN and (iii) are Activated NM(s). Additionally, "Covered Items" may include other equipment such as ancillary routers, switches and servers that SDN has agreed to service, but to the extent the same are so identified as "Covered Items" on the Order Form. All Equipment which is installed, maintained, modified, adjusted or otherwise serviced in any manner at any time by the Customer or parties other than SDN, unless specifically identified as "Covered Items" by SDN in the Order Form, shall be referred to as "Excluded Items."

4.2 The NM remedial maintenance services for Covered Items located within the forty-eight (48) contiguous states of the United States shall consist of: (1) technical troubleshooting to isolate the problem; (2) replacement of a malfunctioning NM Covered Item, or component thereof, in order to return the Covered Item to operating condition, and shipment of the malfunctioning Covered Item, or component thereof, to the designated repair facility; (3) stocking of NM spares for Covered Items at selected site locations; and (4) diagnostic support for the NM Covered Items equipment. Notwithstanding the previous sentence, if at the request of the Customer, SDN shall have taken extraordinary measures to deliver a needed part on an expedited basis, including delivery and/or installation of same to a location outside of the forty-eight (48) contiguous states of the United States, the cost of such measures shall be paid by the Customer.

4.3 The Customer shall, without charge, provide SDN's authorized service technicians with free and uninterrupted access to all equipment covered hereunder and to adequate working space, telephone service, heat, light, ventilation and electrical power. The Customer shall not relocate, alter or attempt to repair or service the Equipment without the written consent of SDN and the successful completion of any required certification training, or in violation of SDN's instructions; provided further, any such equipment which the Customer shall relocate, alter, repair or service, or attempt to relocate, alter, repair or service, shall be deemed to constitute Excluded Items upon the commencement of any such attempt or effort. Title to components that are replaced shall pass to SDN when the replacement component is installed.

4.4 SDN warrants to the Customer that the maintenance services performed by SDN on Covered Items under this Agreement will be performed in a good and workmanlike manner and those parts and materials furnished hereunder will be free from defects in workmanship and material upon installation. If any failure to meet the foregoing warranty appears within thirty (30) days after the date such service or material is furnished, SDN will re-perform the service and, at its option, repair or replace the defective parts or material. SDN does not warrant that the operation of any NM will be uninterrupted. The provisions of this hardware maintenance warranty shall not apply to failures or outages caused by the Customer or to any hardware on which the Customer has performed any modifications, adjustments, maintenance, installation or other type service.

4.5 THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY, NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PARTICULAR PURPOSE WILL APPLY.

4.6 SDN and its suppliers may, from time to time, need to interrupt Services for maintenance and other operational reasons, and Customer shall not receive any compensation for such interruptions. If commercially feasible, SDN will give Customer reasonable advance notice of all interruptions in the Service, whatever the cause.

4.7 SDN will initiate the dispatch of a field technician for maintenance services if SDN, in its reasonable discretion, believes such a dispatch is necessary.

4.8 If (i) Customer requests that service be provided outside of the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday (the "Primary Coverage Hours"), or (ii) a malfunction is the result of damage from improper use, operation other than in accordance with the operating manuals, alterations or service not authorized by SDN or any modifications, adjustments, installation, maintenance or other service performed by the Customer, acts of God, power failure, fire, flood, water, lightning, vandalism, accident or other cause external to the equipment, or (iii) free and uninterrupted access to the equipment is denied to the service technician, or (iv) a field service technician is dispatched at Customer's request to the site and discovers that the unit has "no trouble found" (as defined below), then in any such case the Customer shall be billed for and shall pay charges in accordance with the Engineering Service Fee contained in the chart below:

On-Site Service Fee:

(i) Within Primary Service Coverage Hours	\$175.00/hr
(ii) Outside Primary Service Coverage Hours Excluding Sundays and Holidays	\$250.00/hr
(iii) Sundays and Holidays	\$350.00/hr

"No trouble found" is defined as problems caused by (i) equipment not provided by SDN, (ii) equipment which is not a Covered Item or has been modified, adjusted, installed, maintained or serviced by the Customer or another party not authorized under this Agreement or (iii) SDN equipment that is found to be operational at the time of the visit.

**Article 5. Payment; Termination**

5.1. The Customer shall pay SDN a monthly fee for the services set forth in this Agreement, pursuant to the terms set forth on the Order Form and in this Article 5. This monthly service fee shall be due and payable on the first day of each month following installation of the NM(s) and initiation of service over the SDN network and shall be billed in advance of the month of service. Other payment terms such as advance deposits may be required as specified in the Order Form. By agreeing to the Order Form, the Customer is agreeing to the terms of payment therein.

5.2 Payment for Equipment - The Customer shall indicate on the Order Form whether the Customer will rent or purchase the Equipment and according to the indication on the Order Form, one or the other following terms shall apply:

5.2.1 Rental Agreement - The Customer shall pay SDN a monthly rental fee for the use of the Equipment described in this Agreement and necessary for the services set forth in this Agreement, pursuant to the terms set forth on the Order Form and in

this Article 5. This monthly rental fee shall be due and payable on the first day of each month following installation of the NM(s). The monthly rental fee shall apply to all installed Equipment.

5.2.2 Purchase Agreement - The Customer shall pay SDN a one-time amount as shown on the Order Form for the purchase of the Equipment described therein and necessary for the services set forth in this Agreement.

5.3 The Prices include all costs for the performance by SDN of its responsibilities in accordance with the provisions of this Agreement but do not include any amounts for shipping, or federal, state or local taxes imposed on the sale or use of such items or on the basis of the amounts paid or the value of the items or services delivered or located at the installation sites or on the basis of gross receipts (collectively, the "Shipping Charges and Taxes"). The Customer shall reimburse SDN for any of the Shipping Charges and Taxes that SDN is required to pay promptly after receipt of an invoice therefore. The Customer shall also pay all: (i) import and/or export duties, fees, costs or similar type expenses, (ii) costs incurred in connection with compliance with local laws, including those relating to telephone and/or other telecommunication and (iii) reasonable costs or expenses related to any governmental approvals or filings which may be necessary in connection with the Equipment or the transactions contemplated hereby. The Customer shall not be responsible for taxes to SDN's income or gross receipts from its overall business activities.

5.4 SDN may terminate this Agreement for cause immediately if Customer breaches the payment obligations of the Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice of the breach.

5.5 Customer may terminate this Agreement if SDN materially breaches any of its obligations under this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the breach.

5.6 In the event (i) SDN terminates this Agreement for breach of the payment obligations pursuant to Section 5.4, or (ii) Customer terminates this Agreement for any reason other than a material breach by SDN as provided for in Section 5.5, the payment obligation for the balance of the services to be provided for the remainder of the term of the Agreement (as may be provided on the Order Form) shall accelerate and the entire unpaid balance shall be immediately due and payable forthwith and SDN may take legal action to recover and collect the same.

#### **Article 6. Insurance**

6.1. Customer shall be liable to SDN for any cost not covered by Customer's insurance to repair or replace SDN's equipment damaged while in Customer's possession.

6.2 SDN and Customer shall each, at its own expense, maintain in full force and effect Worker's Compensation Insurance for its own employees, providing coverage in accordance with the statutory limits prescribed for any applicable installation site.

6.3. If SDN has the installation work done by a subcontractor, it will require the subcontractor to maintain at least the amount of insurance required by Section 6.2.

#### **Article 7. Taxes**

Customer shall be responsible for and shall pay all applicable federal, state and local taxes, fees, charges, surcharges or other similar exactions (hereinafter called "taxes") imposed on or with respect to the Services and/or Products that are the subject of this Agreement whether such taxes are imposed directly upon Customer or upon SDN, and include, but are not limited to, such things as sales and use taxes, utility user's fees, municipal occupation and license taxes, excise taxes, business and occupations taxes, 911 taxes, franchise fees and universal service fund fees or taxes. For purposes of this Section, taxes do not include any taxes that are imposed on or measured by the net income of SDN.

#### **Article 8. Indemnification**

8.1 Customer agrees to indemnify and hold SDN and its officers, directors and employees harmless from any loss, damage, liability and expense on account of bodily injuries or death or physical damage to tangible property, including the property of SDN, arising from any occurrence caused by a negligent or willful act or omission of Customer or any employee or agent of Customer, or of an independent contractor of Customer, which indemnity shall survive this Agreement.

8.2 UNDER NO CIRCUMSTANCES SHALL EITHER SDN OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY NATURE, WHETHER OR NOT FORESEEABLE. IN NO EVENT SHALL SDN OR ITS SUPPLIERS' LIABILITY EXCEED THE FEES PAID BY CUSTOMER DURING THE TERM. Customer assumes sole responsibility for the selection and use of the Products and Services. Customer shall hold SDN and its suppliers harmless from any claims, costs, or expenses arising from or related to Customer's selection or use of the Products and Services, and Customer shall defend, indemnify and hold SDN harmless against any expense or cost incurred as a result of any such claims.

#### **Article 9. Independent Contractor**

SDN is an independent contractor and shall not be deemed the agent or employee of the Customer.

#### **Article 10. Basis of Bargain**

EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL, BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY

HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

**Article 11. Force Majeure**

SDN shall not be responsible for delays or performance degradation caused by conditions beyond the reasonable control of SDN, including without limitation such conditions as acts of God, civil insurrections, wars, sabotage, terrorist activity, fires, floods, sun outages, lightning, atmospheric and externally caused interference, accidents, labor disputes, acts or requirements of governmental authorities or governmental laws, ordinances, rules and regulations, transportation delays, unusually severe weather, or other conditions beyond the reasonable control of SDN. In the event of delay or service degradation due to any such condition, the performance schedule shall be adjusted equitably and, notwithstanding Article 18, no service credits will be awarded.

**Article 12. Substitution of Sources**

SDN reserves the right to alter the type and source of supply of any item furnished pursuant to the Agreement; provided such substitutions are of comparable quality and do not, in SDN's reasonable judgment, impair the system performance specifications as specified herein, and such substitution shall not constitute a material change to the Agreement.

**Article 13. Assignment and Subcontracting**

13.1 The Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective legal representatives, successors and assigns, subject to the understanding that neither the Agreement nor any rights there under may be assigned by either party without the prior written consent of the other party, which consent will not be unreasonably withheld, except that the Agreement may be assigned to a parent or associated corporation or to an entity that acquires all or substantially all of the capital stock, business, or assets of a party hereto. For purposes of the foregoing, notwithstanding any other situation or circumstance which might at any time prevail, SDN shall not be deemed to have unreasonably withheld its consent if (i) any proposed successor or assignee of the Customer shall be a competitor of SDN or (ii) any proposed successor or assignee of the Customer shall be, in the sole discretion of SDN, less creditworthy than the Customer.

13.2 Nothing in the Agreement shall be construed as limiting the right of SDN to engage one or more subcontractors to perform any or all of the obligations of SDN under the Agreement. Any such assignment or subcontracting shall not, unless the parties otherwise agree in writing; relieve either party hereto from any obligations under the Agreement.

**Article 14. Miscellaneous**

14.1 The Agreement, including only modifications or additions agreed to in writing, expresses the entire understanding of the parties with reference to the subject matter of the Agreement, and supersedes any prior or contemporaneous representations, understandings and agreements, whether oral or written, and no representations or agreements modifying or supplementing the terms of the Agreement shall be valid unless in writing and signed by the parties to the Agreement.

14.2 The Agreement shall be interpreted in accordance with and governed by the laws of the State of North Carolina, excluding its conflict of laws provisions.

**Article 15. Arbitration**

15.1. Any controversy or claim between or among the parties, including but not limited to those arising out of or relating to the Agreement or any agreements or instruments relating to or delivered in connection with the Agreement and any claim based on or arising from an alleged tort, shall be determined by arbitration as provided in this Article.

15.2. The arbitration shall be conducted in accordance with the Federal Arbitration Act (Title 9, U.S. Code), notwithstanding any choice of law provision in the Agreement, and under the then-prevailing Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted in Charlotte, North Carolina, unless the parties agree on a different location. The arbitrator shall give effect to statutes of limitation in determining any claim. Any controversy concerning whether an issue is arbitral shall be determined by the arbitrator. The decision of the arbitrator shall be final and binding on the parties. Judgment upon the arbitration award may be entered in any court having jurisdiction. In rendering any decision or making findings of fact the arbitrator shall apply the express intentions of the parties set forth in the Agreement and the laws of the State of North Carolina, including without limitation any applicable statutes, regulations and binding judicial decisions, as such would be applied by the courts of the State of North Carolina and the United States District Court for the Western District of North Carolina.

15.3. In connection with any arbitration having an amount in controversy of less than \$1,000,000, such arbitration shall be conducted by a single arbitrator, chosen by the AAA. The AAA shall be guided by any applicable rules with respect to the choosing of an arbitrator for arbitrations conducted pursuant to the Commercial Arbitration Rules of the AAA, and, in addition, thereto, (i) the AAA shall attempt to appoint an arbitrator having a technical background, where available, consistent with the technical issues and procedures which are the subject matter of the Agreement and (ii) the AAA shall prefer an arbitrator who is an attorney in good standing and licensed to practice law within the State of North Carolina. In connection with any arbitration where the amount in controversy is equal to or greater than \$1,000,000, the arbitration shall be conducted by a panel of three (3) or more arbitrators chosen by the AAA, giving preference to those factors identified in subsections (i) and (ii) in the foregoing sentence.

**Article 16. Severability**

If any provision of the Agreement is held to be invalid, illegal or unenforceable in any respect in any jurisdiction, then such invalidity, illegality or unenforceability will affect only such provision in such jurisdiction, and will not in any manner affect the provision in any other jurisdiction, or any other provision of the Agreement in any other jurisdiction. The parties hereby authorize a court or arbitrator to substitute such invalid, illegal or unenforceable provision with a valid provision that reflects the original intent of the parties as nearly as possible.

**Article 17. Public Release of Information**

Each party shall obtain the written approval of the other party prior to disclosing the terms, conditions or content of the Agreement to any other party.

**Article 18. Service Level Agreement (SLA) and Service Credits**

**18.1 Network Availability**

18.1.1 SDN warrants to Customer that the services outlined in this Agreement and/or in the Order Form should be available to the Customer twenty-four hours a day for Covered Items, as that term is defined in Article 4. This availability will be deemed to be satisfied if all Customer NM(s), both on a collective and individual basis, which are Covered Items, are available for use not less than the following percentage of time in any complete monthly cycle ("Month"):

**99.50 %**

18.1.2 The percentage of availability will be calculated and measured in respect of the total number of NM(s) (that are Covered Items) according to the following formula:

**P = (A/B) x100** where:

**A** represents the actual number of minutes for which all of the NM(s) were individually or collectively available as set out in the SDN fault summary reports;

**B** is the number of NM(s) (that are Covered Items) multiplied by current month minutes (being the total number of minutes in the measured month); and

**P** is the percentage of availability

18.1.3 Service Credits for Network Outages. If network outages exceed the availability level set forth in Section 18.1.1, the Customer is entitled to receive service credits against the total service fees for all Covered Items as described in Services Pricing Attachment to Master Services Agreement in an amount equal to one service day of credit for each percentage point of unavailability. Example: If the network availability drops to 98.5%, then the customer will be entitled to 1/30 of the monthly bill as a credit.

18.2 Notwithstanding any other provision in this Agreement, in no event shall unavailability which in any way relates to access facilities, including but not limited to outages associated with Customer provided carrier facilities and associated equipment, Excluded Items, Scheduled and Emergency Maintenance under Article 20, or to commercial power outages or any Force Majeure item count as an interruption for the calculation of percentage availability for Network Availability.

18.3 The Customer must notify SDN, in writing, within 60 days of receipt of an invoice that a credit is due under Section 18.1. After SDN receives notification, a valid service credit will be applied to the next invoice. The foregoing credit is the exclusive remedy for network interruptions.

**Article 19. Network Capacity & Streaming**

19.1 SDN and the Customer will agree on the amount of capacity required for service and the best way to meet that need, whether through utilization of dedicated or shared capacity. Various qualities of service ("QOS") arrangements, including a Committed Information Rate ("CIR"), are available that correspond to Customer's needs and will be mutually agreed to with SDN.

19.1.1 "Dedicated capacity" means that the Customer sites are served on satellite capacity which is reserved for that customer.

19.1.2 "Shared capacity" means that the Customer sites are served on satellite capacity which is shared with other users and sites. Every attempt is made by SDN to insure compatibility among the various users of the capacity and from time to time capacity will be added and sites may be moved at SDN's option in order to maintain a balanced system.

19.2 "Streaming" means a continuous use of a channel (either outbound or inbound) in excess of SDN predetermined limits of time. The time limit depends on the streaming data rate as a percent of the maximum channel rate. The following table gives the time limits as a function of data rate:

Continuous use by one site	Maximum time allowed	Example based on 2 Mbps channel rate
50 percent or more of the channel	5 minutes	Over 1 Mbps

speed		
25 to 50 percent	10 minutes	> 500 kbps and < 1 Mbps
10 to 25 percent	20 minutes	> 200 kbps and < 500 kbps
5 to 10 percent	30 minutes	> 100 kbps and < 200 kbps
Under 5 percent	No limit	

Customer's usage of the channel may vary from time to time. SDN may not enforce the above limits when overall traffic is light. During heavy traffic, however, SDN reserves the right to rate limit customers who exceed the above limits.

**Article 20. Scheduled and Emergency Maintenance**

20.1 From time to time SDN will find it necessary to perform scheduled and emergency maintenance ("Scheduled and Emergency Maintenance"). SDN will make every effort to notify each Customer in advance of any outage and will make every effort to perform such Scheduled and Emergency Maintenance affecting work outside normal business hours. However, SDN will make the final decision regarding the time and method of affecting such maintenance. Scheduled and Emergency Maintenance does not count against service availability or towards service credits as outlined in Article 18.