



600 Ash Ave., McAllen, Texas 78501 Phone: (956) 687-7070

PRODUCT SUPPLEMENT - DEDICATED INTERNET ACCESS

To the Master Service Agreement

This Product Supplement-Dedicated Internet Access (this "Supplement") is incorporated by reference into and made part of that certain Master Service Agreement (including all attachments and incorporated documents, the "Agreement") entered into between the Seller and the Buyer who signed the Master Service Agreement, as expressly provided therein and shall be effective as of the Effective Date defined in the Master Services Agreement. This Supplement provides additional terms and conditions governing the DIA Services.

1. SERVICE DESCRIPTIONS

A. Dedicated Internet Access

- 1.1 "Dedicated Internet Access" or "DIA" shall mean a dedicated high-speed connection to the Internet. Over a single access port connect ("Port"), Buyer may select from several connectivity options, speeds, and billing methods as outlined below and/or as set forth on any Service Order for which Seller has issued a FOC. The available configurations are subject to technical limitations, and Seller shall determine the actual allowed and available configurations from time to time consistent with then current technical considerations. Among other things, due to protocol overhead, IP addresses may be assigned to Buyer by Seller as deemed appropriate by Seller at rates agreed to by the Parties, but such IP addresses remain the property of Seller and are not transferred to Buyer or its User upon termination or expiration of this Supplement or any respective Service Order. Buyer and its Users will promptly return such IP addresses, and cooperate with any additional documentation of same, upon termination or expiration of this Supplement or any respective Service Order.
- 1.2 **Technical Specification.** The DIA Service and related offerings shall conform with the technical standards as specified by the Internet Engineering Task Force ("IETF").
- 1.3 **Service Options.** DIA may be offered in two service types: "Committed Bandwidth" and "Bursting Bandwidth". The selected type of service, pricing and length of term commitment shall be specified on the Service Order Form.
- (a) "Committed Bandwidth" is the provision of a fixed capacity internet access port. A fixed capacity Port is provisioned as a Port up to the bandwidth purchased by Buyer, giving Buyer the ability to use the full Port bandwidth. The monthly Recurring Charge ("MRC") is fixed each month and does not change due to usage of the Port.
- (b) "Bursting Bandwidth" allows the Buyer to use bandwidth above its Committed Bandwidth rate up to levels as agreed to in the Service Order consistent with the terms herein. The MRC for Bursting Bandwidth shall be calculated as follows: Seller will measure bandwidth usage, in five minute intervals, for each point of connection between Buyer and Seller's DIA network in two categories: incoming and outgoing traffic. At the end of each month, all data samples in each category in excess of the Committed Bandwidth rate will be sorted from highest to lowest and the top five percent (5%) of such measurements will be discarded. The highest remaining data sample in the higher of the two categories will then constitute the bandwidth usage level for that particular month. Bursting Bandwidth is the amount by which bandwidth usage for the particular month exceeds the Committed Bandwidth.

- (c) Invoicing for the MRC shall be in advance for Committed Bandwidth charges and in arrears for Bursting Bandwidth charges. Billing for a Bursting Bandwidth service period shall be billed in arrears no later than the second billing cycle following the period measured.

1.4 Definitions. Capitalized terms or phrases not defined in this Supplement shall have the definitions ascribed thereto in the Agreement. In addition to terms or phrases defined elsewhere in the Agreement or this Supplement, the following terms or phrases, where capitalized, shall be defined as follows:

“BGP-4 Routing” shall mean Border Gateway Protocol, version 4 (“BGP-4”), a routing protocol enabling packets with user data to travel between remote locations on the internet and to exchange information between autonomous systems within the internet. The provision of BGP-4 is subject to certain policies and procedures which will be reviewed with Buyer upon request.

“Demarc Extension” or “Extended Demarc” shall mean a build to extend Services from Seller’s stated Point of Demarcation to Buyer’s Point of Demarcation. In most cases, Seller’s stated Point of Demarcation is the Incumbent Local Exchange Carriers’ (“ILEC”) minimum point of entry (“MPOE”). Non-Recurring Charges for any Demarc Extension will be on an individual basis.

“DNS” or “Domain Name Server” shall mean a system for converting host names and domain names into IP addresses on the Internet or on local networks that use the TCP/IP protocol.

“E-BGP” shall mean an External Border Gateway Protocol, a routing protocol enabling packets with user data to travel between remote locations on the internet and to exchange information between autonomous systems within the internet.

“HSRP” shall mean Hot Standby Routing Protocol, a proprietary routing protocol from CISCO for fault tolerant IP routing which enables a set of routers to work together to present the appearance of a single virtual router or default gateways to the hosts on a local area network (“LAN”).

“Internet Protocol Address” or “IP Address” shall mean an address in four-part numerical format that uniquely identifies a computer accessible over a TCP/IP-based LAN or the Internet, for example, 127.0.0.10.

“Local Loop Service” shall mean any transport service requested by Buyer and provided by Seller to connect a site with a Port.

B. Professional Services

- 1.1 “Professional Services” shall mean offering firewall equipment for purchase, a one-time basic firewall configuration service and connection of the purchased firewall to Seller’s Point of Demarcation.
- 1.2 Equipment Options. Buyer may purchase the selected type of equipment and pricing shall be specified on the Service Order form.
- 1.3 Configuration Services. Seller will provide the following one-time configuration services:
- (i) Physical setup and configuration of network settings for the firewall.
 - (ii) Connect the firewall to Seller’s Demarcation Point.
 - (iii) Update firewall firmware as needed
 - (iv) For the firewall specified on the Service Order, firewall setup for Buyer’s WiFi network
 - (v) Update administrator username and password on the firewall
 - (vi) Test the connectivity to Seller’s DIA Service

- (vii) Establish DHCP service on the firewall as needed

2. PROVISIONING INTERVALS FOR FACILITIES

2.1 Provisioning Intervals. Seller will use reasonable commercial efforts to meet the following Provisioning Intervals for the DIA Services that are provided entirely on Seller’s Facilities:

<u>Service Description</u>	<u>Minimum Provisioning Intervals</u> (In Business Days from date of Service Order)
Port Only	10
Port and Local Loop Service (DS-1)	20
Port and Local Loop Service (Ethernet)	ICB

The Provisioning Intervals for all other Services shall be provided by Seller on an individual case basis and as set forth in the applicable Service Order FOC.

2.2 Remedies. If the Commencement Date does not occur prior to the Scheduled Service Date with regard to Services and such delay in the Commencement Date is not due to a Force Majeure Event or an act or omission of Buyer, Buyer’s Users or their respective representatives, then the following remedies shall apply:

- (a) Delay of Recurring Charge. Buyer shall not be obligated to pay the Recurring Charges until such time as the Service commences.
- (b) Termination of Service. If the Commencement Date does not occur on or before sixty (60) days following the applicable Scheduled Service Date, then Buyer shall have the right to terminate the applicable Service by providing written notice to Seller to the extent that such notice is provided prior to the Commencement Date. In such event, unless otherwise provided in the Service Order, Buyer shall not be obligated to pay, and shall receive reimbursement for any amounts previously paid with regard to, any Recurring Charges associated with such Service.
- (c) **SOLE AND EXCLUSIVE REMEDIES: THE PARTIES ACKNOWLEDGE THAT THE REMEDIES IN THIS SECTION 2 SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF BUYER AND THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR THE FAILURE OF THE COMMENCEMENT DATE TO OCCUR PRIOR TO THE SCHEDULED SERVICE DATE OR ANY OTHER DELAY IN PROVIDING THE SERVICE.**

2.3 Supp or Deferral Rights. With respect to any Services provided entirely on Seller’s Facilities, Buyer shall have the right to request up to three (3) deferrals of the Scheduled Service Date; provided that, unless otherwise agreed by Seller, in no event may Buyer request a deferral of more than thirty (30) days in aggregate from the Scheduled Service Date set forth in the initial FOC for the Service. The Supp Charges applicable to any such deferrals of the Scheduled Service Date are as set forth in Seller’s Miscellaneous Price Schedule. With respect to any Services provided in whole or in part on Third Party Facilities, any rights of Buyer to deter the Scheduled Service Date and any associated charges shall be determined by the Seller on an individual case basis.

3. TESTING PROCEDURES FOR FACILITIES

Seller agrees to use reasonable commercial efforts throughout the provisioning process so that the Service, when tendered to Buyer, meets the technical specifications set forth in this Supplement.

4. PERFORMANCE AND OPERATING STANDARDS FOR FACILITIES

4.1 Availability. If a Service Outage (as defined below) occurs with respect to Services provided entirely on Seller's Facilities and Seller is unable to provide the Services at the Availability Factors (as defined below), then Seller will credit Buyer's invoice for the applicable period with an amount equal to the Service Outage Credit (as defined below) in the month following the request by Buyer and determination of the applicable Service Outage Credit pursuant to the provisions set forth below; provided that Buyer must request such Service Outage Credit and such request must be made within ten (10) days of the applicable Service Outage. If a Chronic Service Outage (as defined below) occurs for any Service, then Buyer shall have the right to terminate the applicable Service consistent with paragraph (e) of Section 4.2.

4.2. Service Outage. A "Service Outage" shall mean that Buyer is unable to exchange IP packets over the Service via the Network Port.

(a) A Service Outage shall begin upon the earlier of Seller's actual knowledge of the Service Outage or Seller's receipt of written notice from Buyer of the Service Outage and shall end upon the correction of the loss of service.

(b) Notwithstanding the above, a Service Outage shall not be deemed to have occurred and no Service Outage Credits will apply:

(i) during periods (A) of less than ten (10) minutes, (B) in which Seller is not given access to its Facilities or equipment that are required to provide the Services or to remedy any Service Outage, (C) in which planned or scheduled maintenance and repair activities are occurring, (D) in which Buyer or its User continues to use the Services on an impaired basis, or (E) that are not reported to Seller within ten (10) days of the date the Service was affected;

(ii) for interruptions that are caused by or due to (A) acts or omissions of Buyer, its User or another third party, (B) the failure or malfunction of facilities or equipment not owned or operated by Seller, including without limitation the failure of the power supply, or (C) a Force Majeure Event or (D) disconnections by Seller for non-payment or other contract default or breaches by Buyer; and

(iii) for Services utilizing in whole or in part Third Party Facilities.

(c) Availability Factor. The following Availability Factors shall apply to DIA Services that are provided entirely on Seller's Facilities:

(i) Port Only – 99.999%

(ii) Port with DS-1 Local Loop Service – 99.90%

(iii) Port with Ethernet Private Line Local Loop Service

i. Unprotected – 99.0%

ii. Protected (Network protection; no client protection) – 99.9%

iii. Load Shared – 99.99% one of the two diverse paths will be available.

(iv) Port with Metro Ethernet Service – 99.90%

The Availability Factors set forth above shall apply for each calendar quarter and is a measurement of the percent of total time that Service is operative and deemed available to Buyer in accordance with the above specifications when measured over such period. The Availability Factor for any other Service will be as agreed to by Seller and Buyer in writing.

(d) Service Outage Credit. With respect to any Service Outages in excess of the Availability Factors, the Service Outage Credit shall be equal to an amount equal to (a) the Recurring Charge applicable to the affected Service during the calendar quarter in which the Service Outage occurred multiplied by (b) the number of hours or fractions thereof that the Service Outage occurred

during the applicable period divided by 2160 hours. Service Outage Credits are calculated after deduction of all discounts and other special pricing arrangements, and are not applied to governmental fees, taxes, surcharges and similar additional charges, nor are credits available for any usage based Services. **OTHER THAN THE ADDITIONAL TERMINATION REMEDY SET FORTH BELOW FOR CHRONIC SERVICE OUTAGES, BUYER'S RIGHT TO RECEIVE SUCH SERVICE OUTAGE CREDIT SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND THE SELLER'S SOLE AND EXCLUSIVE OBLIGATION IN THE EVENT OF A SERVICE OUTAGE OR FOR ANY OTHER CLAIM THAT SELLER FAILED TO MEET ITS OBLIGATIONS IN THE PROVIDING OF THE SERVICE.**

- (e) Chronic Service Outage. An affected Service shall be deemed to have experienced a "Chronic Service Outage" to the extent that in any calendar month (i) four or more Service Outages have occurred with each such Service Outage having a duration of more than thirty (30) minutes or (ii) one Service Outage has occurred for a duration of more than forty-eight (48) hours, in each case where the applicable Service Outage has been reported by Buyer to Seller with respect to any Service within ten (10) days. If a Chronic Service Outage occurs, then Buyer shall have the right to terminate the affected Service upon providing written notice to Seller, without the incurrence of any Termination Charge; provided that Buyer terminates the applicable Service on or before the expiration of the calendar month following which the Chronic Service Outage occurred. **BUYER'S RIGHT TO TERMINATE THE AFFECTED SERVICE SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND THE SELLER'S SOLE AND EXCLUSIVE OBLIGATION IN THE EVENT OF A CHRONIC SERVICE OUTAGE.**

4.3 PERFORMANCE LIQUIDATED DAMAGES. FOR THIS SUPPLEMENT, THE REMEDIES OF BUYER IN SECTIONS 2.2(C), 4.2(D), AND 4.2(E) HEREOF SHALL CONSTITUTE BUYER'S PERFORMANCE LIQUIDATED DAMAGES FOR THE SERVICE OFFERED UNDER THIS SUPPLEMENT AND CONSTITUTE BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY PERFORMANCE RELATED TO OR ARISING FROM THE SERVICE OFFERED HEREUNDER.

5. RULES AND REGULATIONS FOR USE OF DIA SERVICE

- (a) As a condition of Buyer's use of the DIA Service, Buyer warrants to Seller that neither it nor its Users will use the DIA Service for any purpose that is unlawful or prohibited by these terms, conditions, and notices. Buyer agrees to abide by, and shall cause its Users to abide by, all applicable local, state, national and international laws and regulations. Buyer is solely responsible for all acts or omissions that occur under its account, including the content of Buyer's and its Users' transmission through the DIA Service.
- (b) Buyer agrees that it and its Users shall comply in all respects with Seller's Acceptable Use Policy ("AUP"), as set forth under the AUP link at www.smartcomtelephone.com/aup. Buyer acknowledges that it has reviewed and agrees to the provisions of the AUP.