

HIGH-SPEED INTERNET ACCESS SERVICES AGREEMENT TERMS AND CONDITIONS

1. Definitions. As used herein: "**Services**" are services using Ethernet Networking (10/100 Mbps) utilizing upstream digital subscriber line ("**DSL**") or **T1** technology to provide high-speed telecommunications data services identified in the attached Schedule of Services (which may include business-grade DSL or T1 services from one or more providers at DVSA discretion) to Customer's Internet and Network Access customers (each an "**End User**"), that DVSA makes available at its discretion; "**End User Circuit**" is an Ethernet (10/100 Mbps) digital data telecommunications service that consists of one Virtual Local Area Network (**VLAN**) to a network interface device ("**NID**") on an End User's premises utilizing Ethernet technology and Internet Protocol ("**IP**") services. An End User Circuit provides upstream and downstream maximum throughput rates that range from 64 kbps up to 100 Mbps (depending on what Service Customer orders for its End Users and the maximum Internet Access available). "**SLA**" means the DVSA Service Level Agreement. "**AUP**" means the DVSA Acceptable Use Policy. "**Web-Site**" means DVSA's web site (that DVSA makes available at its sole discretion). Statement of Work ("**SOW**") means any document that describes services to be performed detailing all applicable fees associated with completing the requested services. "**CPE**" means Customer Premise Equipment which includes any equipment installed at the customer's location to support the VLAN its connection or any other customer equipment that will use the connected network whether provided by DVSA or the Customer. "**Shared Access**" means the process in which multiple DVSA customers share the Internet Access Upstream Connection via the secure infrastructure installed by DVSA. "**Dedicated Access**" means the process in which DVSA customers get sole use of the Internet Access Upstream Connection via the secure infrastructure installed by DVSA. "**NAT**" means Network Address Translation a procedure in which the Public IP address supplied by DVSA can be mapped to multiple End User CPE devices allowing simultaneous access to the DVSA VLAN.

2. Provision of Services. DVSA will use reasonable commercial efforts to supply the Services that Customer may order. All Services will be supplied in accordance with the Agreement (including these Terms and Conditions and the Schedule of Services), the SLA, the AUP and the DVSA Standard Customer Policies. Each of these documents are incorporated into this Agreement by this reference. Should any inconsistency exist or arise between a provision of this Agreement and a provision of any exhibit, schedule or other incorporated writing, the provision of this Agreement shall prevail. Customer agrees that its End Users must comply with the AUP. DVSA reserves the right to terminate Services to an End User in violation of the AUP or take other actions in accordance with the terms of the AUP. DVSA reserves

the right to change the AUP upon thirty (30) days written notice to Customer. Customer shall purchase Services for each End User for an initial term of one (1) year (consisting of 365 days and co-terminating with existing agreements with upstream service provider) beginning on the Billing Start Date (as defined in the Schedule of Services) ("**End User Term**"), after which DVSA may continue to provide Services to such Customer on a yearly basis at its discretion, subject to continuing payment of applicable fees and Customer's compliance with terms and conditions requested by DVSA. DVSA reserves the sole and exclusive right to determine its service area, and the right to, maintain, reconfigure, or discontinue any Service or other product. Customer understands that DVSA's performance is dependent in part on third party actions, including, without limitation, actions on the part of Customer and its End Users. Accordingly, any performance to be rendered by DVSA hereunder shall be appropriately waived or delayed to account for such actions or inactions. Customer shall provide DVSA with all information reasonably requested (including, without limitation, information about each End User) to allow successful installation of each order placed.

3. End User Circuits. Customer must order an End User Circuit (as described in Section I of the Schedule of Services) for each End User before DVSA can supply any Services for that End User. Customer acknowledges that the installed speed of an End User Circuit may vary from the ordered speed depending on several factors, including but not limited to, the condition of the upstream communications connection supplied by a 3rd party and the type of service orders (shared or dedicated). DVSA reserves the right to limit throughput to any customer in any case where such throughput or utilization is affecting other DVSA customers.

4. Equipment/Products. For any End User premises equipment that Customer purchases through DVSA pursuant to this Agreement, DVSA may supply new or recertified equipment. Recertified equipment is equipment that (a) may have been removed from its original packaging by DVSA or returned to DVSA by an End User after a promotional offer, (b) is free from visible defects, and (c) is equivalent in function and appearance to new units. On new and recertified equipment purchased by Customer through DVSA, DVSA will provide a one (1) year replacement warranty from the Billing Start Date (as defined in the Schedule of services) for manufacturer's defects. At DVSA's discretion, any equipment DVSA supplies as replacement equipment for existing equipment (e.g., for warranty purposes) may be new, recertified or refurbished. Refurbished equipment is previously owned equipment that has been remanufactured by the manufacturer or its agent, is free from visible defects,

HIGHSPEED INTERNET ACCESS SERVICES AGREEMENT TERMS AND CONDITIONS

and is equivalent in functionality to new units. Any equipment supplied as replacement equipment will carry the remainder of the one (1) year warranty described above. DVSA shall have no obligation or liability in connection with any equipment not purchased through DVSA even when configured by DVSA, or for any abuse, reconfiguration, acts of God, repair or misuse of any equipment by any party other than DVSA. All such equipment supplied by DVSA is hereinafter referred to as the "**Products**."

5. Fees and Payment Terms. DVSA shall invoice Customer once a month by either providing a paper invoice or an electronic invoice that can be accessed via the Web Site. DVSA will bill Customer for recurring charges on the first day of the month in which DVSA provides the Services. For example, DVSA's July 1 invoice will bill Customer for Services to be received from July 1 to July 31. For new End Users installed during a month, DVSA's next invoice will reflect all fees associated with the installation and setup of such End User, prorated monthly fees for Services for such month, and the advance monthly fees for Services for the following month. For example, if DVSA installs Service for an End User on July 15, the August invoice for that End User will include (a) all one time non-recurring fees, (b) the prorated monthly fees for July 15 through July 31, and (c) the monthly fees for August. If Customer has existing Services that are covered under this Agreement, such Services shall be billed at the rate as set forth hereunder for the corresponding Services. If Customer has existing Services provided by DVSA that are not described in this Agreement, DVSA may terminate such Services without notice unless Customer signs an addendum to cover such discontinued services. Fees shall be due on the first day of the month on which DVSA provides the invoice and will be considered late if not paid within thirty (30) calendar days of the date of the invoice. After this thirty (30) day period, all unpaid fees will accrue interest at a rate of one and one-half percent (1.5%) per month or any part thereof, or the highest rate allowed by applicable law, whichever is lower, and Customer shall pay all collection costs incurred by DVSA (including, without limitation, reasonable attorney's fees). If Customer has a bona fide, good faith dispute with any of the amounts on an invoice ("**Disputed Amounts**"), Customer must pay all amounts not in dispute as set forth above, and provide DVSA with a written request for billing adjustment together with all supporting documentation (in the form requested by DVSA) within sixty (60) days from the first day of the month of the invoice. If DVSA does not receive this information within this sixty (60) day period, Customer's right to billing adjustment shall be waived. In the event of a billing dispute the parties shall promptly resolve the dispute by mutual agreement or, if the parties cannot mutually agree, by arbitration in accordance with the process

described in Section 19, Miscellaneous. DVSA reserves the right to Limit, reduce, or terminate services for customers in thirty (30) days or more in arrears.

6. 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 DVSA, and include, but are not limited to, 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 DVSA. If Customer is exempt from any such taxes for any reason, DVSA will exempt Customer from such taxes once Customer delivers a duly executed, signed and dated valid exemption certificate to DVSA's tax department and DVSA's tax department has approved such exemption certificate. Such exemptions should be sent directly to: DVSA Technologies, 5 Reeve Rd., Rockville Centre, NY 11570, ATTN: Tax Department, with a copy to the address set forth in the notice provision herein. If for any reason a taxing jurisdiction determines that Customer is not exempt from such taxes, and assesses such taxes, Customer agrees to pay DVSA such taxes, plus any applicable interest or penalties that may be imposed on DVSA's acceptance of such certificate. Customer shall indemnify and hold DVSA harmless for any liability or claims related to such unpaid taxes pursuant to the provisions of Section 15, Indemnity, herein.

7. Cancellation and Disconnection. If Customer disconnects Services for an End User during the End User Term (or if DVSA disconnects an End User for Customer's Payment Default), Customer shall pay to DVSA the lesser of the following as liquidated damages (such amounts being an accurate estimation of DVSA's damages): (a) the monthly fees for all months between the month during which the Service was disconnected and the final month of the End User Term; or (b) the Disconnect Fee If set forth in the Schedule of Services. After the End User Term, Customer must request an End User disconnection by the second to last business day of the month, or Customer will be liable for fees for such End User for the month following the disconnection. If an End User requests that DVSA switch its End User Circuit from Customer to another DVSA customer (current or new), DVSA may perform such switch (it its sole discretion), but Customer will not incur a disconnect charge. However, Customer will be liable for and shall pay all fees incurred for such End User Circuit prior to the change and Customer will not be

HIGHSPEED INTERNET ACCESS SERVICES AGREEMENT TERMS AND CONDITIONS

entitled to a refund of any already-paid fees. Such switch will only be performed with full payment of all incurred fees and pre-payment of all installation charges.

8. Support and Maintenance. Customer shall be the initial point of contact for all End Users. Customer shall use reasonable commercial efforts to provide primary support to End Users for issues relating to End User Circuits, equipment, and Services. Customer understands that DVSA may, from time to time, need to interrupt Services for maintenance and other operational reasons, and that Customer shall not receive any compensation for such interruptions. If commercially feasible, DVSA will give Customer reasonable advance notice of all such interruptions. DVSA may make available (at its option) Professional Services to its Customers and End Users including but not limited to trouble shooting activities, network integration, performance analysis, network administration, computer administration, Help Desk, hardware/software installation and support, Windows, Unix, or other services upon request and at a rate to be determined. In all cases all work will be preceded with a statement of work clearly outlining the work to be performed and fees applicable. Under no circumstances will work be performed without a signed and executed statement of work.

9. Limited Performance Warranty. DVSA warrants to Customer, and only Customer, that the DVSA network shall perform in substantial accordance with the performance criteria set forth in the SLA. This limited warranty shall be void if: (i) any equipment has been subjected to physical or electrical stress, misuse, neglect, accident or abuse, or damaged by any external causes; (ii) the Service or any equipment has been repaired or altered by anyone other than DVSA or DVSA's subcontractors or affiliates, without DVSA's express, prior written approval; (iii) the Service or any equipment has been provided by someone other than DVSA or DVSA's subcontractors or affiliates; or (iv) the Service or any equipment is used in violation of instructions furnished by DVSA. DVSA's sole obligation and Customer's sole remedy if the Internet Access Services ("IAS") fail to meet the SLA shall be to use reasonable commercial efforts to correct such failure (in addition to any credits set forth in the SLA), *provided* that (a) Customer promptly reports such failure; (b) the failure can be reproduced or confirmed by DVSA; and (c) the cause of the failure is within DVSA's control. If a performance failure occurs that is within DVSA's control, and DVSA is unable to correct such failure within the time periods set forth in the SLA, then, as Customer's sole and exclusive remedy, DVSA will credit Customer's account with the amounts set forth in the SLA for the type of failure experienced by Customer, but only up to the amount paid by Customer for such services in the month in which such failure occurred. A failure to meet

the metrics contained in the SLA shall not be a material breach of this Agreement. Except as provided in the SLA, DVSA shall have no liability in connection with the failure of any of the Services to meet any transmission speed, throughput rates or other performance criteria, or in connection with any unavailability of or interruption in the Services. DVSA Internet Access Services are reasonable commercial efforts services and are not subject to the SLA or the provisions of this limited warranty.

10. Warranty Disclaimer. EXCEPT FOR THE LIMITED WARRANTIES SET OUT IN SECTION 9, ALL SERVICES, END-USER CIRCUITS, AND ALL OTHER PRODUCTS (INCLUDING END USER PREMISES EQUIPMENT) AND SERVICES HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S OR END USERS' USE THEREOF IS AT SUCH PARTIES OWN RISK. DVSA DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE WARRANTIES SET OUT IN SECTION 9, DVSA DOES NOT WARRANT THAT THE SERVICES OR END-USER CIRCUITS WILL PERFORM AT A PARTICULAR SPEED, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. In addition to, but not in limitation of, the above disclaimer neither DVSA nor its suppliers shall have any liability under any provision of this Agreement with respect to any performance problem, claim of infringement or other matter to the extent attributable to (a) any unauthorized or improper use or modification of the Products or Services; (b) any unauthorized combination of the Products or Services with other Products or Services; (c) any use of any version of the Products other than the latest release of the Products, or (d) any breach of this Agreement or DVSA's Acceptable Use Policy by Customer or its End Users. DVSA (and DVSA's suppliers) shall not be liable to Customer or End Users for any of the following resulting or in any way related to its Services or Products: (i) viruses, worms, trojan horses, or other undesirable data or software produced or initiated by third parties; or (ii) the attempt by unauthorized users (e.g. hackers) to obtain access to Customer's or an End Users' data, web-site, computers, or networks.

11. Customer Representations and Warranties. Customer represents and warrants that: (i) DVSA has informed Customer that the Services constitute telecommunications or telecommunications services ("**Telecommunication services**") as defined by federal

HIGH SPEED INTERNET ACCESS SERVICES AGREEMENT TERMS AND CONDITIONS

law, and as a result, DVSA will assume the obligations of providing such Telecommunications Services, including billing, collecting from Customer, and remitting to governmental authorities any applicable taxes such as the universal service tax (collectively, "**Telecommunication Obligations**"). In the event Customer chooses to use the Services to provide Telecommunication Services, Customer must provide DVSA thirty (30) days prior written notice (including any back-up documentation requested by DVSA) so that DVSA (at its option) may discontinue such Telecommunication Obligations, and Customer will assume such Telecommunication Obligations thereafter; (ii) Customer shall not, in the ordinary course of its business when using Services, be able to identify, and distinguish between, packet data transmissions that originate and terminate within the same state (intrastate transmissions), and those packet data transmissions that originate and terminate in different states (interstate transmissions), and states that it is impractical to identify, distinguish and measure its intrastate and interstate transmissions on DVSA's network; (iii) Customer estimates in good faith that more than ten percent (10%) of all data packets transmitted through Services will consist of interstate transmissions; and, (iv) Customer will inform all End Users, and state explicitly in its contract with its End Users, that Services do not include 911 or other emergency and ancillary services to 911 that may be available from incumbent local phone companies or other telecommunications services providers.

12. Term and Termination. This Agreement shall remain in effect until terminated as set forth in this Section. The initial term of this Agreement shall be thirty (30) days (the "**Initial Term**"). After the Initial Term, either party may terminate this Agreement with a minimum thirty (30) days prior written notice to the other party. If Customer fails to pay the fees for Services within forty (40) calendar days after the date of the invoice, or if Customer fails to meet any of its other obligations under the Agreement, DVSA will, without any further notice, stop taking orders for additional End User Circuits and stop provisioning Services not yet installed. If Customer fails to pay the fees for Services within sixty (60) calendar days after the date of the invoice, or if Customer fails to meet any of its other obligations under the Agreement, ("**Payment Default**"), DVSA will do any combination of the following in its discretion and without further notice: (i) terminate any or all of the Services; (ii) disconnect any End User Circuits and treat such disconnection as a disconnection of the Circuit by Customer; (iii) terminate this Agreement; (iv) notify Customer's End Users of the pending termination; and (v) transition Customer's End Users to DVSA or another customer of DVSA. In the event of a termination, Customer shall remain responsible for and shall pay

DVSA all fees accrued prior to the date of termination and all liability imposed hereunder for terminating the End User Circuits prior to the end of their respective Terms. DVSA also may set-off and apply any and all credits, rebates, deposits, accounts, marketing funds or monies owed by DVSA to or for the account of Customer against any and all of Customer's obligations under this Agreement. After thirty (30) days when Customer (i) does not have any orders for Service pending, (ii) does not have any End User Circuits in service, and (iii) does not have an outstanding balance with DVSA, this Agreement shall terminate automatically. In the event that Customer orders a Service that is not described in this Agreement, DVSA reserves the right to disconnect such service and charge Customer all applicable one-time fees, including, without limitation, service set up, equipment and early termination fees. DVSA reserves the right to terminate service without penalty to DVSA in the event that DVSA is unable to procure, maintain, or obtain upstream Internet services through contracted providers. Every attempt will be made to provide advanced notice of termination provided DVSA is aware of such termination by its Internet provider.

13. Effect of Expiration. Provided that the Agreement is not terminated pursuant to Section 12, Term and Termination, for a Payment Default, upon expiration of this Agreement, DVSA will continue to maintain all existing End User Circuits for the remainder of their respective End User Terms, *provided* that Customer has paid and continues to pay all applicable fees for such Services and complies with any additional terms and conditions requested by DVSA and with the terms and conditions of this Agreement. Any accrued rights to payment, any remedies, and Sections 5, 6, 7, 8, 9 (with respect to the limitations set forth therein), 10, 11, 12, 13, 14, 15, 17, 18 and 19 will survive any expiration or termination of this Agreement.

14. Limitations of Liability. EXCEPT FOR THE INDEMNITY PROVISIONS SET FORTH IN SECTION 15, INDEMNITY, AND FEES OWED TO DVSA BY CUSTOMER, NEITHER PARTY WILL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR ANY LOST REVENUE, LOST PROFITS, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO SERVICES AND PRODUCTS. IN NO EVENT WILL DVSA OR ITS SUPPLIERS BE LIABLE TO CUSTOMER, ANY END USER, OR ANY THIRD PARTY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO CUSTOMER'S BUSINESS, ITS RELATIONSHIP WITH ITS END USERS, OR OTHERWISE. NEITHER DVSA NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY DAMAGES ASSOCIATED WITH THE

HIGHSPEED INTERNET ACCESS SERVICES AGREEMENT TERMS AND CONDITIONS

INTERRUPTION, UNAVAILABILITY, OR LOSS OF USE OF SERVICES OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER DVSA NOR ITS SUPPLIERS WILL BE LIABLE FOR ANY THIRD PARTY'S UNAUTHORIZED ACCESS TO CUSTOMER'S OR ITS END USERS' TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF AN END USER'S DATA FILES, PROGRAMS PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD. DVSA'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER RELATED TO A CLAIM ARISING UNDER THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER THEORY, WILL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO DVSA FOR THE SERVICES GIVING RISE TO SUCH CLAIM IN THE FOUR (4) MONTHS PRIOR TO THE OCCURRENCE OF SUCH CLAIM. Customer shall include in its agreement with its End Users a provision specifically limiting DVSA's and its Supplier's liability, including provisions similar to the ones contained in this Agreement regarding the limitation of liability for the Services and Products. Such provision will also make DVSA a third-party beneficiary to such limitations of liability.

15. Indemnity. DVSA shall defend, indemnify and hold harmless Customer from any personal injury or tangible property damage caused by DVSA's or its agents' negligent or willful acts during the course of providing or maintaining the End User Circuits; *provided, however*, that such indemnity shall not be available if the cause of such damage is related, directly or indirectly, to Customer's or End User's acts or omissions. Customer shall defend, indemnify and hold harmless DVSA for any and all loss, damages and costs arising from an End user claim in connection with: (a) this Agreement; (b) the Services or Products provided to such End User by Customer or DVSA, or the failure to provide such Services or Products; and (c) any misrepresentation made to End User by Customer regarding the Services and/or Products, except if the cause of such claim is due to DVSA's willful or grossly negligent acts or omissions.

16. Force Majeure. Neither party hereto shall be responsible for any failure to perform its obligations under this Agreement (other than obligations to pay money) if such failure is caused by acts of God, war, terrorist activities, strikes, inability to secure labor materials or third party services, revolutions, fire, earthquake or other casualty, lack or failure of transportation, water or electrical facilities, changes in laws or governmental regulations or any other causes that are beyond the reasonable control of such party.

17. Non Disparagement. Neither DVSA nor Customer shall make any disparaging remarks about the other party to any third party, including, but not limited to, End Users.

18. Confidentiality. All technical and business information, including, but not limited to, patents, patent applications, know-how, financial statements, business plans, pricing, descriptions of Products and Services and DVSA's technology in whatever form furnished by either party to this Agreement (the "**disclosing party**") to the other party (the "**receiving party**") under or in contemplation of this Agreement and, if in tangible form, clearly marked "Proprietary" or "Confidential" or otherwise clear from the subject matter of such information that it is confidential or proprietary and, if provided orally, clearly identified as proprietary or confidential at the time of disclosure by the disclosing party (collectively, "**Information**") shall remain the property of the disclosing party. Unless the disclosing party otherwise agrees in writing, this Information (a) shall be treated in confidence by the receiving party and used by the receiving party only for the purposes of performing the receiving party's obligations under this Agreement; (b) shall not be reproduced or copied in whole or in part, except as necessary for use as authorized in this Agreement; (c) shall be made available only to those employees of the receiving party who have a need to have access to the Information and have agreed to comply with the terms of this Section 18; and (d) shall, together with any copies thereof, be returned, be destroyed, or, if in the form of software recorded on an erasable storage medium, be erased when no longer needed by the receiving party to perform its duties under this Agreement or when this Agreement terminates, whichever occurs first. The above conditions do not apply to any part of the Information which (i) is independently developed by the receiving party as evidenced by documentation in the party's possession; (ii) is lawfully received from another source free of restriction and without breach of this Agreement; (iii) has become generally available to the public without breach of this Agreement by the receiving party; or (iv) is otherwise known, or becomes known to the receiving party free of any obligation to keep in confidence (each an "**Exemption**"). In the event of termination of the Agreement, the provisions set forth in this Section 18 shall continue to apply to such Information that is not subject to an Exemption.

19. Monitoring. DVSA and its suppliers have no obligation to monitor the Services, but may do so and disclose information regarding use of the Services if DVSA or its suppliers, in their sole discretion, believes that it is reasonable to do so, including to: (i) satisfy laws, regulations, or governmental or legal requests; (ii) operate the Services properly; or (iii) protect itself and its

HIGHSPEED INTERNET ACCESS SERVICES AGREEMENT TERMS AND CONDITIONS

other users and customers. DVSA may immediately remove Customer's material or information from DVSA's servers, in whole or in part, if DVSA, in its sole and absolute discretion, determines that such content infringes another party's property rights, is illegal or that such content violates DVSA's Acceptable Use Policy. In addition, DVSA may disconnect Customer's service if DVSA determines that Customer is in violation of the Acceptable Use Policy, and Customer will be responsible for any applicable Termination Fees.

20. Miscellaneous. This Agreement is not assignable or transferable by operation of law or otherwise by Customer without the prior written consent of DVSA. DVSA may subcontract the performance of Services to third parties or assign any of its other obligations or rights hereunder. The parties agree that they are independent and that this Agreement and relations between DVSA and Customer hereby established do not constitute a joint venture, agency or contract of employment between them, or any other similar relationship. Neither party has the right or authority to assume or create any obligation or responsibility on behalf of the other. This Agreement is intended solely for the benefit of the parties and is not intended to confer third person beneficiary rights upon any other person or entity. Any notice, report, approval or consent required or permitted hereunder shall be in writing, and effective on the date of delivery (if sent by hand, first class US mail, or courier), or on the date sent (if sent by facsimile or email and preceded by a copy sent by first class U.S. mail or overnight courier service). Notices will be sent to Customer at the address, fax or email located on the cover page to this Agreement. Notices to DVSA should be sent to: DVSA Technologies, 5 Reeve Rd., Rockville Centre, New York 11570 ATTN: Sales Operations, with a copy to the General Counsel's Office at the same address. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. Customer agrees to comply with the U.S. Export laws concerning the transmission of technical data and other regulated materials via the Services. Upon expiration, cancellation or termination of the Agreement, Customer shall relinquish any IP addresses or address blocks assigned to Customer by DVSA or by any of DVSA's network service suppliers. Customer agrees to provide clear and unobstructed right-of-way to DVSA technologies, its partners and/or sub contractors including but not limited to running cables, installing CPE, access to power, and installing network equipment for the purpose of installing and/or maintaining the requested Service. Customer also agrees that DVSA will not be responsible for any repairs, construction, patch work, or painting required to repair

customers premise due to the normal installation of requested services. Customer also agrees that Internet Services purchased from DVSA may not be used for hosting including but not limited to web site or file servers. DVSA will make every reasonable attempt to install all cables, equipment, and CPE in accordance to local code and policies as long as said Policy is known in advance. Any non-standard requests must be made in advance of the installation date. Customer acknowledges that access will be required after hours to complete the installation of the requested Service and it is Customers responsibility to arrange for said access and provide security for Customers premises. Under no circumstances will DVSA be responsible for Customers premises and/or property. If any provision of this Agreement shall be adjudged by any court or arbitrator of competent jurisdiction to be illegal, unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of New York and the United States without regard to conflicts of laws provisions thereof. No waivers, amendments, changes or modifications to this Agreement shall be effective unless set forth in a written agreement executed by Customer and an executive of DVSA having the title of Senior Vice President or a greater title. This Agreement (and all other agreements, exhibits and schedules referred to in this Agreement) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to any of the subject matter of this Agreement. Binding arbitration shall be the sole and exclusive remedy for resolution of disputes between the parties. Such dispute shall be submitted for arbitration in Nassau County, New York, before a single arbitrator agreed upon by the parties. Such arbitration shall be governed by the commercial rules of the American Arbitration Association. The arbitrator's decision will be final and entered into any court of competent jurisdiction. The prevailing party will be entitled to recover its attorneys' fees and costs in connection with such arbitration. DVSA may cooperate with law enforcement organizations that have requested information regarding Customer or End Users and provide such organizations with any information requested, including, but not limited to, names, email addresses, mailing or contact addresses, IP addresses and telephone numbers. Customer shall assist DVSA in responding to any state or federal request for information regarding an End User pursuant to the Communications Assistance for Law Enforcement Act ("**CALEA**") and/or any other similar or related statute.

SCHEDULE OF SERVICES

I. End User Circuits

A. Ethernet End User Circuits

i) Description

DVSA's End User Circuit offerings are listed in the table below. For the purposes of this Schedule of Services, "VLAN Services" generally refer to all shared and dedicated services listed below. Although Maximum Throughput numbers are listed, they are considered "up to" or indicators of the highest bandwidth available. DVSA will provision End User Circuits at the data link rates listed as Local Speed below but throughput will be limited to the speed of the Internet data link. **DVSA does not make any representations, warranties, or guarantee regarding any IP throughput achieved by VLAN End Users.**

Service Name	Local Speed	Maximum Throughput Downstream	Maximum Throughput Upstream
S-VLAN-Low	100 Mbps	Up to 1.5Mbps*	Up to 1.5Mbps*
S-VLAN-High	100 Mbps	Up to 3.0Mbps* ++	Up to 3.0Mbps* ++
D-VLAN-Low	100 Mbps	1.5Mbps**	1.5Mbps**
D-VLAN-High	100 Mbps	3.0Mbps** ++	3.0Mbps** ++

* Shared access. Upstream/Downstream connection is shared with other DVSA Shared Access Customers. Throughput will vary based on usage and utilization by other customers. DVSA will monitor and police usage to maximize your throughput.

** Dedicated access. Upstream/Downstream connection will carry only one customer's traffic. Throughput will vary only based on the throughput and/or capabilities of the 3rd party internet access provider used to provide the dedicated service.

++ Where available. Made available at DVSA Technologies discretion and requires that DVSA Technologies infrastructure is configured for 3.0Mbps services at this location.

ii) Provisioning

DVSA and Customer agree that an End User Circuit shall be successfully provided if IP packets can be successfully passed between DVSA's IP Point of Presence ("POP") and the NID at the End User's premises. If DVSA is unable to successfully provide an End User Circuit for the ordered service, DVSA will offer the End User the maximum available throughput rate and corresponding Service. DVSA will notify Customer by email if End User declines the Circuit, or, if End User accepts the Circuit at a lower speed, DVSA will notify Customer at what throughput rate the End User accepted the Circuit. All one-time fees will be due, and all monthly fees will start, for each End User Circuit upon DVSA's notification to Customer of successfully provisioning of such End User Circuit (the "Billing Start Date"). In all installations the termination point for VLAN services will be an RJ45 network interface jack in the customer's location.

(1) "Self Installation" means that the End User is responsible for performing all installation activities at the End User's premises. DVSA will ship the equipment in a Self-Install Kit to the End User. DVSA offers telephone based technical support to assist the End User with the installation. The Self Installation Service is considered complete and billing will begin upon the earlier of the following: (a) when DVSA can verify that the End User Circuit passes traffic or (b) (i) DVSA has provisioned the network elements under its control, (ii) at least five (5) calendar days have elapsed since the shipment of the Self Install Kit. Either (a) or (b), whichever occurs first, is referred to as the "Billing Start Date". DVSA does not guarantee that every request for a Self-Installation will be able to be completed by the End User without onsite assistance. If End User requests a DVSA Professional Installation after attempting a Self Installation, DVSA may, at its discretion, offer on-site assistance as an additional service for the fee set forth below without obtaining authorization from Customer, and Customer agrees to pay the fees for such assistance, including, without limitation, fees for Missed Appointments as specified below. Once DVSA begins billing Customer for an End User, DVSA will continue billing unless Customer requests a disconnection of the End User Circuit. If the Customer requests a disconnection for such End User within thirty (30) calendar days of the Billing Start Date, DVSA will disconnect the End User Circuit without a disconnection fee and provide Customer a credit with respect to such End User equal to the fees billed up to the date of disconnection, except for fees for Professional Installation (including fees for Missed Appointments) and CPE that has not been returned to DVSA pursuant to the Return Materials Authorization ("RMA") instructions below within sixty (60) days of the disconnection date. DVSA will only issue a credit for CPE after DVSA receives the CPE pursuant to the RMA procedures below within sixty (60) days of the disconnection date.

(2) For all DVSA Professional Installation Services, DVSA will supply and configure DVSA provided CPE. Customer must purchase DVSA CPE separately and DVSA may deliver the CPE to the End User at time of the Professional installation or DVSA may ship the CPE to the End User prior to the FST's installation visit. Terms and fees for a DVSA Professional Installation apply whether the DVSA Professional Installation is requested at the time of the initial order or as a subsequent request and regardless of whether it is requested by the Customer or End User. End User may choose to complete a Self-Installation after requesting a DVSA Professional Installation, and DVSA will allow End User to cancel the DVSA Professional Installation without obtaining authorization from Customer. In this event, DVSA will not bill Customer for the DVSA Professional Installation; *provided, however*, the End User cancels the Professional Installation at least one (1) full business day prior to the scheduled date of the DVSA Professional

SCHEDULE OF SERVICES

Installation. Customer agrees to compensate DVSA for DVSA Professional Installations at the rates set forth below. If an End User misses a scheduled DVSA Professional Installation visit, or tries to cancel a scheduled DVSA Professional Installation with less than one (1) full business day's prior notice ("**Missed Appointment**"), Customer will be billed an additional non-refundable charge at the rate set forth below. A DVSA Professional Installation is considered complete and billing will begin when DVSA can verify that the End User Circuit meets the Performance Standard (as defined below) (the "**Billing Start Date**"). DVSA does not guarantee that it will be able to complete every request for a DVSA Professional Installation. Notwithstanding the foregoing, once the DVSA FST has installed the CPE, if the Customer requests a disconnection for such End User within fifteen (15) calendar days of the Billing Start Date, DVSA will disconnect the End User Circuit without a disconnection fee and provide Customer a credit with respect to such End User equal to the fees billed up to the date of disconnection, except for fees for Professional Installation (including fees for Missed Appointments) and CPE that has not been returned to DVSA pursuant to the Return Materials Authorization ("**RMA**") instructions below within forty five (45) days of the disconnection date. DVSA will only issue a credit for End User premises equipment after DVSA receives the CPE pursuant to the RMA procedures below within forty five (45) days of the disconnection date.

iii) End User Premises Equipment (Customer Premise Equipment "CPE")

Customer may choose to have DVSA supply and configure the necessary equipment for an End User Circuit and Services at the End User premises, including End User premises equipment ("CPE"). If Customer chooses to provide its own CPE, such CPE must be DVSA-qualified (see Customer Policies for the current list of DVSA qualified CPE), must be fully functioning at the time of installation and must be available to the DVSA Field Service Technician ("FST") at the time of installation. If such Customer provided CPE is (a) not DVSA-qualified, (b) non-functional or (c) not available at the time of installation, the DVSA FST will attempt to contact the Customer. If the DVSA FST is able to contact the Customer within 15 minutes, the Customer may instruct the DVSA FST to install a particular type of DVSA offered CPE or may instruct the DVSA FST not to install CPE (in which case the DVSA FST will confirm the functionality of the Service at the NID and will close the order). If the DVSA FST is not able to reach the Customer by phone within 15 minutes, the DVSA FST will confirm functionality of the Service at the NID or Minimum Point of Entry ("MPOE"), close the order and DVSA will commence billing for all monthly recurring charges and fees. Customer is responsible for changes to any CPE, software and configuration after DVSA completes its service setup. Future changes to or exchanges of CPE will be invoiced at standard prices contained in this Schedule of Services. DVSA will bill any equipment charges to Customer as part of the one-time fees for the End User Circuit. DVSA will service DVSA provided CPE for the lesser of one (1) year from the Billing Start Date or the full manufacturer's warranty (the "DVSA Service Period"). After the DVSA Service Period, Customer must contact the manufacturer directly for CPE servicing.

B. Monthly Recurring Charges (all charges are per End User Circuit)

(1) Monthly Recurring Prices for End User Circuits by type of circuit for End User Circuits with Billing Start Dates on or after the Effective Date

Service Name	Monthly Recurring Rate	Type	Public IP Addresses* (per segment)	Netmask
S-VLAN-Low	**	Shared Access 10/100Mbps	4*	/30
S-VLAN-High	**	Shared Access 10/100Mbps	4*	/30
D-VLAN-Low or High	**	Dedicated Access 10/100 Mbps	8*	/29

* IP Addresses are assigned at the discretion of DVSA. DVSA reserves the right to change and/or remap the IP addresses and netmasks within its control. DVSA will make reasonable efforts to give advance notice of IP changes. DVSA uses 3 addresses to provide the service leaving one (1) IP for S-VLAN and (5) IP's for D-VLAN customer connections.

** Rates determined based on installation environment & current market conditions and T1 rates.

SCHEDULE OF SERVICES

C. Other Charges Related to End User Circuits

IP Addresses				
Description	Monthly Recurring Rate	One-time Set-up fee	Public IP Addresses* (per segment)	Netmask
IP uplift for S-VLAN-8**	\$10	\$25	8*	/29
IP uplift for S-VLAN-16**	\$25	\$25	16*	/28
IP uplift for S-VLAN-32**	\$50	\$25	32*	/27
IP uplift for D-VLAN-16**	\$20	\$25	16*	/28
IP uplift for D-VLAN-32**	\$30	\$25	32*	/27
IP uplift for D-VLAN-64**	\$40	\$25	64*	/26
IP uplift for D-VLAN-128**	\$50	\$25	128*	/25
IP uplift for D-VLAN-256**	\$95	\$25	128*	/24

* IP Addresses are assigned at the discretion of DVSA. DVSA reserves the right to change and/or remap the IP addresses and netmasks within its control. DVSA will make reasonable efforts to give advance notice of IP changes. DVSA uses 2 addresses to provide the service and depending on the configuration of CPE and/or DVSA environment one (1) IP address may be reserved for DVSA's end of the IP connection reducing the available IP's to the customer by up to three (3).

** IP addressing is an additional Service to DVSA's standard Services. End User Circuits using IP addresses incur the incremental IP address charge in addition to the standard monthly recurring charge for VLAN Services. For shared services the largest address pool available is 32 IP addresses (minus 2 for network and 1 for access for 29 usable). If more than 29 addresses are needed then dedicated services may be required. To calculate the final price of a VLAN Circuit, add the standard monthly recurring charge for IP addresses to the one-time and monthly recurring price of the VLAN End User Circuit. These IP address charges apply both at the time of the initial order and for any post-install IP change order (e.g., Customer wants to change from sixteen (16) IP's to thirty-two (32) IP's).

Equipment and Installation Charges				
Description	Hardware Cost (One time Purchase)	Monthly Recurring Rate	One-time Set-up fee	Comment
LinkSys CPE Router/Firewall*	\$99	\$0	\$50	Optional. Provides firewall protection and NAT translation allowing more than one CPE to be connected to the standard /30 VLAN with one (1) public IP.
Fiber Media Converter	\$135	\$0	\$0	Required for service. Converts building Fiber run to Ethernet (RJ45) connection.
VLAN Port Charge	\$100	\$0	\$0	Required. Access to the Internet requires the use of one (1) port on DVSA's infrastructure.
Fiber Cable	(variable)	\$0	\$90	Required. Due to the size of the mall and the placement of equipment all communication runs need to be Fiber connected.

* A firewall or other protective device is recommended at the CPE. This device although not guaranteed to protect from all attacks will provide a significant level of protection against attacks from the open internet. It is strongly advised that customers do not place any computers or equipment directly on DVSA's VLAN environment without a firewall or VPN router. Any devices connected to DVSA's VLAN environment are open to the internet (World Wide Web).

** Typical install requires one (1) Fiber Media Converter (pair), one (1) VLAN port, and one (1) Fiber Cable install for a total one-time installation charge. Relocation of a store anywhere in the mall (main building) will incur an additional Fiber Cable and Fiber Cable Install charge at DVSA Technologies discretion.

SCHEDULE OF SERVICES

Professional Services		
Description	Price	Notes
Inside Wiring Services. This charge includes the installation of additional RJ45 Wall Jacks, installation and configuration of CPE, testing End User Circuit, tracing or toning inside wiring, and general trouble shooting.	\$110/hr	Minimum of two (2) hours applies unless DVSA is already onsite as part of another service order for customer. Billed in 15 minute increments.
Field Technician Dispatch Charge. This charge applies for the dispatch of a Field Technician to End User location to service non-DVSA service faults, Service upgrades and downgrades requiring the dispatch of a Field Technician, and End User requested switches from one DVSA customer to another. (Does not include inside wire install or repair.)	\$99	This charge applies once a Field Technician is dispatched and is due even if the Field Technician arrives onsite and the problem has been resolved whether any work is performed or not. .
Cancellation Charge. This charge is billed for each End User Circuit order that is cancelled more than five (5) full business days after the acceptance of the order and prior to the installation of services by DVSA.	\$50	Once installation starts Disconnection Charges apply.
Disconnection Charge. This charge is billed for each End User circuit that is disconnected after completion of service setup by DVSA. Customer will remain responsible for payment of remainder of contract.	\$200	The start of "the installation" includes provisioning of the network port, installation of the Fiber and/or Fiber media converters, or the network jack.
Missed Appointment Charge. This charge is billed when the Field Technician arrives at the End User premises and does not have full access to complete the installation of the End User circuit e.g. End User no-show, DVSA Field Technician lack of access to the network interface device, or End User request for installation rescheduling or cancellation with less than (1) full business day advance notice.	\$85	

II. Service Level Agreements (SLA)

DVSA reserves the right to change the SLA upon thirty (30) days' advance written notice to Customer. For the most recent version of the SLA please contact DVSA Technologies.

III. Customer Policies

For additional descriptions of Services and DVSA's Customer procedures, see the DVSA Standard Customer Policies document, the most recent version of which is available from DVSA Technologies. DVSA reserves the right to change the DVSA Standard Customer Policies upon thirty (30) days advance written notice to Customer. For the most recent version of the SLA please contact DVSA Technologies.