

**PRIVATE LINE AND/OR ATM
 TRANSPORT SERVICE AGREEMENT
 BETWEEN
 DAKOTA CARRIER NETWORK
 AND
 SMARTNET, INC.**

This is an Agreement between SmartNet, Inc. ("Customer"), and DCN, LLC ("DCN"), doing business as Dakota Carrier Network, for the provision of Private Line Transport and/or Asynchronous Transfer Mode (ATM) Services ("Services").

1. **SCOPE.** Under this Agreement, Customer shall purchase and DCN shall supply Services, which provides non-switched point-to-point telecommunications services or ATM Switched Services. Non-switched point-to-point services are described in Exhibit A of this Agreement. Switched ATM Services are described in Exhibit B of the Agreement
2. **TERM.** This Agreement will commence on the latest signature date. The term of this Agreement will expire 36 months from either: A) the first installation date of Service, as shown by DCN records, if service is new; or B) the date of October 24, 2005.

Should DCN continue to provide Service after this term without a further agreement, the Service charges will convert to the applicable month-to-month rate under the terms and condition of this Agreement.

3. **CHARGES.** Customer agrees to pay the charges shown on Exhibit A and/or Exhibit B of this agreement. Applicable taxes shall be added to the charges shown on that Exhibit.
4. **BILLING FOR SERVICE.** Customer shall pay each bill in full by the payment due date. If late payment charges are applicable and permitted by law, they may be assessed and billed at 1 1/2 percent per month or the highest lawful rate, whichever is less, on the unpaid balance.
5. **SERVICE CHARGES.** Customer may move the physical location of all or part of Service to another location within the same DCN intrastate serving area as this Service, or, may upgrade to another Private Line and/or ATM Service of greater transmission capability for an equal or greater term than this Agreement without incurring discontinuance charges, provided the following conditions for the move or upgrade ("new service") are met: A) The new service is provided to Customer by DCN; B) Customer advises DCN that the requested new service replaces existing Service; C) Customer's request for the disconnection of the existing Service and the installation of the new service are received by DCN on the same date; D) Customer requests DCN install the new service on or prior to the disconnection date of the existing Service; E) Customer agrees to sign appropriate agreements and to pay all then current recurring and nonrecurring charges related to the new service.



6. **TERMINATION.** Either party may terminate this Agreement for cause provided written notice specifying the cause for termination and requesting correction within thirty (30) days is given the other party and such cause is not corrected within such thirty (30) day period. Cause is any material breach of the terms of this Agreement. If DCN terminates this Agreement for cause, or if Customer terminates this Agreement WITHOUT cause, Customer shall pay discontinuation charges. If termination is prior to installation of Service, discontinuance charges shall be those reasonable costs incurred by DCN throughout the date of termination. If termination is after installation of Service, discontinuance charges will be calculated by taking the total monthly recurring charges at the time of termination, multiplied by the number of months (or fraction thereof) remaining in term, multiplied by forty percent (40%).
7. **OUT OF SERVICE CREDIT.** If DCN causes a Service interruption, an out of service credit will be calculated under state Tariff. If there is no applicable Tariff and the interruption lasts for more than four (4) consecutive hours after DCN received notice of it, DCN will give Customer credit calculated by: A) Dividing the monthly rate for the affected Service by seven hundred twenty (720) hours; and then B) Multiplying that hourly rate by the number of hours, or major fraction, that the Service was interrupted.
8. **SERVICE SUSPENSION/MAINTENANCE.** DCN may, from time to time, suspend Service for routine maintenance or rearrangement of facilities or equipment. DCN will give Customer advance notification of the Service suspension. Such Service suspension is not considered an out of service condition provided Service is restored by the end of the period specified in the notification.
9. **PERSONAL INJURY; PROPERTY DAMAGE.** Each party shall be responsible for any actual physical damages it directly causes in the course of its performance under this Agreement, limited to damages resulting from personal injuries, death, or property damage arising from negligent acts or omissions; PROVIDED HOWEVER, THAT NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT.
10. **LIMITATION OF LIABILITY.** DCN SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT. EXCEPT AS PROVIDED IN SECTION 9, ANY DCN LIABILITY TO CUSTOMER FOR ANY DAMAGES OF ANY KIND UNDER THIS AGREEMENT SHALL NOT EXCEED IN AMOUNT A SUM EQUIVALENT TO THE APPLICABLE OUT OF SERVICE CREDIT UNDER THIS AGREEMENT. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THE AGREEMENT.
11. **NO WARRANTIES.** THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. **UNCONTROLLABLE CONDITIONS.** Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of the obligation under this Agreement by reason of severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control.

13. **DISPUTE RESOLUTION.**

- A. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, related directly or indirectly to this Agreement, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA").
- B. All Expedited procedures prescribed by the AAA shall apply. There shall be no discovery other than the exchange of information, which is provided to the arbitrator by the parties. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.
- C. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-15) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.
- D. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such actions and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

14. **LAWFULNESS.** This Agreement and the parties actions under this Agreement shall comply with all applicable federal, state and local laws, rules, regulations, court orders, and governmental agency orders including, if applicable, the Modification of Final Judgment "MFJ", as issued in *United States v. Western Electric, Co., et al.* Civil Action No. 82-0192, U.S. District Court for the District of Columbia, and all subsequent orders issued in or related to that proceeding. This Agreement shall be governed by the laws of the state where the Service is provided.

15. **SEVERABILITY.** In the event that a court, governmental agency, or regulatory body with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. Further, if DCN determines that this Agreement or a provision of the Agreement is inconsistent with the MFJ, this Agreement or that provision shall terminate upon written notice to the Customer to that effect. If a provision of this Agreement is terminated, but the parties can legally, commercially and practicable continue without the terminated provision, the remainder of this Agreement shall continue in effect.

16 GENERAL PROVISIONS.

- a.) Failure or delay by either party to exercise any right, power, or privilege hereunder will not operate as a waiver hereto.
- b.) This Agreement will not be assignable by Customer without the express written consent of DCN.
- c.) This Agreement benefits Customer and DCN. There are no third party beneficiaries.
- d.) This Agreement constitutes the entire understanding between Customer and DCN with respect to Service provided herein and supersedes any prior agreements or understandings.

The parties hereby execute and authorize this Agreement as of the latest date shown below:

SMARTNET, INC.

DCN, LLC

Bruce Dunbar
Signature

Evan A. Hass
Signature

Pres.
Name/Title Printed or Typed

Evan A. Hass/General Manager
Name/Title Printed or Typed

11-20-02
Date

November 21, 2002
Date

P.O. Box 454, Dickinson ND
Address for Notice 58602

P.O. Box 2484, Fargo, ND 58108
Address for Notice

**EXHIBIT A
SERVICE DESCRIPTION AND RATES**

*E-MAILED
MKTG 1-15-03*

SERVICE DESCRIPTION

<u>Circuit Capacity</u>	<u>Circuit Quantity</u>	<u>Term of Contract</u>	<u>Location A</u>	<u>Location B</u>	<u>Monthly Recurring Charges</u>	<u>Non-Recurring</u>	<u>Circuit ID</u>	<u>In-Service Date</u>
DS1	1	3 Yr.	Bismarck	Bismarck	\$100.00	\$300.00	16224BSMRBSMR	3/1/01
DS1	1	3 Yr.	Bismarck	Bismarck	\$100.00	\$300.00	16257BSMRBSMR	5/11/01
DS1	1	3 Yr.	Bismarck	Bismarck	\$100.00	\$300.00	16442BSMRBSMR	5/17/02
DS1	1	3 Yr.	Bismarck	Dickinson	\$610.70	\$0.00	16531BSMRDCSN	10/24/02
			TOTAL		\$910.70	\$900.00		