

**SERVICES AGREEMENT  
BETWEEN  
HUGHES NETWORK SYSTEMS  
AND**

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\_\_\_\_\_, 20\_\_

5 year service term

## SERVICES AGREEMENT

This Agreement is entered into and made effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a corporation organized under the laws of \_\_\_\_\_, (Customer), with \_\_\_\_\_ offices at \_\_\_\_\_, and Hughes Network Systems (HNS), a Delaware corporation, having its principal offices at 11717 Exploration Lane, Germantown, MD 20876.

In accordance with the terms of this Agreement and in order for HNS to provide the Equipment and Services needed to permit the implementation and operation of an interactive satellite communications service for Customer, HNS and Customer agree as follows:

### 1. SERVICES TO BE PROVIDED

- A. HNS will provide and Customer will accept and pay for a satellite based connection to an Electronic Payment Authorization Service, provided by Concord Computing Corporation ("Concord"), within the contiguous United States. The Service will specifically include:
- 1) HNS shall provide VSAT installation, including planning, scheduling and assistance in securing permits and approvals when required by HNS. As referred to in Attachment 1.
  - 2) VSAT Equipment maintenance service shall be 24 hours a day, 365 days a year.
  - 3) VSAT satellite connection service to the Electronic Payment Authorization Service, carrying electronic payment transaction data only.
- B. Any non standard installations and or equipment shall be dealt with on a case by case basis in terms of both practicality and price.
- C. Services shall **not** include either of the following:
- 1) Maintenance, repair, or replacement of part damaged or lost through catastrophe, accident, lightning, theft, misuse, fault, or negligence of the Customer, or causes external to the Equipment, such as, but not limited to, failure of, or faulty, electrical power or air conditioning, operator error, failure, or malfunction of data communication Equipment not provided to Customer by HNS, or from any cause other than intended and ordinary use.
  - 2) Changes, modifications, or alterations in or to the Equipment other than approved upgrades and configuration changes.

### 2. TERM OF AGREEMENT

The Term of this Agreement (the Term) will commence on the date this Agreement has been fully signed and executed by duly authorized representatives of both parties. The day that this Agreement commences shall be called the "Agreement Commencement Date". The term of this Agreement will expire on the last day any VSAT installed hereunder is providing Services.

### 3. VSAT SERVICE TERM

The duration of Service for any VSAT installed shall begin on the date such VSAT has been installed and Services accepted by the Customer (the VSAT Service Commencement Date). The term of Service for any VSAT location pursuant to this Agreement shall then continue for a period of sixty (60) months after the first day of the next calendar quarter after the VSAT Service Commencement Date (the Initial VSAT Service Term). Thereafter, each VSAT Service Term will continue, on a year-to-year basis, unless otherwise terminated by either party on written notice given at least ninety (90) days prior to the end of the Initial VSAT Service Term or any renewal VSAT Service Term. Each VSAT Service Term shall not terminate, nor shall the respective obligations of HNS and Customer with respect to any item of Equipment provided hereunder be affected by reason of any loss or destruction of any such Equipment from any cause whatsoever, or the interference with the use thereof by any private person, corporation or governmental authority, or as a result of any war, riot, insurrection or Act of God (except, in all cases, when, in any way caused or contributed to by HNS).

### 4. CUSTOMER OBLIGATIONS

To facilitate provision of the Equipment and Services by HNS, Customer will meet the following obligations:

- A. Customer hereby grants HNS and HNS' authorized representatives access, subject to Customer's reasonable security restrictions, to Equipment and related locations and areas of Customer's facilities and premises, and will arrange permitted access to areas of third-party facilities and premises for the purpose of HNS performing the

work required under this Agreement. Any delays or return calls resulting from lack of free access or authorization to perform maintenance may, at HNS' option, be billed at the Time and Materials rates indicated in Attachment I.

- B. Customer will inform HNS should any of the equipment be removed or removed and then reinstalled. In such an event HNS takes no responsibility as to the operability of said units unless such actions are performed by a Authorized HNS technician.
- C. HNS employees and representatives shall have the right to refuse to work on Equipment located at Customer's premises when they reasonably determine that the work environmental where such Equipment is located is unsafe.
- D. Customer shall ensure that HNS representatives are provided with access to electrical power, as well as direct or indirect voice access to the HNS host facilities as required for efficient operations and fulfillment of HNS obligations hereunder
- E. To facilitate installation, Customer will provide HNS installation representatives with reasonable assistance in procuring landlord approvals, required permits and other site preparation related matters. Customer hereby recognizes that in certain circumstances VSAT's will functionally fail to execute useful service. In such instances HNS reserves the right to void this contract upon discovery of said problem.
- F. To facilitate payment for satellite services, customer will establish or designate a bank account into which Concord will transfer funds resulting from Concord's Electronic Payment services (Settlement Account). Customer hereby authorizes that payment for such equipment and services as are offered herein shall be made from the settlement account, via Concord, to the following HNS account:

Account of Hughes Network Systems  
First National Bank of Maryland  
Baltimore, MD 21203  
Account No. 401-5029-0  
ABA# 052000113

Customer will reimburse HNS for all reasonable costs incurred by HNS as a direct result of Customer's failure to meet such obligations.

### 5. OWNERSHIP, INSPECTION AND RISK OF LOSS

The following conditions relative to title and risk of loss shall apply to any equipment and/or software provided by HNS hereunder.

Nothing contained in this Agreement shall give or convey to Customer any right, title or interest in or to the Equipment or Software provided hereunder. HNS is hereby authorized by Customer, to cause this Agreement, or other instrument as may be required by law showing the interest of HNS and any Assignee to be filed and Customer agrees to execute and deliver Uniform Commercial Code financing statements reasonably required by HNS for such purposes. Customer shall, at its expense, protect and defend HNS' title as well as the interest of any Assignee against all persons claiming against or through Customer and shall at all times keep the Equipment free and clear from any legal process, liens or encumbrances whatsoever (except any placed thereon by HNS) and shall give HNS immediate written notice thereof and shall indemnify and hold HNS and any Assignee harmless from and against any loss caused thereby. Should third parties place liens on the Equipment, Customer shall not be considered in default under this Agreement so long as Customer is in the process of reasonably contesting the liens.

Upon reasonable notice to Customer, HNS or its agents shall have free access to the Equipment at reasonable times for the purpose of inspection and for any other purpose contemplated by this Agreement.

#### 5.1 Damage, Destruction or Loss

- A. From and after an installation date, Customer shall be responsible for and hereby assumes the entire risk of loss, damage or destruction with respect to any installed equipment resulting from any cause whatsoever.
- B. In the event any Equipment is materially damaged, Customer shall promptly notify HNS. If such damaged Equipment can be repaired by HNS under the terms of this Agreement, HNS shall effect such repairs.
- C. If any such Equipment is damaged beyond repair or is lost, stolen, destroyed, in the opinion of HNS rendered permanently unusable or not economically repairable (any such occurrence hereinafter referred to as an "Event of Loss"), then this Agreement shall continue in full force and effect without any abatement of payments hereunder. Customer shall immediately notify HNS of the same and, at Customer's expense, promptly replace the affected Equipment with a like unit, in good

condition and otherwise acceptable to HNS, and having a fair market value equal to that of the replaced Equipment prior to its being so affected, free and clear of any liens. Any such replacement Equipment shall be the property of HNS and for the purposes of this Agreement be deemed to be the Equipment which it replaced and thereupon shall be subject to the terms of this Agreement.

**6. SERVICE PERFORMANCE**

In the event that HNS fails to provide the Service described herein to any Customer location for a period in excess of 24 consecutive hours, HNS will credit Customer with 1/30<sup>th</sup> of its monthly service charge for the applicable location for each such 24 hour period. Such failure time begins upon HNS receipt of Customer's notification of such an event.

**7. CUSTOMER INSURANCE**

During the term of this Agreement, Customer shall, at its sole cost and expense, maintain in full force and effect, "all risk" extended coverage fire and casualty insurance on the Equipment. Such insurance shall:

- A. provide for coverage in an amount equal to at least the replacement cost of the Equipment;
- B. be in form and substance and with insurers reasonably satisfactory to both parties;
- C. designate HNS and the Assignee, if any as additional insureds and designate the Assignee (or, if there is none, HNS) as the loss payee for distribution of the insurance proceeds to the respective parties as their interests may appear;
- D. provide that the policy or policies may not be canceled or materially altered without thirty (30) days prior written notice to HNS and the Assignee, if any; and
- E. provide HNS and that Assignee, if any, with thirty (30) days in which they shall be permitted to cure any defaults by Customer under the policy.

**8. PRICE AND PAYMENT TERMS**

- A. The prices for Equipment or Services to be provided hereunder are set forth in Attachment I. Payment for such services as aforementioned shall be paid to HNS by Concord, with funds debited from Customers Settlement Account. These payments will be conducted on the 25<sup>th</sup> day or the next following business day of each month. Customer hereby understands that in the event any payment fails to reach HNS from Concord, Customer must pay such unpaid amounts directly to HNS with Customers only recourse against Concord for remuneration. Customer agrees to pay interest on demand of any Service installation, and maintenance charges and any other invoiced amount that is unpaid more than thirty (30) days after date of said invoice, at the rate of two percent (2%) per month, compounded monthly, not to exceed the maximum rate permitted by law.
- B. The Prices set forth herein assume that (a) the creditworthiness of Customer remains relatively constant throughout the delivery period for Equipment to be supplied by HNS, and (b) there are no changes in financial markets which would significantly affect the interest rates at which HNS might borrow money using the Equipment as collateral. In the event of any such changes, HNS will notify Customer and advise Customer of the effect of such changes on the Service Prices for Equipment to be delivered subsequent to such notification.
- C. The prices for the optional Equipment and Services as set forth in Attachment I will remain in effect for a period of twenty-four (24) months. Thereafter, these prices may be adjusted annually. Any such annual increase will be the lower of seven percent (7%) or the Consumer Price Index (CPI) inflator using the original Agreement Commencement Date as the base month.
- D. The prices provided for in this Agreement are exclusive of the following taxes and charges with respect to the Services hereunder: (i) any present or future Federal, State, or local excise, sales, or use Taxes; (ii) any other present or future excise, sales, or use Tax upon or measured by the gross receipts from the transactions provided in this Agreement or any allocated portion thereof or by the gross value of the Equipment, Services, materials, and Software provided hereunder; and (iii) any present or future property, inventory, or value-added Tax or similar charge. Customer will pay and discharge, either directly to the governmental agency or as billed by HNS, the foregoing taxes and charges and all assessments, and other taxes with respect to the transactions provided in this Agreement and all Services and material provided hereunder (excluding any Federal, State, local or foreign income taxes, or any tax on gross receipts or gross revenue which is in the nature of an income tax, or any franchise, net worth or capital taxes, imposed upon HNS).

**9. FORCE MAJEURE**

HNS will be excused for delays or interruptions in the installation of Equipment and provision of Services and shall have no liability as a result thereof when such delays or interruptions (i) are caused by Customer, or

(ii) are otherwise beyond the reasonable control of HNS, including but not limited to war, sabotage, riot, act of public enemy, judicial action, priorities given U.S. Government procurements, labor dispute, fire, accident, explosion, storm, flood, earthquake, or other Acts of God (Force Majeure). Customer may cancel any scheduled delivery that has been excusably delayed for reason (ii) above for more than two (2) months.

**10. INDEMNIFICATION**

Customer and HNS shall indemnify, defend and hold the other harmless from claims, demands, and causes of action asserted against the indemnitee by any person (including, without limitation, HNS' and Customer's employees, HNS' subcontractors and employees of such subcontractors or any third party) for personal injury or death or for loss of or damage to property resulting from the indemnitor's negligence or willful misconduct hereunder. Where personal injury, death or loss of or damage to property is the result of the joint negligence or willful misconduct of Customer and HNS, the indemnitor's duty of indemnification shall be in proportion to its allocable share of joint negligence or willful misconduct. In addition, Customer hereby indemnifies and holds HNS harmless from and against any claim it may have against Concord.

**11. DEFAULT BY CUSTOMER**

**11.1 Definition**

The occurrence of any one or more the following events (herein called "Events of Customer Default") shall constitute a default by Customer under this Agreement:

- A. Default by Customer in the payment of any charge payable hereunder as and when the same becomes due and payable and such default continues for a period of thirty (30) days after notice of such default from HNS, or
- B. Default by Customer in the performance of any other term, covenant or condition of this Agreement, which default shall continue for a period of thirty (30) days after written notice; or
- C. The making of an assignment by Customer for the benefit of its creditors or the admission by Customer in writing of its inability to pay its debts as they become due, or the insolvency of Customer, or the filing by Customer of a voluntary petition in bankruptcy, or the adjudication of Customer as bankrupt, or the filing by Customer of any petition or answer seeking for itself any reorganization, arrangement, composition or readjustment precipitated by the insolvency or bankruptcy of Customer, any liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the filing of any answer by Customer admitting, or the failure by Customer to deny, the material allegations of a petition filed against it for any such relief, or the seeking or consenting by Customer to, or acquiescence by Customer in, the appointment of any trustee, receiver or liquidator of Customer or of all or any substantial part of the properties of Customer, or the inability of Customer to pay its debts when due, or the commission by Customer of any act of bankruptcy; or

**11.2 Remedies**

Upon the occurrence of any one or more Events of Customer Default, HNS, at its option, may (1) proceed by appropriate court action or actions either at law or in equity to enforce performance by Customer of the applicable terms of this Agreement, or to recover from Customer any and all damages or expenses, including attorney's fees, which HNS shall have sustained by reason of Customer's default or on account of HNS' enforcement of its remedies hereunder, or (2) without written notice, declare immediately due and payable all monies to be paid during the term of any VSAT Service Term. Customer shall in any event remain fully liable for reasonable damages as provided by law and for all costs and expenses incurred by HNS on account of such default including all court costs and reasonable attorneys fees, and HNS shall have the right to the extent permitted by law: (i) to recover all sums so due thereunder; (ii) to retake immediate possession of any Equipment held by Customer without any process of law and for such purpose HNS may enter upon premises where such Equipment may be located and may remove the same therefrom without notice, and without being liable to Customer therefore, except that HNS shall be liable for damages resulting from the fault or negligence of HNS, HNS' Assignee or their respective agents and representatives in any such entry or repossession; (iii) to sell, lease or otherwise dispose of all or any portion of such Customer held Equipment, with the privilege of becoming the purchaser thereof, at public or private sale, for cash or on credit without notice of its intention to do so or of its doing so, in which event HNS shall apply the cash proceeds from any sale or other disposition, less all costs and expenses incurred in connection with the recovery, repair or storage of such Equipment or the transaction itself, against all sums due from Customer and to the extent and in the manner permitted by law, Customer shall be liable to HNS for the amount by which the Proceeds of any such transaction, less the expenses of retaking, storing, repairing and the transaction itself, including reasonable attorney's fees incurred by HNS, is less than all sums due from Customer hereunder; and (iv) to pursue any other remedy permitted by law or equity.

**Services Agreement  
1/2000 version**

**12. DEFAULT BY HNS**

**12.1 Definition**

The occurrence of any one or more the following events (herein called "Events of HNS Default") shall constitute a default by HNS under this Agreement:

- A. Default by HNS in the performance of any other term, covenant or condition of this Agreement, which default shall continue for a period of sixty (60) days after notice; or
- B. The making of an assignment by HNS for the benefit of its creditors or the admission by HNS in writing of its inability to pay its debts as they become due, or the insolvency of HNS, or the filing by HNS of a voluntary petition in bankruptcy, or the adjudication of HNS as bankrupt, or the filing by HNS of any petition or answer seeking for itself any reorganization, arrangement, composition or readjustment precipitated by the insolvency or bankruptcy of HNS, any liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the filing of any answer by HNS admitting, or the failure by HNS to deny, the material allegations of a petition filed against it for any such relief, or the seeking or consenting by HNS to, or acquiescence by HNS in, the appointment of any trustee, receiver or liquidator of HNS or of all or any substantial part of the properties of HNS, or the inability of HNS to pay its debts when due, or the commission by HNS of any act of bankruptcy, as amended; or

**12.2 Remedies**

Upon the occurrence of any one or more Events of HNS Default, Customer, at its option, may (1) proceed by appropriate court action or actions either at law or in equity to enforce performance by HNS of the applicable terms of this Agreement, or (2) terminate this Agreement.

**13. LIMITATION OF LIABILITY**

- A. IN NO EVENT WILL HNS OR ITS ASSIGNEES BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR SPECIAL, COLLATERAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF GOODWILL, LOSS OF PROFITS OR REVENUES, LOSS OF SAVINGS, LOSS OF USE, INTERRUPTIONS OF BUSINESS, AND CLAIMS OF CUSTOMERS). EXCEPT AS MAY BE OTHERWISE PROVIDED IN THE SECTION HEREOF ENTITLED "INDEMNIFICATION", HNS' MAXIMUM LIABILITY HEREUNDER SHALL BE LIMITED TO SIX MONTHS NETWORK SERVICES CHARGES.
- B. The remedies of Customer set forth herein are exclusive and in lieu of all other remedies, express or implied. Except for the remedies provided in herein, neither HNS nor its subcontractors will be liable for any delay or failure of performance of the Equipment or Services provided herein.

**14. INDEPENDENT CONTRACTOR AND SUBCONTRACTING**

- A. The relation of HNS to Customer under this Agreement will be that of an independent contractor. HNS will exercise its own discretion on the method and manner of performing its obligations hereunder. In addition, in no event shall Concord be considered a subcontractor, agent or representative of HNS.
- B. Customer agrees that HNS may, at its sole discretion, subcontract the whole or any part of its obligations under this Agreement and HNS agrees that it will retain full responsibility for such obligations despite any such subcontract.

**15. ADDITIONAL CLAUSES**

- A. ENTIRE AGREEMENT: This Agreement and the Attachments hereto constitute the entire Agreement between the parties and supersede any prior written or oral Agreement or understanding with respect to the subject matter hereof. No interpretation, amendment, or change to this Agreement will be effective unless made in writing and signed by both parties, except that each party may change the address or the name of the person to whom notices to that party will be sent by giving written notice of such change to the other party as provided in Section 15D hereof.
- B. NO WAIVER: Failure by either party to exercise any rights under this Agreement in any one or more instances will not constitute a waiver of such rights in any other instance. Waiver by such party of any default under this Agreement will not be deemed a waiver of any other default. No alteration or modification of any provision of this Agreement will be binding unless in writing and signed by duly authorized representatives of both parties.
- C. GOVERNING LAW: This Agreement will be interpreted under the laws of the State of Maryland applicable to Agreements made and performed in that State, notwithstanding the place of execution or performance of this Agreement.
- D. NOTICES: All notices provided for herein (other than routing communications concerning the Services to be provided hereunder) will be given in writing and will be effective when delivered personally or when sent by certified mail, return-receipt requested, postage

prepaid, or when the answer-back is recorded by the sender's telecopier machine at the end of a telecopier communication. All notices sent by either party will be addressed as follows:

If to HNS:

Hughes Network Systems  
11717 Exploration Lane  
Germantown, Maryland 20876  
ATTN: Director, Satellite Networks Division Contracts

If to Customer:

- E. SEVERABILITY: If any of the provisions or any portion of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement will be construed as if not containing the particular invalid or unenforceable provisions or portion thereof, and the rights and obligations of the parties hereto will be construed and enforced accordingly.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by and through their duly authorized representatives.

Hughes Network Systems

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Customer

By \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT I**  
**ORDER AND PRICE SCHEDULE**  
**TO**  
**AGREEMENT BETWEEN**

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**AND**  
**HUGHES NETWORK SYSTEMS**  
**FOR**  
**VSAT EQUIPMENT AND SERVICES**

**ATTACHMENT I  
ORDER AND PRICE SCHEDULE**

**1. Initial Order for Services**

The following sets forth the Equipment and Service configuration that comprises the initial order for Services under this Agreement. This configuration is based upon the traffic parameters described below.

The configuration set forth below includes the following Equipment provided for the customers use with the services provided:

Each VSAT shall be comprised of;

- One standard Personal Earth Station™(PES) including;<sup>1</sup>
  - a)one indoor unit, equipped with two serial interfaces,
  - b)one outdoor unit,

Which will support all necessary space segment and bandwidth to support financial payment services traffic (credit/debit, check); that is characterized by approximately 6,000 transactions/site/month.<sup>2</sup>

The Service Charges set forth herein include the following Services :

- a)Vsat connective service to Electronic Payment Authorization, provided by Concord. \$135.00/site/month
  - b)Continuous maintenance service coverage (24 hours a day, 7 days a week).
- Deicing equipment \$14.00/site/month

Prices quoted for Services apply only for sites located within the Continental United States  
Any ancillary backup equipment needed will be supplied by Concord in accordance with their price schedule.<sup>3</sup>

**2. Options**

PES Installation Charges

Unit Price

- The base price set forth in Section 1 of this attachment is based in HNS's standard installation package. Upon Customer request HNS will provide Customer with a copy of said package. Additionally the following options may be applied in certain instances.
- Expedited Installation at Customer's request (in less than 30 days after notification of landlord approval) \$1,000/site
- Aborted installation \$750/site

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<sup>1</sup> In the event that Customer's requirements exceed the parameters in this Section 1, such special installations and or equipment charges will be quoted on site by site basis.

<sup>2</sup> Each transaction shall consist of; 1)90 bytes inbound and, 2) 200 to 300 bytes outbound. Connection type will be the following; 1)X.3 Pad protocol at the remote station and 2)X.25 protocol from the Hub.

<sup>3</sup> Concord will be responsible for any backhaul and/or ancillary multiplexing equipment as may be required.

