

**DEDICATED INTERNET ACCESS or DATA TRANSPORT  
 SERVICE AGREEMENT**

**THIS AGREEMENT** is entered into by and between Hidalgo County ("Customer"), and Smartcom Telephone, LLC ("Smartcom"), for the purpose of establishing the terms and conditions under which Smartcom will provide data service.

**SERVICE TO BE PROVIDED.** Smartcom, under the terms of this agreement will provide to Customer the selected application of services of the following type(s):

Service	MRC*	Installation	Premise Equipment
1Gbps x 1Gbps Metro-E Data Transport	\$ 449.00	\$ 0.00	Extreme or Juniper

*\*Plus any applicable Taxes or regulatory fees*

**TERMS OF THE AGREEMENT.** This Agreement shall be in effect for an initial term of monthly (1) months, commencing on completion of installation and handoff to customer. At the end of this initial term, or any extension thereof, if a new term agreement is not entered into within 30 days, the service will revert to a "month-to-month" service agreement. The monthly service charges may increase to the then-current rate, unless prior to the end of the initial term either party notifies the other, in writing, of its intent to terminate the Agreement.

**CHANGES TO SERVICE.** A move of service will be considered as a "disconnect" and a new installation. Charges for new service will apply.

**PAYMENT SCHEDULE.** At the time of the first bill, the Customer will be billed Non-Recurring (installation) charges, as well as the appropriate monthly recurring charges ("MRC") for the service(s) ordered. All billing for services is done in advance. Title to any premise equipment supplied by Smartcom shall remain the property of Smartcom. Customer assumes the risk of loss or damage of the equipment upon delivery to Customer's location.

Monthly service charges are due and payable upon receipt of statement. Failure to pay monthly service charges shall give Smartcom the right, without liability, to temporarily disconnect service. To restore service will require payment of any unpaid balance and a reconnect charge. The charge for reconnecting is \$50.00 per site. If service is not restored within ten (10) calendar days, the service will be permanently disconnected. To restore service after permanent disconnect, pre-payment of full unpaid balance, early termination charge, and new installation charges will apply.

**RETURNED CHECKS:** A returned check will be considered non-payment of the account. A \$35.00 processing fee will be charged on all returned checks.

**APPROPRIATE USE.** Customer agrees to maintain all passwords as private and confidential information. Customer agrees to use its Smartcom account in a way that conforms to all applicable laws and regulations. Customer understands that violation of certain generally accepted guidelines on Internet usage, such as restrictions on mass e-mailings (Spam) and advertising, or posting to inappropriate newsgroups, may cause severe operating difficulties for Smartcom, and would be a likely cause for the termination of Customer's account. Customer specifically agrees not to attempt to gain unauthorized access to any other systems or networks. Customer agrees to abide by Smartcom's Subscriber Acceptable Use Policy.

**INTERNET CONTENT.** Customer understands that the information available through Smartcom or interconnecting networks may not be accurate, including the content displayed on the Smartcom Desktop. Customer understands that the some of the information available through Smartcom or interconnecting networks may be intended for adult audiences. Any filtering of internet content will be the sole responsibility of Customer.

**IP ADDRESS.** Any IP Blocks that are assigned by Smartcom are for Customer use only, and it is understood that Smartcom will not guarantee routing of any IP's of any user other than those assigned to the Customer unless prior arrangements have been made. IP addresses issued by Smartcom are not portable and remain the property of Smartcom. If the Customer discontinues service with Smartcom, Smartcom will bear no responsibility or liability for any actions or costs incurred by Customer in obtaining or reconfiguring its equipment with new IP addresses.

**SECURITY POLICY.** Customer understands that internetworking communications are not secure and may be subject to interception or loss. Smartcom makes no warranties of any kind, either express, implied, or statutory concerning the data or information available through the use of its Smartcom network. Customer understands that the use of its Smartcom account, and any data or information accessed using that account, will be completely at its own risk. Customer is responsible for its network security. Smartcom will not be liable for damages arising out of unauthorized access to Customer's network.

**CUSTOMER PROVIDED EQUIPMENT (CPE).** Smartcom is not responsible for equipment purchased/installed by Customer. Smartcom will not work on, or open, any Customer-owned or personal computers. Any equipment purchased from Smartcom becomes CPE upon installation.

**INSTALLATION.** Prior to installation, Customer is responsible for ensuring that its computers are configured for network connection. Smartcom will provide/install the service to the Smartcom-provided ethernet router or switch at the Customer's premises. Customer will provide any necessary 110vAC electrical power needed to operate premise equipment and will ensure that an uninterrupted power source ("battery backup") is available for said equipment. Interface to customer will be on a standard ethernet jack.

Customer acknowledges that if the installation address is not currently serviced by Smartcom-owned facilities, construction may be required which can take up to one hundred twenty (120) days even without any construction hindrance due to rights-of-way issues, permit acquisition, and other factors beyond the control of Smartcom. Installation dates and times will be determined and communicated to Customer. If technician is on site and access cannot be provided, Customer may be charged a \$45.00 "no show" fee and rescheduling may result in a delay of service.

**SERVICE DELIVERY.** Actual data transmission or throughput may be lower due to Internet congestion, server or router speeds, protocol overheads, and other factors which Smartcom cannot control.

**SERVICE CALLS.** Smartcom encourages customers to check your networks and make every effort to rule out any problems on your side prior to calling for repair. If Smartcom is called to the Customer site and it is determined that the problem is other than the Smartcom network or Smartcom-Provided interface device, a service fee of \$85 will be charged for the first hour or any fraction thereof, and \$42.50 for each additional half hour increment. The stated rates apply during regular business hours. After-hours; weekend and holiday rates will be higher.

**EQUIPMENT WARRANTY:** Smartcom-provided new modem/router equipment will be covered by the by the manufacturer's warranty. During the one-year warranty period, Smartcom will support the modem/router for problems covered by the manufacturer's warranty including full replacement of the router, if necessary. After the one-year warranty period has expired, Smartcom will no longer support problems with the T-1 or DSL modem/router. Any equipment furnished by Smartcom will be maintained at no cost to the Customer throughout the duration of this Agreement.

**DELAY.** Smartcom will not be liable for any delay in the delivery or installation of any service or for any damages suffered by Customer if such delay is directly or indirectly caused by, or in any manner arises from transportation delays or any other cause beyond the control of Smartcom.

**CONSEQUENTIAL DAMAGES.** Smartcom is not responsible for any consequential damages resulting from failure of or suspension of services.

**RIGHT TO MODIFY.** Smartcom reserves the right to increase the monthly charge to customer if Smartcom's underlying carrier raises the cost it charges Smartcom to deliver the service to Customer's premise. Should such increase in monthly charges exceed 10% of the MRC, Customer may choose not to pay such increase in monthly charges and have service terminated at that time thereby abrogating this agreement and releasing both parties from the terms set forth herein. This Agreement supersedes any or all previous agreements, verbal or written. Periodic amendments to this Agreement may be allowed and can be sent via electronic mail ("e-mail"). Should the parties agree to an amendment, such amendments shall be effective upon written execution of both parties.

**EARLY TERMINATION. If service is cancelled and/or terminated within the initial term of this Agreement, Customer shall be immediately liable for any unpaid installation and invoiced charges plus 100% of the balance of all payments for the entire term of this Agreement.**

**ATTORNEY'S FEES.** If either party commences an action against the other party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the losing party, reasonable attorney's fees and cost of suit.

**SEVERABILITY.** If any provision of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**NON-APPROPRIATIONS.** By executing the Agreement, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of

Customer's current fiscal period. Customer further agrees to request all appropriations and funding necessary to pay for the services for each subsequent fiscal period through the end of the Agreement Term. In the event Customer is unable to obtain the necessary appropriations or funding for the services provided under this Agreement, Customer may terminate this Agreement without liability for the termination charges upon the following conditions: (i) Customer has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite Customer's best efforts funds have not been appropriated and are otherwise unavailable to pay for the Services; and (iii) Customer has negotiated in good faith with SmartCom to develop revised terms, an alternative payment schedule or a new agreement to accommodate Customer's budget. Customer must provide SmartCom thirty (30) days' written notice of its intent to terminate the services. Termination of the services for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If Customer terminates the services under this section, Customer agrees as follows: (i) it will pay all amounts due for services incurred through date of termination and reimburse all unrecovered non-recurring charges; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original Agreement Term.

**NO IMPLIED WARRANTIES.** The Customer acknowledges that the services are of such a nature that the services can be interrupted for many reasons other than the negligence of Smartcom and that damages resulting from any interruption of the services are difficult to ascertain. Therefore, the Customer agrees that Smartcom shall not be liable for any damages arising from the Customer's use of the system or the services. Smartcom makes no warranties of any kind, express or implied, with respect to the system or the services. Smartcom disclaims any warranty of merchantability, fitness for a particular purpose, or non-infringement with respect to the system and the services. Smartcom shall not be liable to the user, or to any third party, for any loss or damage as a result of the use of the system or the services. This includes, but is not limited to, the loss of data resulting from delays, non-deliveries, mis-deliveries or service interruptions whether caused by Smartcom's own negligence, errors, omissions or otherwise.

The liability of Smartcom for mistakes, omissions, interruptions, delays, errors, or defects in transmission shall not exceed an amount equivalent to the proportionate monthly recurring charge to the Customer for the period of service during which such events occur. No credit shall be allowed for an interruption of a continuous duration of less than two (2) hours. For purposes of determining service credits, a month shall be deemed to have seven hundred twenty (720) hours. Any credits will be offset against charges billed during the next month. Additional limitations on liability can be found in Smartcom's current End-User tariff on file with the Public Utility Commission of Texas.

**FORCE MAJEURE.** Smartcom is not liable for failure to perform its obligations if such failure is as a result of acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. Neither party is entitled to terminate this Agreement due to such circumstances.

**VENUE.** In the event of legal action arising out of or related to this Agreement, including claims for non-payment of amounts owed hereunder, Hidalgo County, Texas shall be the exclusive jurisdiction and legal venue for said action. This Agreement shall be construed according to the laws of the State of Texas.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_

**Signature**

\_\_\_\_\_  
For Customer

\_\_\_\_\_  
Printed Name

**Billing Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Accounts Payable E-Mail**

\_\_\_\_\_

**Signature**

\_\_\_\_\_  
For Smartcom Telephone, LLC

\_\_\_\_\_  
Printed Name

**Installation Address**

Point A 100 E. Cano 4th Floor Edinburg  
\_\_\_\_\_  
Point B 215 S. Closner Edinburg  
\_\_\_\_\_

**Site Contact:**

**Name:** Leonel Torres III  
\_\_\_\_\_

**Phone:** 956-292-7000 ext 6006  
\_\_\_\_\_

**E-mail:** Leonel.Torres3@co.hidalgo.tx.us  
\_\_\_\_\_

**Name:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_