

**CAPITAL CONNEGTION, INC.**

417 E. Virginia Street, Suite 1 • Tallahassee, Florida 32301  
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V23208

SmartGate/Radio Matrix  
 Acquisition Corp.

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 -02/26/02--01066--010  
 \*\*\*\*\*70.00 \*\*\*\*\*70.00

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- \_\_\_ Art of Inc. File
- \_\_\_ LTD Partnership File
- \_\_\_ Foreign Corp. File
- \_\_\_ L.C. File
- \_\_\_ Fictitious Name File
- \_\_\_ Trade/Service Mark
- Merger File
- \_\_\_ Art. of Amend. File
- \_\_\_ RA Resignation
- \_\_\_ Dissolution / Withdrawal
- \_\_\_ Annual Report / Reinstatement
- Cert. Copy
- Photo Copy
- \_\_\_ Certificate of Good Standing
- \_\_\_ Certificate of Status
- \_\_\_ Certificate of Fictitious Name
- \_\_\_ Corp Record Search
- \_\_\_ Officer Search
- \_\_\_ Fictitious Search
- \_\_\_ Fictitious Owner Search
- \_\_\_ Vehicle Search
- \_\_\_ Driving Record
- \_\_\_ UCC 1 or 3 File
- \_\_\_ UCC 11 Search
- \_\_\_ UCC 11 Retrieval
- \_\_\_ Courier

FILED  
 2002 FEB 26 PM 1:11  
 SECRETARY OF STATE  
 TALLAHASSEE, FLORIDA

RECEIVED  
 02 FEB 26 PM 12:27  
 DIVISION OF CORPORATION

C. Coulliette FEB 26 2002

Signature \_\_\_\_\_

Requested by: SK  
 Name \_\_\_\_\_ Date 2/26/02 Time 11:02

Walk-In \_\_\_\_\_ Will Pick Up \_\_\_\_\_

ARTICLES OF MERGER  
Merger Sheet

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MERGING:

RADIO METRIX INC., a Florida corporation, V23208

INTO

**SMARTGATE/RADIOMETRIX ACQUISITION CORP.** a Nevada entity not  
qualified in Florida

File date: February 26, 2002

Corporate Specialist: Cheryl Coulliette

**ARTICLES OF MERGER**  
**(Profit Corporations)**

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, F.S.

**First:** The name and jurisdiction of the **surviving** corporation:

<u>Name</u>	<u>Jurisdiction</u>
<u>SmartGate/RadioMetrix Acquisition Corp.</u>	<u>Nevada</u>

**Second:** The name and jurisdiction of each **merging** corporation:

<u>Name</u>	<u>Jurisdiction</u>
<u>Radio Metrix Inc.</u>	<u>Florida</u>
_____	_____
_____	_____
_____	_____

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2002 FEB 26 PM 1:11  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**Third:** The Plan of Merger is attached.

**Fourth:** The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State

**OR** \_\_\_ / \_\_\_ / \_\_\_ (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days in the future.)

**Fifth:** Adoption of Merger by **surviving** corporation - **(COMPLETE ONLY ONE STATEMENT)**  
The Plan of Merger was adopted by the shareholders of the surviving corporation on February 25, 2002.

The Plan of Merger was adopted by the board of directors of the surviving corporation on \_\_\_\_\_ and shareholder approval was not required.

**Sixth:** Adoption of Merger by **merging** corporation(s) **(COMPLETE ONLY ONE STATEMENT)**  
The Plan of Merger was adopted by the shareholders of the merging corporation(s) on February 25, 2002.

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on \_\_\_\_\_ and shareholder approval was not required.

*(Attach additional sheets if necessary)*



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**AGREEMENT OF MERGER AND PLAN OF REORGANIZATION**

**BY AND AMONG**

**SmartGate Inc.**

**SmartGate/RadioMetrix Acquisition Corp.**

**Radio Metrix Inc.**

## AGREEMENT OF MERGER AND PLAN OF REORGANIZATION

This AGREEMENT OF MERGER AND PLAN OF REORGANIZATION (this "Agreement") is made and entered into as of February 25, 2002 by and among SmartGate Inc., a Nevada corporation ("SmartGate"), SmartGate/RadioMetrix Acquisition Corp., a Nevada corporation ("SmartGate/RadioMetrix Acquisition Corp." or the "Sub") and RadioMetrix Inc., a Florida corporation ("RadioMetrix").

### RECITALS

A. The Board of Directors of each of RadioMetrix, SmartGate and SmartGate/RadioMetrix Acquisition Corp. believe it is in the best interests of each company and their respective stockholders that RadioMetrix and SmartGate/RadioMetrix Acquisition Corp. combine into a single company through the statutory merger of RadioMetrix with and into SmartGate/RadioMetrix Acquisition Corp. (the "Merger") and, in furtherance thereof, have approved the Merger.

B. The parties entered into a Letter of Intent, a copy of which is attached to this Agreement as Exhibit "A".

C. RadioMetrix, SmartGate and SmartGate/RadioMetrix Acquisition Corp. desire to make certain representations and warranties and other agreements in connection with the Merger.

D. The parties intend, by executing this Agreement, to adopt a plan of reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code").

**NOW, THEREFORE**, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the parties agree as follows:

### ARTICLE I THE MERGER

1.1 *The Merger.* At the Effective Time (as defined in Section 1.2) and subject to and upon the terms and conditions of this Agreement and Florida and Nevada Law, RadioMetrix shall be merged with and into SmartGate/RadioMetrix Acquisition Corp., the separate corporate existence of RadioMetrix shall cease and SmartGate/RadioMetrix Acquisition Corp. shall continue as the surviving corporation. SmartGate/RadioMetrix Acquisition Corp., as the surviving corporation after the Merger is hereinafter sometimes referred to as the "Surviving Corporation."

1.2 *Effective Time.* As promptly as practicable after: (i) the satisfaction or waiver of the conditions set forth in Article V; and (ii) the Closing Date as hereinafter defined, the parties hereto shall cause the Merger to be consummated by filing Articles of Merger (the "Articles of Merger") with the Secretary of State of the States of Florida and Nevada, in such form as required by, and executed in accordance with the relevant provisions of Florida Law and Nevada Law ("Filings") and the date upon which the last of the two Filings is completed shall be the "Effective Time". The closing of the transactions contemplated hereby (the "Closing") shall take place on or before February 25, 2002, at 10:00 a.m. at the offices of RadioMetrix' counsel (the "Closing Date"), unless otherwise extended by mutual agreement of the parties.

**1.3 Effect of the Merger.** At the Effective Time, the effect of the Merger shall be as provided under Florida Law and Nevada Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all the property, rights, privileges, powers and franchises of RadioMetrix and SmartGate/RadioMetrix Acquisition Corp. shall vest in the Surviving Corporation, and all debts, liabilities and duties of RadioMetrix and SmartGate/RadioMetrix Acquisition Corp. shall become the debts, liabilities and duties of the Surviving Corporation. Further, at the Effective Time, SmartGate/RadioMetrix Acquisition Corp. shall become a wholly owned subsidiary of SmartGate and the shareholders of RadioMetrix, immediately before the Effective Time, shall become holders of shares of SmartGate Common Stock as herein provided.

**1.4 Articles of Incorporation: Bylaws.**

(a) At the Effective Time the Articles of Incorporation of SmartGate/RadioMetrix Acquisition Corp., as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation of the Surviving Corporation until thereafter amended as provided by law and such Articles of Incorporation. Further, as part of the Merger and as soon as practicable following the Effective Time, the Articles of Incorporation of SmartGate shall be amended to change the name from SmartGate, Inc. to "Invisa, Inc.," or such other name as may be selected by SmartGate and the Articles of Incorporation of SmartGate/RadioMetrix Acquisition Corp. shall be amended to change the name from SmartGate/RadioMetrix Acquisition Corp. to "RadioMetrix, Inc." or such other name as may be selected by SmartGate.

(b) The Bylaws of SmartGate/RadioMetrix Acquisition Corp., as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until thereafter amended.

**1.5 Directors and Officers.** The directors of SmartGate, immediately prior to the Effective Time, shall be the directors of the Surviving Corporation immediately after the Effective Time, each to hold office in accordance with the Articles of Incorporation and Bylaws of said entity, and the officers of SmartGate, immediately prior to the Effective Time, shall be the officers of the Surviving Corporation immediately after the Effective Time, in each case until their respective successors are duly elected or appointed and qualified.

**1.6 Merger Consideration.**

(a) As consideration for the Merger, SmartGate shall, at Closing, exchange and pay the following consideration for 100% of the outstanding capital stock of RadioMetrix:

(i) \$400,000 in cash.

(ii) \$800,000 by Promissory Note from SmartGate payable in one installment of principal due in full 14 months following Closing, with interest at seven percent (7%) per annum which shall be paid monthly during the 14-month period. In the event that the Promissory Note ("Note") is not paid in full when due, interest after such default shall be at the rate of eighteen percent (18%) per annum from the date of such default until such amount is paid in full. There will be no pre-payment penalty. The form of Note is attached as Schedule 1.6(a)(ii);

(iii) 435,000 shares of SmartGate Common Stock; and

(iv) A quarterly revenue-based payment as defined in and pursuant to the terms and conditions of the Quarterly Revenue Based Payment Agreement which is attached hereto as Exhibit "B" and incorporated herein by this reference.

(b) **Additional Merger Consideration.** Contingent upon the following conditions (the "Earn Out Conditions"), SmartGate shall pay the following additional merger consideration to the shareholders of RadioMetrix (the "Earn Out Consideration"):

(i) Upon the first commercial sale of a product incorporating the RadioMetrix Technology (as that term is defined in Exhibit "B") or product applications, SmartGate shall pay the following to the RadioMetrix shareholders:

(a) \$4,500,000 by Promissory Note payable in one installment due in sixty (60) months together with interest at nine percent (9%) per annum, which interest shall be accrued and paid with principal. For purposes of this Agreement, the term "first commercial sale" shall mean any arms length sale of a commercially available product to a non-affiliated customer under normal commercial terms and conditions. While outstanding, the Promissory Note (principal and accrued interest) may, at the discretion of holder, be converted into shares of SmartGate Common Stock at the conversion ratio of one share of SmartGate common stock for each \$5.00 of principal and interest, the Note shall be in the form attached as Schedule 1.6(b)(i)(a); and

(b) 1,125,000 shares of SmartGate Common Stock. The number of shares of Common Stock of SmartGate to be issued under this Section (b)(i)(b) shall be automatically increased to the extent that the aggregate market value of the shares of common stock to be issued under Section (b)(i)(b) on the date of issuance as determined by disinterested members of the SmartGate Board of Directors is less than \$4,500,000; and

(ii) 3,750,000 shares of SmartGate Common Stock, upon the first to occur of: (i) \$25,000,000 in revenue from RadioMetrix Technology, product applications, royalty or other revenue related to RadioMetrix Technology, product applications or assets including but not limited to license, royalty, joint venture or other revenue or consideration; or (ii) \$4,000,000 in net pre-tax profits from the RadioMetrix Technology, product applications and royalty; or (iii) any thirty-day period during which SmartGate's Common Stock has an average closing price which equals or exceeds \$15 per share; or (iv) a change in control of SmartGate. "Change of Control" shall mean that SmartGate has: entered into a merger transaction in which SmartGate is not the survivor; or sold shares representing sixty (60%) percent or more of the then outstanding shares in a transaction; or sold all or substantially all (i.e. - seventy [70%] percent or more of the fair market value) of the RadioMetrix Technology related assets; or sold or granted a master license to the RadioMetrix Technology to a third party in which the stockholders are different than the stockholders of SmartGate.

(c) **Registration Rights.** On two occasions, the shares of SmartGate Common Stock issued or to be issued hereunder shall be registered with the SEC upon the demand of the holders of seventy-five percent (75%) of the shares of SmartGate's Common Stock issued pursuant to this Agreement. Additionally, the holders of the shares issued hereunder shall have piggyback registration rights in all future Registration Statements filed with the SEC by SmartGate. The terms and conditions of the registration rights shall be as set forth in the Registration Rights Agreement which is attached hereto as Exhibit "E" and incorporated herein by this reference.



(d) ***Conversion of RadioMetrix Common Stock.***

(i) Each share of common stock of RadioMetrix (the "RadioMetrix Common Stock") issued and outstanding immediately prior to the Effective Time (other than any Dissenting Shares [as defined and to the extent provided in Section 1.7(a)]) will be canceled and extinguished and be converted automatically into the Merger Consideration set forth in Section 1.6.

(ii) ***Capital Stock of SmartGate/RadioMetrix Acquisition Corp.*** Each share of common stock, par value \$.001 per share, of SmartGate/RadioMetrix Acquisition Corp. issued and outstanding immediately prior to the Effective Time shall be owned by SmartGate. The stock certificate of SmartGate/RadioMetrix Acquisition Corp. evidencing ownership of such shares shall continue to evidence ownership of such shares of capital stock of the Surviving Corporation.

(iii) ***Adjustments to SmartGate Shares.*** The number of SmartGate shares to be issued hereunder shall be adjusted to reflect fully the effect of any stock split, reverse split, stock dividend (including any dividend or distribution of securities convertible into SmartGate Common Stock), reorganization, recapitalization or other like change with respect to SmartGate Common Stock occurring before the issuance of said shares.

(iv) ***Fractional Shares.*** No fraction of a share of SmartGate Common Stock will be issued, but in lieu thereof each holder of shares of RadioMetrix Stock who would otherwise be entitled to a fraction of a share of SmartGate Common Stock (after aggregating all fractional shares of SmartGate to be received by such holder) shall be entitled to receive from SmartGate a whole share of SmartGate Common Stock.

(e) The Merger Consideration and the Additional Merger Consideration shall be allocated among the shareholders of RadioMetrix in an amount equal to the percentage of ownership interest each RadioMetrix shareholder held in RadioMetrix Common Stock as set forth on Schedule 1.6(e).

**1.7 *Dissenting Shares.***

(a) Notwithstanding any provision of this Agreement to the contrary, any shares of capital stock of RadioMetrix held by a holder who has demanded and perfected appraisal rights for such shares in accordance with Florida Law and who, as of the Effective Time, has not effectively withdrawn such appraisal rights ("Dissenting Shares"), shall not be converted into or represent a right to receive SmartGate Common Stock pursuant to Section 1.6, but the holder thereof shall only be entitled to such rights as are granted by Florida Law.

(b) Notwithstanding the provisions of subsection (a), if any holder of shares of capital stock of RadioMetrix who demands appraisal of such shares under Florida Law shall effectively withdraw the right to appraisal, then, as of the later of the Effective Time and the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive SmartGate Common Stock, without interest thereon, upon surrender of the certificate representing such shares.

(c) RadioMetrix shall give SmartGate: (i) prompt notice of any written demands for appraisal of any shares of capital stock of RadioMetrix, withdrawals of such demands, and any other instruments served pursuant to Florida Law and received by RadioMetrix; and (ii) the opportunity to participate in all negotiations and proceedings which

take place prior to the Effective Time with respect to demands for appraisal under Florida Law. RadioMetrix shall not, except with the prior written consent of SmartGate, voluntarily make any payment before the Effective Time with respect to any demands for appraisal of capital stock of RadioMetrix or offer to settle or settle any such demands.

**1.8 Surrender of Certificates.**

(a) *Exchange Agent.* Prior to the Effective Time, SmartGate shall designate a bank or act as its own exchange agent (the "Exchange Agent") in the Merger.

(b) *SmartGate to Provide SmartGate Common Stock.* Promptly after the Effective Time, SmartGate shall make available to the Exchange Agent for exchange in accordance with this Article I the shares of SmartGate Common Stock issuable pursuant to Section 1.6 in exchange for outstanding shares of RadioMetrix Stock.

(c) *Exchange Procedures.* Promptly after the Effective Time, the Surviving Corporation shall cause to be mailed to each holder of record of a certificate or certificates (the "Certificates") which, immediately prior to the Effective Time, represented outstanding shares of RadioMetrix Common Stock whose shares were converted into the right to receive shares of SmartGate Common Stock pursuant to Section 1.6: (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and shall be in such form and have such other provisions as SmartGate may reasonably specify); and (ii) instructions for use in effecting the surrender of the Certificates in exchange for certificates representing shares of SmartGate Common Stock. Upon surrender of a Certificate for cancellation to the Exchange Agent or to such other agent or agents as may be appointed by SmartGate, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, the holder of such Certificate shall be entitled to receive in exchange therefor, a certificate representing the number of whole shares of SmartGate Common Stock which such holder is entitled pursuant to the Merger Consideration payment provisions of Section 1.6, and the Certificate so surrendered shall forthwith be canceled. Until so surrendered, each outstanding Certificate that, prior to the Effective Time, represented shares of RadioMetrix Common Stock will be deemed from and after the Effective Time, for all corporate purposes, other than the payment of dividends, to evidence the ownership of the number of full shares of SmartGate Common Stock into which such shares of RadioMetrix Common Stock shall have been so converted in accordance with the Merger Consideration payment provisions of Section 1.6.

(d) *Restrictions on Transfer.* Shares of SmartGate issued to RadioMetrix Shareholders hereunder shall not be registered under the Securities Act of 1933 and shall be subject to the following restrictive legend which shall be affixed to each certificate.

"THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND ARE "RESTRICTED SECURITIES" AS DEFINED IN RULE 144 PROMULGATED UNDER THE SECURITIES ACT. THE SHARES REPRESENTED BY THE CERTIFICATE MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, TRANSFERRED OR ASSIGNED EXCEPT (1) PURSUANT TO A REGISTRATION STATEMENT THEN IN EFFECT UNDER THE SECURITIES ACT, (2) IN COMPLIANCE WITH RULE 144, OR (3) PURSUANT TO AN OPINION OF COUNSEL TO THE ISSUER HEREOF, SATISFACTORY IN FORM AND SUBSTANCE TO THE ISSUER, THAT SUCH REGISTRATION OR COMPLIANCE IS NOT REQUIRED AS TO SUCH SALE, OFFER TO SELL, PLEDGE, HYPOTHECATION, TRANSFER OR ASSIGNMENT"

(e) *Transfers of Ownership.* If any certificate for shares of SmartGate Common Stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it will be a condition of the issuance thereof that the certificate so surrendered will be properly endorsed and otherwise in proper form for transfer and that the person requesting such exchange will have paid to SmartGate or any agent designated by it any transfer or other taxes required by reason of the issuance of a certificate for shares of SmartGate Common Stock in any name other than that of the registered holder of the certificate surrendered, or established to the satisfaction of SmartGate or any agent designated by it that such tax has been paid or is not payable.

(f) *No Liability.* Notwithstanding anything to the contrary in this Section 1.8, none of the Exchange Agent, the Surviving Corporation or any party hereto shall be liable to a holder of shares of SmartGate Common Stock or RadioMetrix Common Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

1.9 *No Further Ownership Rights in RadioMetrix Common Stock.* All shares of SmartGate Common Stock issued upon the surrender for exchange of shares of RadioMetrix Common Stock in accordance with the terms hereof (including any cash paid in respect thereof) shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of RadioMetrix Common Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of RadioMetrix Common Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article I.

1.10 *Lost, Stolen or Destroyed Certificates.* In the event any certificates evidencing shares of RadioMetrix Common Stock shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed certificates, upon the making of an affidavit of that fact by the holder thereof, such shares of SmartGate Common Stock pursuant to Section 1.6; provided, however, that SmartGate may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificates to deliver a bond in such sum as it may reasonably direct as indemnity against any claim that may be made against SmartGate or the Exchange Agent with respect to the certificates alleged to have been lost, stolen or destroyed.

1.11 *Tax Consequences and Accounting Treatment.* It is intended by the parties hereto that the Merger shall constitute reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended.

1.12 *Taking of Necessary Action: Further Action.* If, at any time after the Effective Time, any such further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of RadioMetrix and SmartGate/RadioMetrix Acquisition Corp., the officers and directors of RadioMetrix, SmartGate and SmartGate/RadioMetrix Acquisition Corp. are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

## ARTICLE II REPRESENTATIONS AND WARRANTIES OF RADIOMETRIX

RadioMetrix hereby makes the following representations and warranties to SmartGate and SmartGate/RadioMetrix Acquisition Corp. All representations and warranties are to the best knowledge and belief of RadioMetrix.

**2.1 *Organization of RadioMetrix.*** RadioMetrix (a) is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida; and (b) has all corporate power and authority and all governmental licenses, permits, authorizations, consents and approvals to own and lease its properties and assets and to carry on its business as presently conducted.

**2.2 *Authorization; Enforceability.*** RadioMetrix has, subject to shareholder approval, full corporate power and authority to enter into this Agreement, to consummate the transactions contemplated hereby, and to perform its obligations hereunder. This Agreement has been executed and delivered by a duly authorized officer of RadioMetrix and, upon approval by RadioMetrix Shareholders, will constitute a legal, valid and binding obligation of RadioMetrix, enforceable against RadioMetrix in accordance with its terms.

**2.3 *No Breach or Violation.*** RadioMetrix' execution and delivery of this Agreement, its compliance with and fulfillment of the terms of this Agreement, and its consummation of the transactions contemplated hereby, do not and will not, with notice or passage of time or both, after giving effect to the approvals, consents and other actions described on Schedule 2.5 - Consents and Approvals attached hereto (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in the creation of any lien upon the capital stock, assets, properties or rights of RadioMetrix pursuant to, (iv) give any person the right to accelerate any obligation under, or (v) result in a violation of, (a) any law applicable to RadioMetrix, (b) RadioMetrix' certificate of incorporation or bylaws, (c) any material franchise, permit, license, authorization, concession, order, judgment, writ, injunction or decree to which RadioMetrix is subject, or by which any of its assets, properties or rights are bound, or (d) any material lease, mortgage, indenture, deed of trust, trust agreement, note agreement or other agreement or instrument to which RadioMetrix is subject, or by which any of its assets, properties or rights are bound.

**2.4 *Litigation.*** There is no litigation, suit, claim, action, proceeding or investigation pending or, to RadioMetrix' knowledge, threatened by or against RadioMetrix, whether at law or in equity, before any Governmental Authority or instrumentality or before any arbitrator of any kind. RadioMetrix has not been a party to any litigation, suit, claim, action, proceeding or investigation during the past two years. RadioMetrix is not a party or subject to any judgment, writ, injunction, order or decree.

**2.5 *Approvals and Consents.*** Except as set forth on Schedule 2.5, no consent, approval, exemption, audit, waiver, order or authorization of, or declaration, qualification, designation, notice, filing or registration with, any governmental authority or any other person, is required for RadioMetrix' execution and delivery of this Agreement, the performance of its obligations hereunder, or its consummation of the transactions contemplated herein.

**2.6 Ownership of United States Patent Number 5,337,039.** RadioMetrix has good and marketable title to United States Patent Number 5,337,039, free and clear of any and all claims, rights, security interests, encumbrances or liens, other than a first lien security interest held by SDR Metro and a second lien security interest held by SmartGate. Attached as Exhibit "C" is a copy of the Assignment pursuant to which RadioMetrix acquired all patent rights from SDR Metro. Exhibit "C" is a valid and enforceable agreement.

**2.7 Receivable from SmartGate.** RadioMetrix has an account receivable from SmartGate. To the extent RadioMetrix receives any payment thereof from SmartGate prior to Closing, RadioMetrix will use the proceeds of such receivables only to advance the RadioMetrix Technology or technology development and to pay costs in connection with the Closing. No portion of the account receivable will be assigned or collected or distributed to RadioMetrix stockholders.

**2.8 No Licenses or Other Long-Term Commitments.** At Closing, RadioMetrix will have no licenses, joint ventures or other long-term commitments concerning the RadioMetrix Technology except those expressly consented to in writing by SmartGate.

**2.9 Tax Return.** Attached hereto as Schedule 2.9 is the Federal Tax Return filed by RadioMetrix for the year 2000 (the "RadioMetrix 2000 Tax Return"). The RadioMetrix 2000 Tax Return is a true and correct copy of the tax return filed by RadioMetrix.

**2.10 Material Contracts.** To the best knowledge of RadioMetrix, attached hereto as Schedule 2.10 is a true, complete and accurate list of all contracts, whether written or oral, entered into by RadioMetrix or by which RadioMetrix is bound and which either: (i) cannot be canceled on ninety (90) days or less written notice; or (ii) require the aggregate payment of more than \$1,000.

Except as set forth on Schedule 2.10, all contracts required to be disclosed pursuant to this Section 2.10 are valid, binding and in full force and effect, and neither RadioMetrix, nor, to RadioMetrix' knowledge, any other party thereto, is in breach or violation of, or default under, nor, to RadioMetrix' knowledge, is there any valid basis for such a claim of breach or violation of, or default under, the terms of any such contract, and no event has occurred which constitutes or, with the lapse of time or the giving of notice or both, would constitute, such a breach, violation or default by RadioMetrix thereunder.

**2.11 Employees.** RadioMetrix has complied in all material respects with all applicable laws relating to the employment of labor, including provisions thereof relating to wages, hours, equal opportunity, collective bargaining, age, pregnancy, disability, sex, race, national origin and other forms of unlawful discrimination, the WARN Act, and the payment and withholding of social security and other taxes due in respect thereof.

**2.12 Absence of Certain Developments.** Since the date of the RadioMetrix 2000 Tax Return, and except as otherwise disclosed in this Agreement or the schedules hereto, RadioMetrix has not:

(a) Incurred any liabilities, other than liabilities incurred in the ordinary course of business or related to this transaction, or discharged or satisfied any lien or encumbrance or paid any liabilities, other than in the ordinary course of business, or failed to pay

or discharge when due any liabilities of which the failure to pay or discharge has caused or would reasonably be expected to cause any material damage or risk of material loss to any of its assets or properties;

(b) Created, incurred, assumed or guaranteed any indebtedness for borrowed money, or mortgaged, pledged or subjected any of its assets or properties to any mortgage, lien, pledge, security interest, conditional sales contract or other encumbrance of any nature whatsoever in an aggregate amount exceeding \$1,000;

(c) Made or suffered any material amendment or termination of any contract to which it is a party or by which it is bound, or canceled, modified or waived any material debts or claims held by it or waived any rights of material value not in the ordinary course of business;

(d) Suffered any damage, destruction or loss, whether or not covered by insurance, of any item or items carried on its books of account individually or in the aggregate at more than \$1,000 or suffered any repeated, recurring or prolonged shortage, cessation or interruption of supplies or utilities or other services required to conduct its business;

(e) Received notice or obtained knowledge of any actual or threatened labor trouble, strike, union organizing efforts, or other occurrence, event or condition of any similar character;

(f) Made any acquisition of substantial assets or any commitments or agreements for capital expenditures or capital additions or betterments exceeding \$1,000 individually or in the aggregate;

(g) Increased the salaries or other compensation of, or made any advance (excluding advances for ordinary and necessary business expenses) or loan to, any of its employees or made any increase in, or any addition to, other benefits to which any of its employees may be entitled;

**2.13 Undisclosed Liabilities.** RadioMetrix does not have any material liabilities or obligations, whether accrued, absolute, contingent or otherwise, due or to become due, or direct or indirect, arising out of any action or inaction, or with respect to or based upon transactions or events occurring, or any state of facts or condition existing, in connection with RadioMetrix' conduct of its business, and, to RadioMetrix' knowledge, there is no basis for any claim against RadioMetrix for any such material liability or obligation, except (i) to the extent specifically described in this Agreement or disclosed in the schedules hereto, (ii) to the extent fully reflected or reserved against in RadioMetrix' Financial Statements, (iii) for liabilities and obligations arising or incurred in the ordinary course of business under any contract disclosed on Schedule 2.10 or not required to be disclosed because of the term or amount involved, and (iv) for liabilities and obligations arising or incurred in the ordinary course of business which will be paid or discharged prior to the due date thereof or at the Closing. At the Effective Time, to the best knowledge of RadioMetrix, RadioMetrix shall have no liabilities or obligations, whether accrued, absolute, contingent or otherwise, due or to become due, or direct or indirect, arising out of any action or inaction, or with respect to or based upon transactions or events occurring, or any state of facts or condition existing, in connection with RadioMetrix' conduct of its business, and, to RadioMetrix' knowledge, there is no basis for any claim against RadioMetrix for any

such material liability or obligation, except as disclosed on Schedule 2.10, 2.13 - Undisclosed Liabilities or 2.20 - Indebtedness and Accounts Payable.

**2.14 Tax Matters.** Other than as set forth on Schedule 2.14 hereto, (a) all tax returns that RadioMetrix was or is required to file on or prior to the Closing Date have been duly filed and all taxes thereon have been paid; (b) all tax returns that RadioMetrix is or will be required to file after the Closing Date will be timely filed and all taxes reflected thereon will be timely paid; (c) none of RadioMetrix' assets or properties is subject to any lien (other than a permitted lien) for payment of any unpaid taxes or levy proceedings; (d) all taxes which RadioMetrix is or was required by law to withhold or collect have been duly withheld or collected, and have been timely paid over to the proper taxing authorities to the extent due and payable; (e) RadioMetrix is not a party to any contract that would require it to make any payment that would constitute an "excess parachute payment" for purposes of Sections 280G and 4999 of the Code; (f) RadioMetrix is not a "foreign person" as such term is defined in the Code; (g) RadioMetrix does not have any express or implied obligation (including, but not limited to, an indemnification obligation) with respect to the payment of taxes for any person other than RadioMetrix; and (h) RadioMetrix has not received any notice of any additional assessments since the date of any tax return nor has RadioMetrix received any notice of any audit or review of such tax returns.

**2.15 Real Property.** RadioMetrix neither owns nor leases any real property.

**2.16 Licenses and Permits.** RadioMetrix possesses all licenses, permits, consents, concessions and other authorizations of governmental authorities that were required to own and lease its assets and to conduct its business.

**2.17 Environmental Matters.**

(a) At all times prior to the Closing, RadioMetrix has complied and at the Closing will be in compliance, in all material respects, with all environmental laws, and RadioMetrix has not received any notice, report, or information (including information that any litigation, investigation or administrative or other proceedings of any kind are pending or threatened) regarding any liabilities (whether accrued, absolute, contingent, unliquidated, or otherwise), or any corrective, investigatory, or remedial obligations, arising under environmental laws.

(b) No hazardous substances have been, or are currently, located at, in, or under or emanating from RadioMetrix' assets in a manner which: (i) violates any applicable environmental laws, or (ii) requires response, remedial, corrective action or cleanup of any kind under any applicable environmental law.

**2.18 Corporate Documents, Books and Records.** The books, records and accounts of RadioMetrix accurately and fairly reflect in all material respects the transactions and the assets and liabilities of RadioMetrix. RadioMetrix has not engaged in any transaction or used any funds of RadioMetrix except for transactions and funds that have been and are reflected in the normally maintained books and records of RadioMetrix.

**2.19 Compliance with Law.** To the best of its knowledge, RadioMetrix is not in default under, or in violation of, nor has RadioMetrix violated (and not cured) any law, statute, referrals, or the regulations promulgated pursuant to such statutes or related federal, state or local regulation or any licenses, franchises, permits, authorizations or concessions granted by, or any judgment, decree, writ, injunction or order of, any governmental authority, applicable to

RadioMetrix. To the best of its knowledge, no investigation or review by any governmental authority with respect to RadioMetrix is pending or, to RadioMetrix' knowledge, threatened.

**2.20 *Indebtedness and Accounts Payable.*** Except as set forth on Schedule 2.20, RadioMetrix has no debts or accounts payable. Further, at the Closing, each employee, officer and director of RadioMetrix shall execute a resignation and an Estoppel Certificate confirming that said employee, officer or director has no entitlement or claim against RadioMetrix, other than for outstanding shares owned of record, except as otherwise listed in Schedule 2.20.

**2.21 *Labor Agreements and Employee Relations.*** RadioMetrix is not a party to any collective bargaining or similar agreement covering any of its employees. No labor organization or group of employees of RadioMetrix has made a demand for recognition, has filed a petition seeking a representation proceeding, or given RadioMetrix notice of any intention to hold an election of a collective bargaining representative. RadioMetrix has not suffered any strike, slowdown, picketing or work stoppage by any group of employees affecting its business.

**2.22 *Brokers' Fees.*** Neither RadioMetrix nor any person on RadioMetrix' behalf has retained any broker, finder or agent or agreed to pay any brokerage fee, finder's fee, commission or other payment with respect to the transactions contemplated by this Agreement.

**2.23 *All Material Information.*** No representation or warranty made by RadioMetrix in this Agreement, including the attached schedules, and no statement contained in any certificate or other instrument furnished to SmartGate at the Closing, knowingly contains any untrue statement of a material fact or knowingly omits to state any material fact necessary in order to make any statement therein not misleading.

**2.24 *Employee Benefit Plans.*** Except as set forth on Schedules 2.10, 2.20 or 2.24 Employee Benefit Plans:

(a) RadioMetrix does not, and does not have any obligation to, maintain or contribute to any Employee Benefit Plan.

(b) No event has occurred, and to RadioMetrix' knowledge, there exists no condition or circumstances, in connection with which RadioMetrix could be subject to any liability under the terms of any Employee Benefit Plan of RadioMetrix, ERISA, the Code or any other applicable law which would have a material adverse effect on its business.

(c) The execution, delivery and performance of this Agreement will not result in any: (i) increase in the compensation or benefits otherwise payable under any Employee Benefit Plan of RadioMetrix or pursuant to any agreement with respect to any employee of RadioMetrix; (ii) acceleration of the time of payment or vesting of any such compensation or benefits due to any employee of RadioMetrix; or (iii) renew or extend the term of any agreement regarding compensation of any employee of RadioMetrix, which in the case of (i), (ii) or (iii) above, would create any liability to SmartGate after the Closing Date. No payment or benefit, which may be made by RadioMetrix with respect to any employee of the RadioMetrix, will be classified as an "excess parachute payment" within the meaning of Section 280G of the Code.

(d) SmartGate will have no liability or obligation of any kind whatsoever under or with respect to any Employee Benefit Plan of RadioMetrix.

**2.25 *Benefit Claims.*** RadioMetrix has no liability for any benefit which has been or could be claimed as a result of any event occurring prior to the Closing Date under any



Employee Benefit Plan or any workers' compensation or similar law (i) which is not fully covered by insurance, or (ii) if not so insured, for which RadioMetrix has not established an adequate reserve on RadioMetrix' Financial Statements.

**2.26 THIS SECTION INTENTIONALLY LEFT BLANK.**

**2.27 Stage of Development.**

**2.27.1 *Product Testing.*** While RadioMetrix has conducted product testing in the past, its product testing is not considered completed and further testing is anticipated. RadioMetrix gives no assurance nor makes any representations or warranty regarding the outcome of future testing.

**2.27.2 *Commercialization.*** RadioMetrix has not commercially marketed any products, and no assurance is given and no representation or warranty is made regarding time, expense and obstacles to commercial sales.

**2.27.3 *Patent Protection.*** While RadioMetrix owns all right, title and interest in and to Patent No. 5,337,039 ("Proprietary Rights"), no assurance or representation or warranty is given that said Proprietary Rights completely protect the RadioMetrix products from competitive technology or the development of new competitive technology, and further, no assurance is given nor representation or warranty made that the Proprietary Rights will not be challenged, and if challenged, that RadioMetrix would prevail in any such challenge.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES BY SMARTGATE**

SmartGate hereby makes the following representations and warranties to RadioMetrix. All representations and warranties are made to the best knowledge of SmartGate.

**3.1 *Existence and Qualification.*** SmartGate (a) is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada; (b) has all corporate power and authority and all governmental licenses, permits, authorizations, consents and approvals to own and lease its properties and assets and to carry on its business as presently conducted; and (c) is duly qualified or licensed as a foreign corporation in, and is in good standing under the laws of, each jurisdiction in which the nature or conduct of its business or the character or location of its properties or assets requires such qualification, except where the failure to be so qualified would not have and would not reasonably be expected to have a material adverse effect.

**3.2 *Outstanding Capital Stock.*** As of February 6, 2002, SmartGate shall have an aggregate of 12,015,355 shares of capital stock issued and outstanding (excluding all shares of common stock reserved for issuance upon the exercise of outstanding SmartGate Options and any subsequent sale of shares) consisting of a single Class of Common Stock. SmartGate has approximately 2,711,000 shares reserved for stock options which may be granted. Additionally, SmartGate may be reserving an additional 3,000,000 shares for issuance under a proposed Units Offering.

**3.3 *Authorization; Enforceability.*** SmartGate and SmartGate/RadioMetrix Acquisition Corp., each have full corporate power and authority to enter into this Agreement, to consummate the transactions contemplated hereby, and to perform their respective obligations hereunder. This Agreement has, subject to shareholder approval of SmartGate/RadioMetrix

Acquisition Corp., been executed and delivered by a duly authorized officer of SmartGate and SmartGate/RadioMetrix Acquisition Corp. and constitutes the legal, valid and binding obligation of SmartGate and SmartGate Acquisition Corp, enforceable against SmartGate and SmartGate/RadioMetrix Acquisition Corp. in accordance with its terms.

**3.4 No Breach or Violation.** Neither SmartGate's nor SmartGate/RadioMetrix Acquisition Corp.'s execution and delivery of this Agreement, their compliance with and fulfillment of the terms of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not, with notice or passage of time or both, after giving effect to the approvals, consents and other actions described on Schedule 3.5 - Consents and Approvals attached hereto (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default or event of default under, (iii) result in the creation of any lien upon any of the capital stock, assets, properties or rights of SmartGate or SmartGate/RadioMetrix Acquisition Corp. pursuant to, (iv) give any person the right to accelerate any obligation under, or (v) result in a violation of, (a) any law applicable to SmartGate or SmartGate/RadioMetrix Acquisition Corp., (b) SmartGate's or SmartGate/RadioMetrix Acquisition Corp.'s certificates of incorporation or bylaws, (c) any material franchise, permit, license, authorization, concession, order, judgment, writ, injunction or decree to which SmartGate or SmartGate/RadioMetrix Acquisition Corp. are subject, or by which any of their assets, properties or rights are bound, or (d) any material lease, mortgage, indenture, deed of trust, trust agreement, note agreement or other agreement, contract, understanding or instrument to which SmartGate or SmartGate/RadioMetrix Acquisition Corp. is subject, or by which any of their assets, properties or rights are bound.

**3.5 Approvals and Consents.** Except as provided In Schedule 3.5, no consent, approval, exemption, audit, waiver, order or authorization of, or registration, qualification, designation, declaration, notice or filing with, any governmental authority or any other person is required for SmartGate's or SmartGate/RadioMetrix Acquisition Corp.'s execution and delivery of this Agreement, the performance of their obligations hereunder, the assumption of the assumed obligations of RadioMetrix, or SmartGate's or SmartGate/RadioMetrix Acquisition Corp.'s consummation of the other transactions contemplated herein.

**3.6 Sublicense Agreement.** The Sublicense Agreement between SmartGate, L.C. and RadioMetrix, a copy of which is attached as Exhibit "D" is in good standing and is enforceable. SmartGate, L.C. is actively commercializing products pursuant to the Sublicense Agreement. SmartGate, L.C. is in full compliance with said Agreement, and to the best of its knowledge, RadioMetrix is in full compliance with said Agreement. As a result of the commercialization of products and the development of technology pursuant to the Sublicense Agreement, SmartGate, through its Independent Committee of Directors, has determined that it is in SmartGate's best interest to expand its rights, interests, and ownership of the RadioMetrix Technology.

**3.7 Conflict of Interest.** SmartGate has been fully advised of the overlapping interests of certain officers, directors and stockholders of RadioMetrix and SmartGate, including that of Stephen Michael, Samuel Duffey, William Dolan and Robert Roth. SmartGate has had full access to all books, records and other documents of RadioMetrix and to ask questions of RadioMetrix' officers and directors. SmartGate has appointed an Independent Committee of its Board of Directors consisting of Ed King and Robert Knight (the "Independent Committee of Directors"), and has vested said Independent Committee of Directors with full and complete authority to negotiate, perform due diligence and, in its sole discretion, to enter into and close

this Agreement. The Independent Committee of Directors determined, in the exercise of its sole discretion, to seek an opportunity to merge with RadioMetrix. RadioMetrix, as a condition to initiating and conducting such negotiations, required that SmartGate expressly acknowledge and waive all conflicts of interest of RadioMetrix and its officers, directors and stockholders, expressly including, but not limited to, Mr. Michael, Mr. Duffey, Mr. Dolan and Mr. Roth, and members of their families and trusts administered by them. As part of said waiver, SmartGate has acknowledged and agreed that Messrs. Michael, Duffey, Dolan and Roth would abstain from participation in any discussions, valuation, or negotiations regarding this Agreement on behalf of SmartGate and would be allowed to represent their interest in RadioMetrix in all such discussions and negotiations. The Independent Committee of Directors has had access to and has relied upon input from its independent consultant, Marshall & Stevens, and from its independent legal counsel, Spitzer & Feldman, P.C. in all matters relating to this Agreement. Section 6.8 is incorporated herein by reference and expressly made a representation of SmartGate.

**3.8 Financial Statements.** Attached hereto as Schedule 3.8 are audited financial statements for the periods ending March 31, 1999 and 2000 and unaudited financial statements for the period ending September 30, 2001 ("SmartGate's Financial Statements"). The financial statements of SmartGate fairly and accurately reflect the financial condition of SmartGate.

**3.9 Brokers' Fees.** Neither SmartGate nor any person on SmartGate's behalf has retained any broker, finder or agent or agreed to pay any brokerage fee, finder's fee, commission or other payment with respect to the transactions contemplated by this Agreement.

**3.10 All Material Information.** No representation or warranty made herein by SmartGate, including the attached schedules, and no statement contained in any certificate or other instrument furnished to RadioMetrix as required herein contains any untrue statement of a material fact or omits to state any material fact necessary in order to make any statement therein not misleading.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SMARTGATE/RADIOMETRIX ACQUISITION CORP.**

SmartGate/RadioMetrix Acquisition Corp. hereby makes the following representations and warranties to RadioMetrix:

(a) At the Effective Time, SmartGate/RadioMetrix Acquisition Corp. will be a duly incorporated and existing Nevada corporation. SmartGate/RadioMetrix Acquisition Corp. is being organized solely for the purpose of entering into and carrying out this Agreement. SmartGate/RadioMetrix Acquisition Corp. has conducted no business and will conduct no business except the execution and Closing of this Agreement prior to the Effective Time. SmartGate/RadioMetrix Acquisition Corp. is wholly owned by SmartGate. SmartGate/RadioMetrix Acquisition Corp. has no debts, liens or liabilities of any nature or description.

(b) SmartGate/RadioMetrix Acquisition Corp.'s Articles of Incorporation and Bylaws will remain in existence and be unchanged through the Effective Time.

(c) SmartGate/RadioMetrix Acquisition Corp. will enter into no agreements and incur no liabilities or debts, except those directly related to and disclosed in this Agreement, except as otherwise provided for herein.

## ARTICLE V CONDITIONS TO THE MERGER

5.1 *Conditions to Obligations of Each Party to Effect the Merger.* The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following conditions:

(a) *Due Diligence.* This Agreement and the Merger are determined by the Independent Committee of Directors to be in SmartGate's best interest.

(b) *Working Capital.* SmartGate has a minimum of \$3,000,000 in unrestricted working capital in excess of the working capital requirements of SmartGate prior to the Merger.

(c) *Stockholder Approval.* This Agreement and the Merger and other transactions contemplated hereby shall have been approved and adopted by the requisite vote of the stockholders of RadioMetrix and of the Sub.

(d) *No Injunctions or Restraints: Illegality.* No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger shall be in effect, nor shall any proceeding brought by an administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, seeking any of the foregoing be pending; nor shall there be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Merger, which makes the consummation of the Merger illegal.

5.2 *Additional Conditions to Obligations of the RadioMetrix.* The obligations of RadioMetrix to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by RadioMetrix:

(a) *Representations, Warranties and Covenants.* The representations and warranties of SmartGate and SmartGate/RadioMetrix Acquisition Corp. in this Agreement shall be true and correct in all material respects on and as of the Effective Time as though such representations and warranties were made on and as of such time and SmartGate shall have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it as of the Effective Time.

(b) *Certificate of SmartGate.* RadioMetrix shall have been provided with a certificate executed on behalf of SmartGate by its Chief Financial Officer or Treasurer to the effect that, as of the Effective Time:

(i) All representations and warranties made by SmartGate and SmartGate/RadioMetrix Acquisition Corp. under this Agreement are true and complete in all material respects; and

(ii) All covenants, obligations and conditions of this Agreement to be performed by SmartGate and SmartGate/RadioMetrix Acquisition Corp. on or before such date have been so performed in all material respects.

(c) *Satisfactory Form of Legal Matters.* The form, scope and substance of all legal matters and accounting matters contemplated hereby and all closing documents and other papers delivered hereunder shall be reasonably acceptable to counsel to RadioMetrix.

**5.3 Additional Conditions to the Obligations of SmartGate and SmartGate Acquisition Corp.** The obligations of SmartGate and SmartGate/RadioMetrix Acquisition Corp. to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by SmartGate:

(a) *Representations, Warranties and Covenants.* The representations and warranties of RadioMetrix in this Agreement shall be true and correct in all material respects on and as of the Effective Time.

(b) *Certificate of RadioMetrix.* SmartGate shall have been provided with a certificate executed on behalf of RadioMetrix by its President to the effect that, as of the Effective Time:

(i) All representations and warranties made by RadioMetrix under this Agreement are true and complete in all material respects; and

(ii) All covenants, obligations and conditions of this Agreement to be performed by RadioMetrix on or before such date have been so performed in all material respects.

(c) *Third Party Consents.* Any and all consents, waivers and approvals required from third parties relating to the contracts and agreements of RadioMetrix so that the Merger and other transactions contemplated hereby do not adversely affect the rights of, and benefits to, RadioMetrix thereunder shall have been obtained.

(d) *Satisfactory Form of Legal and Accounting Matters.* The form, scope and substance of all legal and accounting matters contemplated hereby and all closing documents and other papers delivered hereunder shall be reasonably acceptable to SmartGate's counsel.

(e) *Legal Opinion.* SmartGate has received a legal opinion from Spitzer & Feldman, P.C., legal counsel to the Independent Committee of Directors in form and substance reasonably acceptable to the Independent Committee of Directors.

(f) *No Material Adverse Changes.* There shall not have occurred any event, fact or condition, which has had or reasonably would be expected to have a Material Adverse Effect on RadioMetrix or SmartGate as the survivor.

(g) *Dissenters.* The number of shares of RadioMetrix Common Stock held by holders who either (i) have exercised appraisal rights or (ii) retain the ability to exercise such appraisal rights shall not exceed a level acceptable to SmartGate.

(h) *Fairness Opinion.* The Independent Committee of Directors has received input and an opinion from its financial advisor, Marshall & Stevens, that the transaction provided

for in this Agreement is "fair", which opinion is in form and substance acceptable to the Independent Committee of Directors.

#### **ARTICLE VI ADDITIONAL COVENANTS OF THE PARTIES**

**6.1 Cooperation.** RadioMetrix, SmartGate and SmartGate/RadioMetrix Acquisition Corp. will cooperate with each other and their respective agents in carrying out the transactions contemplated by this Agreement, and in delivering all documents and instruments deemed reasonably necessary or useful by the other party.

**6.2 Expenses.** Each party hereto will be solely responsible for and will bear all of its own costs and expenses associated with this Agreement, including without limitation, expenses of legal counsel, accountants, advisors and others. RadioMetrix may utilize the account receivable from SmartGate to pay closing costs.

**6.3 Confidential Information.** SmartGate and SmartGate/RadioMetrix Acquisition Corp. agree that all "Confidential Information" (as hereinafter defined) so provided by RadioMetrix shall be treated by SmartGate and SmartGate/RadioMetrix Acquisition Corp. as confidential, and all such information will be utilized by SmartGate and SmartGate/RadioMetrix Acquisition Corp. for the sole and limited purpose of their due diligence investigation relating to the Merger, and shall not be disclosed to any third party other than SmartGate and SmartGate/RadioMetrix Acquisition Corp.'s attorneys, accountants, officers or other authorized agents, all of whom shall have been placed under an identical confidentiality obligation by SmartGate and SmartGate/RadioMetrix Acquisition Corp., if SmartGate and SmartGate/RadioMetrix Acquisition Corp. should decide not to go forward with the Merger. Furthermore, if the Closing does not occur, SmartGate and SmartGate/RadioMetrix Acquisition Corp. shall promptly return all written Confidential Information (and all copies thereof) in their possession or will certify to RadioMetrix and RadioMetrix Shareholders that all of such documents not returned to RadioMetrix have been destroyed by SmartGate and SmartGate/RadioMetrix Acquisition Corp., whichever disposition RadioMetrix directs.

**6.4 Publicity.** SmartGate and SmartGate/RadioMetrix Acquisition Corp. shall not, without prior written consent of RadioMetrix, publish any press releases or disseminate any news regarding this Agreement or transaction contemplated herein prior to Closing unless required to do so by law.

**6.5 THIS SECTION INTENTIONALLY LEFT BLANK.**

**6.6 Commercialization.** SmartGate shall, following the Closing, exercise reasonable efforts to commercialize products utilizing the RadioMetrix Technology.

**6.7 Indemnification and Hold Harmless.** SmartGate's Independent Committee has been made aware of the RadioMetrix shareholders' conflicts of interest in connection with this proposed Merger and has determined, even with the existence of the conflicts, that this proposed Merger is in the best interest of SmartGate. The RadioMetrix shareholders have advised SmartGate's Independent Committee that they would proceed with the proposed Merger only if, as a condition to the Closing, SmartGate agreed to indemnify and hold them and related parties harmless from any claim, loss or action resulting from the conflicts of interest. Accordingly,

SmartGate shall, at Closing, enter into and deliver to the RadioMetrix shareholders the Indemnity Agreement attached hereto as Exhibit "F" and incorporated herein by this reference.

**6.8 Future Conflicts of Interest.** Following the Effective Time, SmartGate shall conduct its business, including all aspects relating to the commercialization, development, product introduction, product marketing and the establishment of product and licensing pricing of the RadioMetrix Technology in a fashion deemed by the Board of Directors to be in the best interest of SmartGate and its stockholders without regard to the interests of RadioMetrix stockholders on the Closing Date or with regard to the Merger Consideration issued under this Agreement. RadioMetrix stockholders, as of the Closing Date, hereby acknowledge the absolute discretion of SmartGate and its Independent Committee of Directors to make any and all decisions regarding the manner in which the RadioMetrix Technology shall be commercialized and hereby waive any right to object thereto. In the event that the Board of Directors identifies any matter before the Board or SmartGate which involves a conflict of interest between SmartGate and the RadioMetrix stockholders as of the Closing Date, the decision or matters relating to or effected by said conflict of interest shall be exclusively and solely resolved by an Independent Committee of Directors appointed by the Board of Directors. Such Independent Committee shall have full access to independent legal counsel and independent advisors, including financial advisors. In all such matters, including matters relating to the creation of an Independent Committee or the determination of whether a conflict of interest may be involved, all individuals including, but not limited to, Messrs. Michael, Duffey, Dolan and Roth, which are officers, directors or stockholders of RadioMetrix on the Closing Date, shall abstain. Any determination as to whether a conflict of interest exists shall be determined by the Independent Members of the Board of Directors with all interested or conflicted Directors abstaining.

## ARTICLE VII CONDUCT OF THE PARTIES PENDING CLOSING

**7.(a)** Until the satisfaction of all Conditions to Merger: (i) SmartGate and RadioMetrix may each conduct its respective business and enter into agreements and issue shares of its capital stock in the ordinary course of their businesses without consultation or approval of the other party; (ii) the Promissory Note outstanding as of the date hereof and due and payable by SmartGate to RadioMetrix in the approximate amount of \$330,500, plus accrued interest shall remain in place and, upon the Closing, the balance of the Promissory Note shall remain unpaid and become a debt of SmartGate to its new wholly owned Sub, except as may be otherwise agreed to by the parties.

**(b)** In the event the Condition to the Merger set forth in Section 5.1(b) is not satisfied prior to the Closing, SmartGate may, in the exercise of the sole discretion of its Independent Committee of Directors elect to either: (i) terminate this Merger Agreement; or (ii) waive the condition set forth in Section 5.1(b) and proceed to Closing, where upon the following modifications shall be made to the merger consideration: (a) the consideration as set forth in Section 1.6(a)(i) shall be amended to delete the \$400,000 in cash payment and to replace it with a Promissory Note in the principal amount of \$500,000 due and payable in one principal installment 48 months following Closing. The Promissory Note may be prepaid at any time by SmartGate without penalty. The Promissory Note shall provide for the monthly payment of interest at 10% per annum for the initial six months following Closing and thereafter (if not previously prepaid) interest for the balance of the term of the Promissory Note shall be 15% per

annum and the interest shall be paid monthly. The form of Note is attached as Schedule 7(b); and (b) Section 1.6(a)(ii) shall be amended to provide that the Independent Committee of Directors, in the exercise of its discretion, may extend the \$800,000 Promissory Note for an additional one year term. In the event that the Promissory Note is extended, the interest rate shall be increased to 15% per annum and shall be accrued for the extension period and all interest accrued during the initial term shall be paid in full.

**ARTICLE VIII  
SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

**8.1 *Survival of Representations and Warranties.*** All covenants to be performed prior to the Effective Time, and all representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Merger and continue in effect.

**ARTICLE IX  
TERMINATION, AMENDMENT AND WAIVER**

**9.1 *Termination.*** This Agreement may be terminated and the Merger abandoned at any time prior to the Effective Time:

- (a) By mutual consent of RadioMetrix and SmartGate;
- (b) By SmartGate if it is not in material breach of its obligations under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of RadioMetrix and such breach has not been cured within fifteen (15) days after notice to RadioMetrix.
- (c) By RadioMetrix if it is not in material breach of its respective obligations under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of SmartGate or SmartGate/RadioMetrix Acquisition Corp. and such breach has not been cured within 15 days after notice to SmartGate;
- (d) By any party hereto if: (i) the Closing has not occurred by February 25, 2002; (ii) there shall be a final nonappealable order of a federal or state court in effect preventing consummation of the Merger; (iii) there shall be any action taken, or any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Merger by any Governmental Entity which would make consummation of the Merger illegal; or (iv) there shall be any action taken, or any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Merger by any Governmental Entity, which would (a) prohibit SmartGate's or RadioMetrix' ownership or operation of all or a material portion of the business of RadioMetrix, or compel SmartGate or RadioMetrix to dispose of or hold separate all or a material portion of the business or assets of RadioMetrix or SmartGate as a result of the Merger or (b) render SmartGate, SmartGate/RadioMetrix Acquisition Corp. or RadioMetrix unable to consummate the Merger, except for any waiting period provisions.

Where action is taken to terminate this Agreement pursuant to this Section 9.1, it shall be sufficient for such action to be authorized by the Board of Directors (as applicable) of the party taking such action.

**9.2 *Effect of Termination.*** In the event of termination of this Agreement as provided in Section 9.1, this Agreement shall forthwith become void and there shall be no liability or



obligation on the part of SmartGate, SmartGate/RadioMetrix Acquisition Corp. or RadioMetrix or their respective officers, directors or stockholders, except if such termination results from the breach by a party hereto of any of its representations, warranties, covenants or agreements set forth in this Agreement.

**9.3 Amendment.** This Agreement may be amended by the parties hereto at any time before or after approval of matters presented in connection with the Merger by the stockholders of those parties required by applicable law to so approve but, after any such stockholder approval, no amendment shall be made which by law requires the further approval of stockholders of a party without obtaining such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

**9.4 Extension; Waiver.** At any time prior to the Effective Time any party hereto may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

#### ARTICLE X GENERAL PROVISIONS

**10.1 Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via telecopy to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to SmartGate:

To: SmartGate, Inc.  
4400 Independence Court  
Sarasota, Florida 34234  
Attention: Independent Committee Member, Edmund C. King  
Fax: (941) 355-9373

Copy to:

Spitzer & Feldman, P.C.  
405 Park Avenue  
New York, NY 10022  
Attention: Steven A. Sanders  
Fax: (212) 838-7472

(b) if to SmartGate/RadioMetrix Acquisition Corp.:

To: SmartGate/RadioMetrix Acquisition Corp.  
4400 Independence Court  
Sarasota, Florida 34234  
Attention: Independent Committee Member, Edmund C. King  
Fax: (941) 355-9373

Copy to:

Spitzer & Feldman, P.C.  
405 Park Avenue  
New York, NY 10022  
Attention: Steven A. Sanders  
Fax: (212) 838-7472

(c) if to RadioMetrix:

To: RadioMetrix, Inc.  
416 Burns Court  
Sarasota, Florida 34236  
Fax: (941) 954-5825

**10.2 Interpretation.** When a reference is made in this Agreement to Schedules or Exhibits, such reference shall be to a Schedule or Exhibit to this Agreement unless otherwise indicated. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**10.3 Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

**10.4 Miscellaneous.** This Agreement and the documents and instruments and other agreements among the parties hereto (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; (b) are not intended to confer upon any other person any rights or remedies hereunder; and (c) shall not be assigned by operation of law or otherwise except as otherwise specifically provided.

**10.5 Governing Law.** This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of Florida. All parties hereto agree to submit to the jurisdiction of the federal and state courts of the State of Florida and further agree that service of documents commencing any suit therein may be made as provided in Section 10.1.

**10.6 Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be exclusively settled by binding arbitration before the American Arbitration Association situated in Tampa, Florida before a panel of three (3) arbitrators. All aspects of the arbitration shall be governed by the rules then in effect of the American Arbitration Association. Arbitration shall be the sole and exclusive manner for resolving all disputes hereunder. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each party shall pay its respective share of the fees, costs and expenses billed by the American Arbitration Association and the arbitrators, and the prevailing party shall recover from the non-prevailing party all of the prevailing party's costs, expenses and fees it incurred in connection with the arbitration, including reasonable attorneys' fees.

10.7 *Rules of Construction.* The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

IN WITNESS WHEREOF, SmartGate, SmartGate/RadioMetrix Acquisition Corp., and RadioMetrix have caused this Agreement to be signed by themselves or their duly authorized respective officers, all as of the date first written above.

SmartGate Inc.

SmartGate/RadioMetrix Acquisition Corp.

By: Edmund C. King  
Edmund C. King  
Its: Chief Financial Officer

By: Edmund C. King  
Edmund C. King  
Its: Chief Financial Officer

Radio Metrix Inc.

By: Stephen A. Michael  
Stephen A. Michael  
Its: President

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**Exhibit “A”**  
**Letter of Intent**

# SmartGate® Non-Contact Safety for Gates & Doors

The best safety sensing in the world!

Telephone 941-355-9361  
Facsimile 941-355-9373  
USA Toll Free 800-863-9361

September 27, 2001

Radio Metrix, Inc.  
416 Burns Court  
Sarasota, Florida 34236

Gentlemen:

The purpose of this Letter of Intent ("LOI") is to set forth the points of agreement between SmartGate, Inc. ("SmartGate") and Radio Metrix, Inc. ("Radio Metrix") with respect to the merger of Radio Metrix into a wholly owned subsidiary of SmartGate (the "Sub") in accordance with the terms and conditions set forth below. For the avoidance of any doubt, this LOI shall be considered an expression of our mutual intention, but not a binding agreement (except for Paragraphs 2, 8, 9, 10 and 11 below). The parties shall be bound only under a fully-executed definitive agreement (the "Definitive Agreement"), embodying terms and conditions acceptable to them with respect to the transactions contemplated by this LOI.

1. **Merger.** Radio Metrix shall be merged into SUB (the "Forward Triangular Merger"). The effect of the Forward Triangular Merger shall be for Sub to become a division of SmartGate and for the current stockholders of Radio Metrix to become stockholders of SmartGate.
2. **Conditions To Merger.** The Merger is conditioned on: (i) SmartGate having a minimum of \$3,000,000 in unrestricted cash on hand (beyond the capital requirement of SmartGate to finance its current pre-merger operations for the twelve month period following the closing) to be dedicated to financing the closing of the Merger, the purchase of the Patent as provided in Exhibit A and the commercialization of the Radio Metrix technology and product applications; and (ii) SmartGate's independent directors determining, in the exercise of their sole judgment, that the proposed merger is fair and in the best interest of its shareholders after a full and complete opportunity to conduct due diligence investigation, consult with their independent legal counsel and consult with and obtain written confirmation from their independent financial consultant (the "Conditions to Merger").
3. **Merger Consideration.** As consideration for the Forward Triangular Merger, SmartGate shall, at closing, exchange and pay the following consideration for 100% of the outstanding capital stock of Radio Metrix:

- (i) \$400,000 in cash or same day cash available funds;

- (ii) \$800,000 by Promissory Note from SmartGate, payable in one installment together with monthly interest at seven percent (7%) with all principal due in full one year following closing. In the event that the Promissory Note is not paid in full when due, the interest rate shall be retroactively restated to eighteen percent (18%) from the issuance date of the Note with said adjusted interest rate remaining in effect until the Note is paid in full. During such time, the Note shall be due and payable upon demand of the holders. There will be no pre-payment penalty;
- (iii) 300,000 shares of SmartGate Common Stock; and
- (iv) A quarterly revenue-based payment equal to seven percent (7%) of the sales of the Sub (i.e. all revenue of any description related to the acquired Radio Metrix assets, technology, product applications including but not limited to license, royalty, joint venture or other consideration or revenue). The revenue-based payment shall be paid one half in cash and one half in SmartGate Common Stock. The SmartGate Common Stock shall be valued at seventy-five percent (75%) of the average closing market price for the 30 calendar days immediately preceding the end of the quarterly period. SmartGate may terminate the revenue-based payment at any time by paying an amount equal to the appraised fair market value of the revenue-based payment ("Termination Payment"). The appraisal shall be performed by an appraiser(s) mutually acceptable to SmartGate and seventy five percent ("Super Majority") of the shareholders of Radio Metrix. The appraisal shall reflect the full commercial value, without adjustment for current or past relationships between the parties, past revenue based payments, other consideration or equity interests. The appraisal shall take into consideration the future prospects of the Radio Metrix technology, the present as well as future product applications and the potential of future revenue assuming reasonable financial support. Further, the appraisal shall take into consideration the potential of future revenue-based payments over the term of the entitlement (including but not limited to license, royalty, joint venture and other revenue) from products or technology applications which are currently commercialized and which are planned for future commercialization. The Termination Payment shall be made in cash and common stock in the same fashion as the quarterly revenue-based payments.

4. **Additional Merger Consideration.** Contingent upon the following conditions (the "Earn Out Conditions"), SmartGate shall pay the following additional merger consideration to the shareholders of Radio Metrix (the "Earn Out Consideration"):

- (i) Upon the first commercial sale of a product incorporating the Radio Metrix technology or product applications, SmartGate shall pay the following to the Radio Metrix shareholders: (i) \$4,500,000 by Promissory Note payable in one installment due in sixty (60) months together with interest at nine percent (9%) per annum. While outstanding, the Promissory Note may, at the discretion of holder, be converted into shares of SmartGate Common Stock at the conversion ratio of one share of SmartGate common stock for each \$5,00 of principal and interest; and (ii) 1,125,000 shares of SmartGate Common Stock; and
- (ii) 3,750,000 shares of SmartGate Common Stock, upon the first to occur of: (i) \$25,000,000 in revenue from Radio Metrix technology, product applications, royalty or other revenue related to Radio Metrix technology, product applications or assets including but not limited to license, royalty, joint venture or other revenue or consideration; (ii) \$4,000,000 in net pre-tax profits from the Radio Metrix technology, product applications and royalty; (iii) the per share price of SmartGate Common Stock increases by one hundred percent (100%) from the per share price on the date of this Letter of Intent; or (iv) a change in control of SmartGate or the sale of substantially all of SmartGate's assets.

5. **Registration Rights.** On two occasions, the shares of SmartGate Common Stock issued or to be issued hereunder shall be registered with the SEC upon the demand of the holders of a Super Majority of Radio Metrix shares at closing. Additionally, the holders of the shares issued hereunder shall have piggyback registration rights in all future Registration Statements filed with the SEC by SmartGate.
6. **Definitive Agreement.** The parties agree to exercise good faith to negotiate, with a view to entering into a Definitive Agreement regarding the Forward Triangular Merger. Assuming satisfaction or waiver of the Conditions to Merger, the Definitive Agreement will provide for closing on or before December 15, 2001, unless mutually extended by the parties. The Definitive Agreement will provide for normal and customary terms and provisions, including the mutual rights of inspection and due diligence, the right to consult with and rely upon the advice of independent legal counsel, and necessary SmartGate approval of its independent Board of Directors following the satisfaction of the Conditions to Merger.
7. **Conduct Pending Closing.** Until the satisfaction of all Conditions to Merger: (i) SmartGate and Radio Metrix may each conduct its respective business and enter into agreements and issue shares of its capital stock without consultation with or approval of the other party; (ii) the promissory note outstanding on the date hereof and due and payable by SmartGate to Radio Metrix in the approximate amount of \$ 330,500, plus accrued interest shall remain in place and not be paid during the term of this Letter of Intent, except for a payment of \$75,000 to be paid upon the execution of this Letter of Intent or as otherwise requested by Radio Metrix. In the event that the merger contemplated in this Letter of Intent closes, the balance of the promissory note shall remain unpaid (i.e. become a debt of SmartGate to its new wholly owned Sub) except as



otherwise agreed by the parties; (iii) SmartGate and Radio Metrix shall equally share the cost and use of two display booths at the ASIS trade show in early October 2001 where SmartGate and Radio Metrix shall each pursue their respective and separate business and due diligence and share trade show contact information. To maximize the potential of the ASIS trade show and due diligence opportunities, SmartGate may, but shall not be required to, monitor or set-up phone number or web/E-mail address or intercept mail and phone messages directed to Radio Metrix, unless otherwise directed by Radio Metrix. In connection therewith, both SmartGate and Radio Metrix may separately refer to themselves as "Invisa Companies". SmartGate is considering the adoption of "Invisa" as a trade or corporate name, and accordingly, in the event this Letter of Intent does not close, Radio Metrix shall have no continuing right in, or to use, the name "Invisa"; and (iv) SmartGate and Radio Metrix may each, in their respective discretion and without notice to or consent of the other party hereto, pursue, solicit, negotiate and close agreements and relationships, including the sale of assets, merger, joint ventures etc. any of which are, or maybe, inconsistent with the merger described in this Letter of Intent. In the event either party hereto enters into an agreement or relationship which is inconsistent with the merger provided for in this Letter of Intent, this Letter of Intent shall be automatically terminated and neither party shall have any interest in or claim against the other party or such agreement or relationship as a result of this Letter of Intent and the parties shall be restored to their contractual relationship which was in existence immediately before the execution of this Letter of Intent.

8. **Public Disclosure.** Until the satisfaction of all Conditions to Merger, neither party hereto will make any public release of information regarding this LOI nor the transaction contemplated herein without the express written permission of the party, unless said disclosure is believed by said party to be required, necessary or appropriate in connection with its/his/her legal, fiduciary or other requirements.
9. **Costs.** Each party hereto will be solely responsible for and will bear all of its/his own costs and expenses associated with this LOI and the preparation of the Definitive Agreement, including, without limitation, expenses of legal counsel, accountants, advisors and others.
10. **Shareholder's of Radio Metrix.** The shareholders of Radio Metrix join this agreement to: (i) consent to the merger; (ii) waive dissenters rights; (iii) covenant and agree that, following the merger contemplated herein, such shareholders will have no claim against and no right, title or interest in or to (except as granted as part of the Merger Consideration and Additional Merger Consideration) Radio Metrix or its assets (including, but not limited to no debt, claim, cause of action, receivable, ownership or interest in patents or other intellectual property, marketing right, current or accrued salary, expense advance or license) and each Radio Metrix Shareholder's interest and claim in Radio Metrix and its assets shall be limited to their respective ownership of Radio Metrix Common Stock; (iv) fully disclose all conflicts of interest due to the overlapping ownership and management of Messrs Michael, Duffey and Dolan in both SmartGate and Radio Metrix; and (v) fully disclose that Duffey and Dolan PA has a conflict of interest of interest because of the overlapping ownership and management interest of both Messrs. Duffey and Dolan in both SmartGate and Radio Metrix, that Duffey and Dolan PA has represented neither SmartGate, Radio Metrix nor the

shareholders of Radio Metrix in connection with the preparation of this Letter of Intent or any matter relating thereto, and that all parties including SmartGate, Radio Metrix, the independent Board of Directors of SmartGate and the shareholders of Radio Metrix are advised to and should consult with independent legal counsel in connection with this Letter of Intent and the merger contemplated herein.

Should you find the terms and provisions set forth in this LOI acceptable, please execute and return to me signifying your agreement. We will begin the preparation of Definitive Agreement for mutual review by the parties.

SmartGate, Inc.

By: \_\_\_\_\_  
Edmund C. King, Director

By: \_\_\_\_\_  
Robert Knight, Director

AGREED by Radio Metrix:

Radio Metrix, Inc.

By: \_\_\_\_\_  
Stephen A. Michael, President

By: \_\_\_\_\_  
Samuel S. Duffey, Chairman

AGREED by Radio Metrix Shareholders:

\_\_\_\_\_  
Stephen A. Michael, Shareholder

\_\_\_\_\_  
William Dolan, Shareholder

\_\_\_\_\_  
Robert T. Roth, Shareholder

\_\_\_\_\_  
William Dolan, Trustee as Shareholder

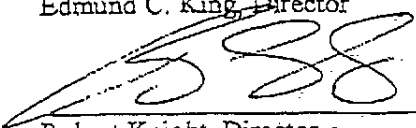
\_\_\_\_\_  
William Dolan, Trustee as Shareholder

shareholders of Radio Metrix in connection with the preparation of this Letter of Intent or any matter relating thereto, and that all parties including SmartGate, Radio Metrix, the independent Board of Directors of SmartGate and the shareholders of Radio Metrix are advised to and should consult with independent legal counsel in connection with this Letter of Intent and the merger contemplated herein.

Should you find the terms and provisions set forth in this LOI acceptable, please execute and return to me signifying your agreement. We will begin the preparation of Definitive Agreement for mutual review by the parties.

SmartGate, Inc.

By: Edmund C. King, Director

By:   
Robert Knight, Director

AGREED by Radio Metrix:

Radio Metrix, Inc.

By: Steven A. Michael, President

By: Samuel S. Duffey, Chairman

AGREED by Radio Metrix Shareholders:

Stephen A. Michael, Shareholder

William Dolan, Shareholder

Robert T. Roth, Shareholder

William Dolan, Trustee as Shareholder

William Dolan, Trustee as Shareholder

shareholders of Radio Metrix in connection with the preparation of this Letter of Intent or any matter relating thereto, and that all parties including SmartGate, Radio Metrix, the independent Board of Directors of SmartGate and the shareholders of Radio Metrix are advised to and should consult with independent legal counsel in connection with this Letter of Intent and the merger contemplated herein.

Should you find the terms and provisions set forth in this LOI acceptable, please execute and return to me signifying your agreement. We will begin the preparation of Definitive Agreement for mutual review by the parties.

SmartGate, Inc.

By: Edmund C. King  
Edmund C. King, Director

By: \_\_\_\_\_  
Robert Knight, Director

AGREED by Radio Metrix:

Radio Metrix, Inc.

By: \_\_\_\_\_  
Steven A. Michael, President

By: \_\_\_\_\_  
Samuel S. Duffey, Chairman

AGREED by Radio Metrix Shareholders:

\_\_\_\_\_  
Stephen A. Michael, Shareholder

\_\_\_\_\_  
William Dolan, Shareholder

\_\_\_\_\_  
Robert T. Roth, Shareholder

\_\_\_\_\_  
William Dolan, Trustee as Shareholder

\_\_\_\_\_  
William Dolan, Trustee as Shareholder

## **Exhibit “B”**

### **Quarterly Revenue Based Payment Agreement**

## QUARTERLY REVENUE BASED PAYMENT AGREEMENT

This Quarterly Revenue Based Payment Agreement (this "Agreement") is made and entered into as of February \_\_, 2002, by and among SmartGate Inc., a Nevada corporation ("SmartGate") and the persons and entities set forth on Exhibit "A" or their assigns (individually a "Recipient" and collectively, the "Recipients").

### **RECITALS:**

**WHEREAS**, pursuant to an Agreement of Merger and Plan of Reorganization by and among SmartGate, SmartGate/RadioMetrix Acquisition Corp. and RadioMetrix Inc. ("RadioMetrix") which was entered into as of February \_\_, 2002 ("Merger Agreement") and closed on even date herewith ("Closing"), the Recipients are entitled to a certain quarterly revenue based payment; and

**WHEREAS**, the parties hereto, by this Agreement, wish to memorialize and set forth the terms, conditions and details of the quarterly revenue based payment arrangement;

**NOW, THEREFORE**, in consideration of the foregoing and the covenants, promises and representations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties intending to be legally bound, agree as follows:

1. **Certain Definitions.** As used in this Agreement, the following terms shall have the following respective meanings:

"Change of Control" shall mean that SmartGate has: entered into a merger transaction in which SmartGate is not the survivor; or sold shares representing sixty (60%) percent or more of the then outstanding shares in a transaction; or sold all or substantially all (i.e. - seventy [70%] percent or more of the fair market value) of the RadioMetrix Technology related assets; or sold or granted a master license to the RadioMetrix Technology to a third party in which the stockholders are different than the stockholders of SmartGate.

"RadioMetrix Technology" shall mean all applications or uses (save and except only those covered by the Sublicense Agreement between RadioMetrix and SmartGate, L.C. dated February 14, 1997, as amended by Amendment dated March 2, 1999 which is incorporated by reference) based upon or covered by the License Agreement between RadioMetrix and SDR Metro Inc. dated March 14, 1992 as amended by Amendment dated May 26, 1998 which is incorporated by reference. The present or future validity or enforceability of the Sublicense Agreement or the License Agreement shall not affect their use for the definitional purpose as set forth herein.

"Revenue Based Payment" shall mean a quarterly revenue-based payment equal to seven (7%) percent of all Revenue from the RadioMetrix Technology.

"Revenue from the RadioMetrix Technology" shall mean all revenue of any description, including but not limited to, revenue from product sales, licenses, sublicenses, royalties, leases, asset sales, joint ventures or other consideration, payments, income or revenue derived from or related to the RadioMetrix Technology.

"Super Majority" shall mean the holders of seventy-five percent (75%) of the Recipients' entitlement to the Revenue Based Payment or Termination Payment, which shall

include any of the Recipients' respective heirs, successors or assigns who acquire all or any part of the entitlement of a Recipient.

"Termination Payment" shall mean a one-time payment in an amount equal to the full commercial value of the Revenue Based Payments determined pursuant to Paragraph 4 of this Agreement which, once paid in full, has the result of terminating SmartGate's ongoing obligation to pay Revenue Based Payments under this Agreement.

**2. Revenue Based Payment.**

a. Until terminated by a Termination Payment pursuant to this Agreement, SmartGate shall pay to the Recipients the Revenue Based Payment as defined herein.

b. Each Revenue Based Payment shall be paid within fifteen (15) calendar days following each fiscal quarter of SmartGate.

c. Unless otherwise agreed by SmartGate and the Super Majority, each Revenue Based Payment shall be paid one-half (1/2) in cash and one-half (1/2) in SmartGate common stock. The SmartGate common stock shall be valued at seventy-five (75%) percent of the average closing market price for the thirty (30) calendar days immediately preceding the end of the applicable quarterly period.

d. In the event any Revenue Based Payment is not paid when due, such unpaid Revenue Based Payment(s) shall accrue interest at the lower of eighteen (18%) percent or the amount permissible under law per annum from the due date until the date said Revenue Based Payment (or Revenue Based Payments) is paid in full.

e. Annually, the Quarterly Revenue Based Payments made shall be reviewed by SmartGate's independent public accountants, which shall provide the manner of calculation and the amount of payment due for the year. The Recipients shall have the right to independently audit said calculation. If any payment is underpaid by greater than ten percent (10%) of the amount that should have been paid, SmartGate shall immediately pay the unpaid amount with interest on such unpaid amount at the lower of eighteen percent (18%) or the amount permissible under law per annum from the date the unpaid amount should have been paid until it is paid in full.

f. The Revenue Based Payment shall be made to the Recipients (or their respective heirs, successors or assigns) in the following amounts:

<b>Name</b>	<b>% of the Revenue Based Payment Being Paid</b>
Stephen A. Michael	42.535953
Elizabeth Rosemary Duffey Irrevocable Trust Under Agreement Dated the 29 <sup>th</sup> day of July 1998	21.267976
Spencer Charles Duffey Irrevocable Trust Under Agreement Dated the 29 <sup>th</sup> day of July 1998	21.267976
Robert T. Roth	10.066844
William W. Dolan	4.861251

g. Any assignment by a Recipient of part or all of their interest in the Revenue Based Payment shall be effective upon delivery of said assignment in written form acceptable to SmartGate.

**3. Term and Termination Payment.**

a. This Agreement and SmartGate's obligation to make Revenue Based Payments shall continue until terminated by mutual agreement of the parties or until terminated pursuant to Paragraphs 3(b) and 3(c) hereof.

b. SmartGate may terminate its obligation to make future Revenue Based Payments by making a one-time payment to the Recipients (or their respective heirs, successors or assigns in interest) of the Termination Payment as determined pursuant Paragraph 4.

c. Should SmartGate enter into a transaction involving a Change of Control of SmartGate, SmartGate shall, prior to the closing of such transaction, notify the Recipients in writing of the anticipated Change of Control transaction. The Super Majority of the Recipients shall, within twenty (20) calendar days after the receipt of such notice, elect, in the exercise of their sole discretion, to: (i) require SmartGate to terminate its obligation pursuant to Paragraph 3(b) by making the Termination Payment thereby terminating SmartGate's ongoing obligation under this Agreement to make Revenue Based Payments. In the event of such election, the Termination Payment shall be made in full before the closing of the Change of Control transaction, unless otherwise agreed in writing by the Super Majority of the Recipients; or (ii) require that this Agreement and SmartGate's ongoing obligation to make Revenue Based Payments shall continue as an express obligation of the surviving entity or the entity which gains control over SmartGate or its assets.

d. The Termination Payment shall be paid to the Recipients (or their respective heirs, successors or assigns) in the same percentage amounts as the Revenue Based Payments are paid.

e. Unless otherwise agreed by SmartGate and the Super Majority, the Termination Payment shall be paid one-half (1/2) in cash and one-half (1/2) in SmartGate common stock. The SmartGate common stock shall be valued at seventy-five (75%) percent of the average closing market price for the thirty (30) calendar days immediately preceding the date of the Termination Payment.

**4. Determination of the Amount of the Termination Payment.**

a. The amount of the Termination Payment shall be determined by appraisal.

b. Unless otherwise agreed in writing by SmartGate and the Super Majority of the Recipients, the appraisal shall reflect the full commercial value of the entitlement to receive Revenue Based Payments for the duration of this Agreement. The determination of full commercial value shall not be adjusted for current or past relationships between the parties, past Revenue Based Payments, other consideration paid under the Merger Agreement or equity interests of the Recipients in SmartGate. The appraisal shall take into consideration the future prospects of the RadioMetrix Technology, the present as well as future product applications and the potential of future revenue assuming reasonable financial support for product development, product introduction, marketing and sales support. Further, the appraisal shall take into consideration the potential of future Revenue Based Payments over the full term of the entitlement (including, but not limited to, potential product sales, license, royalty, joint venture



and other revenue) from products or technology applications which are then commercialized and future or potential applications.

c. The appraisal shall be performed by an appraiser mutually acceptable to SmartGate and the Super Majority. In the event SmartGate and the Super Majority cannot agree upon who the appraiser shall be, then SmartGate shall select an appraiser and the Super Majority shall select an appraiser, and those two appraisers shall select a third appraiser and that third appraiser shall be the appraiser to determine the amount of the Termination Payment based upon the criteria set forth in Paragraph 4(b) above.

5. **Recipients Remedies.** SmartGate's obligation to make the Revenue Based Payments constitutes a material element of this Agreement. SmartGate acknowledges that, in the absence of a breach by Radio Metrix, SmartGate shall not fail or refuse to make any Revenue Based Payments when due or otherwise challenge its obligation to make the Revenue Based Payments. Such failure, refusal or challenge by SmartGate would be wholly inconsistent with the intentions of the parties entering into this Agreement and could be grounds for bad faith. Any failure by SmartGate to timely make the Revenue Based Payments when due or any challenge to the legality or enforceability of the provisions of this Agreement shall be deemed to be a material breach of this Agreement entitling the Recipients to seek damages and specific performance under the arbitration provision of this Agreement.

6. **Acknowledgment of Present and Future Conflicts of Interest**

a. SmartGate has been fully advised of the conflicts of interest of the Recipients and Duffey & Dolan, P.A. (collectively, the "Conflicted Parties"). SmartGate has had full access to all books, records and other documents of RadioMetrix and to ask questions of RadioMetrix' officers and directors. SmartGate appointed an Independent Committee of its Board of Directors (the "Independent Committee of Directors"), and has vested said Independent Committee of Directors with full and complete authority to negotiate, perform due diligence and, in its sole discretion, to enter into and close this Agreement and the Merger Agreement. The conflicts of interest of the Conflicted Parties were expressly waived by the Independent Committee of Directors. Further, the Independent Committee of Directors hereby waives: (i) any defense to the future enforceability or validity of this Agreement arising out of or relating to the conflicts of interest of the Conflicted Parties; and (ii) any claim or cause of action which may be brought by SmartGate against the Conflicted Parties based upon or related to the conflicts of interest.

b. Following the Effective Time of the Merger Agreement, SmartGate shall conduct its business, including all aspects relating to the commercialization, development, product introduction, product marketing and the establishment of product and licensing pricing of the RadioMetrix Technology in a fashion deemed by the Board of Directors to be in the best interest of SmartGate and its stockholders without regard to the interests of the Recipients or with regard to the Merger Consideration and Additional Merger Consideration issued under the Merger Agreement. The Recipients hereby acknowledge the absolute discretion of SmartGate and its Independent Committee of Directors to make any and all decisions regarding the manner in which the RadioMetrix Technology shall be commercialized and hereby waive any right to object thereto. In the event that the Board of Directors identifies any matter before the Board or SmartGate which involves a conflict of interest between SmartGate and the Recipients, the decision or matters relating to or affected by said conflict of interest shall be exclusively and

solely resolved by an Independent Committee of Directors appointed by the Board of Directors. Such Independent Committee of Directors shall have full access to independent legal counsel and independent advisors, including financial advisors. In all such matters, including matters relating to the creation of an Independent Committee of Directors or the determination of whether a conflict of interest may be involved, Recipients who are directors or officers of SmartGate shall abstain. Any determination as to whether a conflict of interest exists shall be determined by the Independent Members of the Board of Directors with all interested or conflicted Directors abstaining.

7. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be exclusively settled by binding arbitration before the American Arbitration Association situated in Tampa, Florida before a panel of three (3) arbitrators. All aspects of the arbitration shall be governed by the rules then in effect of the American Arbitration Association. Arbitration shall be the sole and exclusive manner for resolving all disputes hereunder. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each party shall pay its respective share of the fees, costs and expenses billed by the American Arbitration Association and the arbitrators, and the prevailing party shall recover from the non-prevailing party all of the prevailing party's costs, expenses and fees it incurred in connection with the arbitration, including reasonable attorneys' fees.

8. **Assignment.**

a. SmartGate shall not assign this Agreement without first obtaining the written permission of the Super Majority.

b. Any one or all of the Recipients may assign this Agreement without the permission of SmartGate.

9. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via telecopy to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to SmartGate:

To: Independent Committee of Directors  
SmartGate Inc.  
4400 Independence Court  
Sarasota, Florida 34234  
Attention: Independent Committee Member, Edmund C. King  
Fax: (941) 355-9373

Copy to:

Spitzer & Feldman, P.C.  
405 Park Avenue  
New York, NY 10022  
Attention: Steven A. Sanders  
Fax: (212) 838-7472

(b) If to Recipients:

To: The addresses set forth on Exhibit "A".

10. **Rules of Construction.** The provisions of Section 8 of the Indemnity Agreement to which this Agreement is attached as Exhibit "A" are incorporated herein by this reference and made an integral part hereof.

11. **Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement may be executed by the parties hereto in separate counterparts, each of which, when so executed and delivered, shall be an original but all counterparts shall together constitute one and the same instrument. Facsimile signatures to this Agreement are permitted and shall be deemed the same as the original signature of the signing party for all purposes.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be signed by themselves or their duly authorized respective officers or representatives, all as of the date first above written.

SmartGate Inc.  
a Nevada Corporation

Recipients

By:  
Its:

\_\_\_\_\_  
Stephen A. Michael

Spencer Charles Duffey Irrevocable  
Trust u/a/d July 29, 1998

\_\_\_\_\_  
William W. Dolan, Trustee

Elizabeth Rosemary Duffey  
Irrevocable Trust u/a/d July 29, 1998

\_\_\_\_\_  
William W. Dolan, Trustee

\_\_\_\_\_  
Robert T. Roth

\_\_\_\_\_  
William W. Dolan

**Exhibit "A"**

**Recipients**

Stephen A. Michael  
416 Burns Court  
Sarasota, Florida 34236

Spencer Charles Duffey Irrevocable  
Trust u/a/d July 29, 1998  
c/o William W. Dolan, Trustee  
416 Burns Court  
Sarasota, Florida 34236

Elizabeth Rosemary Duffey Irrevocable  
Trust u/a/d July 29, 1998  
c/o William W. Dolan, Trustee  
416 Burns Court  
Sarasota, Florida 34236

Robert T. Roth  
6008 Bay Valley Court  
Orlando, Florida 32819

William W. Dolan  
416 Burns Court  
Sarasota, Florida 34236

---

**Exhibit "C"**  
**Assignment of Patent**

ASSIGNMENT

WHEREAS, SDR Metro Inc., a corporation of the State of Ohio, having its principal place of business at 27367 Tungsten Road, Euclid, Ohio 44132, hereinafter called Assignor, has title to the United States Patent Number 5,337,039.

WHEREAS, Radio Metrix Inc., a corporation of the State of Florida having its principal place of business at 4400 Independence Court, Sarasota, Florida 34234, desires to acquire the entire right, title and interest in and to said patent.

NOW, THEREFORE, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, receipt whereof is hereby acknowledged, Assignor by these presents does sell, assign and transfer unto said Assignee, its successors and assigns, all right, title and interest in the United States of America to said patent, including all extensions, reissue patents, and corresponding foreign equivalents and all inventions covered by said patent.

Assignor hereby agrees to execute any and all papers, including further assignment documents of any and all kinds in any and all countries, and to perform any and all acts which assignee may deem necessary to secure thereto the rights herein assigned, sold and set over.

Assignor further represents and warrants that it has not granted any rights inconsistent with the rights granted herein.

SDR METRO INC.

By: [Signature] President  
Title: President

State of Ohio )  
County of Cuyahoga ) SS

On this 8<sup>th</sup> day of January, 2002, before me personally appeared David L.E. Jones, to me known to be the person named in and who executed the above instrument and acknowledged that he executed the same for the uses and purposes therein mentioned.

(SEAL)

Notary Public

Diane M. Flower

**DIANE M. FLOWER**  
Notary Public, State of Ohio, Cuy. Cty.  
My Commission Expires Apr. 2, 2005

002 3:37PM

FROM

NO.033 003

1/5/02 14:17  
DATE/TIME RECEIVED

1/15/02 8:52 PAGE 2/3 RightFAX



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
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JANUARY 4, 2002

PTAS

CYFFER, KRASS, CROH, SPRINKLE ET AL  
THOMAS P. ANDERSON  
280 N. GLE WOODWARD AVENUE  
SUITE 400  
BRAINTON, NY 48009

**\*700009762A\***  
-700009762A-

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REPRODUCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-309-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 300, WASHINGTON, D.C. 20231.

RECORDATION DATE: 01/17/2002

REEL/FRAME: 012295/0595  
NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:  
SIP MICRO, INC.

DOC DATE: 01/08/2002

ASSIGNEE:  
RADIO METRIX, INC.  
4400 INDEPENDENCE COURT  
SARASOTA, FLORIDA 34234

SERIAL NUMBER: 07915097  
PATENT NUMBER: 5337039

FILING DATE: 07/16/1992  
ISSUE DATE: 08/09/1994

MARY HUNTON, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS



**Exhibit “D”**

**Sublicense Agreement**

**Between SmartGate, L.C. and**

**RadioMetrix**

## Sublicense Agreement

This **SUBLICENSE AGREEMENT** (the "Agreement") is made and entered into by and between Radio Metrix, Inc. ("RMI"), a Florida Corporation, and SmartGate, L.C. ("SGI") a Florida Corporation as of this 14<sup>th</sup> day of February, 1997.

### WITNESSETH

**WHEREAS**, RMI entered into a License Agreement with SDR Metro Incorporated ("SDR Metro") an Ohio Corporation, on March 14, 1992 (the "SDR Metro License Agent"), pursuant to which SDR Metro granted RMI the exclusive, perpetual, worldwide right to commercialize, manufacture, sell, market, apply and utilize the Technology described in said License Agreement for all applications; and

**WHEREAS**, the License Agreement between SDR Metro and RMI permits the Sublicense by RMI to entities with which it is affiliated, such as SGI; and

**WHEREAS**, RMI and SGI wish to enter into this Sublicense Agreement pursuant to the terms and conditions set forth below.

**NOW, THEREFORE**, for good and valuable consideration, in hand received, including the mutual covenants and promises of the parties as set forth in this Agreement, the parties mutually agree as follows:

1. **Sublicense.** RMI hereby grants SGI the exclusive, perpetual, worldwide right to commercialize, manufacture, sell, market, apply, and utilize the Technology as defined in the SDR Metro License Agreement for (but only for) the following applications: parking barrier gates, sliding gates, swinging gates, vehicular traffic control, vehicular parking and commercial/industrial overhead doors (excluding residential garage doors) [the "Sublicensed Applications"].

2. **License of Trademark.** RMI hereby grants SGI the exclusive right to use the Registered Trademark "SmartGate" during the term of this Sublicense Agreement provided; however, that this license shall not restrict or impede the right of RMI to use the name "Smart" in combination with any other words in connection with products other than the Sublicensed Applications.

3. **Terms.** The term of this Sublicense Agreement shall be perpetual providing that SGI commences the sale of products incorporating the Technology for one or more Sublicensed Applications within six (6) months from the date hereof and providing that SGI's efforts to commercialize the Technology continue on a basis which is not interrupted by any intervening period of more than ninety (90) days.

4. Royalty. SGI agrees to timely pay to SDR Metro the royalty required by the SDR Metro License Agreement for products sold pursuant to this Sublicense Agreement. SGI shall comply with all accounting and reporting requirements and all other applicable requirements of the SDR Metro License Agreement. Both RMI and SDR Metro shall have the right to inspect the books and records of SGI at any reasonable time. In addition to the royalty due and payable to SDR Metro, SGI shall pay on or before the tenth (10th) day of each month, any additional royalties due by RMI to non-affiliated third parties as a result of the products manufactured or sold by SGI.

5. Control Over Product. SGI shall take reasonable precautions to assure that no product manufactured by it is offered for sale, sold, or used for any use other than Sublicensed Applications as defined herein. Further, SGI agrees to consistently enforce strict quality control programs and warranty programs to reasonably assure customer satisfaction.

6. Insurance. SGI agrees commencing ninety (90) days from the date hereof to maintain product liability insurance in the minimum amount of \$1,000,000 per occurrence and to name RMI and SDR Metro as co-insured on said insurance at no cost to RMI or SDR Metro.

7. Representations and Warranties of RMI. RMI makes the following representations and warranties to SGI, each of which shall survive the closing: (a) RMI has obtained the consent of SDR Metro for this Sublicense Agreement and has full right and authority to enter into this Sublicense Agreement; (b) RMI agrees to assist SGI in the defense of the Technology and any patents describing the Technology from any infringement upon the rights of a third party; (c) the Sublicense granted herein hereby does not require the approval of any other party, except SDR Metro and does not violate or breach any agreement or obligation to which RMI is a party or to which the Technology is subject; and (d) RMI shall not, during the term of this Sublicense Agreement, offer or sell products incorporating the Technology for any Sublicensed Application;

8. Representations and Warranties of SGI. SGI makes the following representations and warranties to RMI, each of which shall survive the closing: (a) SGI has full right and authority to enter into this Sublicense Agreement; (b) SGI will exercise its best efforts and good faith to commercialize the Technology for the applications described herein; and (c) SGI will not, during the term of this Agreement and for a period of one (1) year thereafter, compete with the Technology, whether for the Sublicensed Applications sublicensed hereunder or other uses. For purposes hereof, competition shall mean designing, developing, marketing, commercializing or manufacturing any product or any Technology which has a use or function similar to that served or which may be served by the Technology being sublicensed hereunder (the "Competitive Activity") or serving as an Officer, Director, Owner, Partner, Shareholder, Agent or Employee of any such entity engaged in such Competitive Activity.

9. Waiver of Interest and Future Invention Agreement. SGI irrevocably, perpetually and absolutely assigns and relinquishes to RMI all right, title, claim or interest which SGI has or may in the future have to any products or technologies related to or which are

considered inventions, improvements, modifications or alterations to the Technology being sublicensed hereunder. In the event of any such improvement, modification, alteration or new invention developed by or discovered by SGI, SGI shall cooperate with and assist RMI in obtaining patents or otherwise protecting same. RMI hereby grants a Sublicense to SGI to utilize the invention, improvement, modification or alteration in perpetuity without additional compensation for any use which is in support of the Sublicensed Application but for no other use. SGI shall require each of its Employees to enter into a Waiver of Interest and Future Invention Agreement to carry out and implement this Paragraph.

10. Termination. This Sublicense Agreement may be terminated by RMI upon a material breach of this Agreement by SGI which is not cured within thirty (30) days after written notice.

11. Assignment or Sublicense. This Agreement shall not be assigned nor any Sublicense granted by SGI without the prior written permission of RMI. RMI reserves the right to assign its interest in this Agreement without prior approval from SGI.

12. Arbitration. Any dispute arising under this Agreement shall be resolved solely by binding arbitration before the American Arbitration Association. Any party commencing the arbitration may select the location of the arbitration hearing, which may be located either Cleveland, Ohio, or Sarasota, Florida. The findings of the arbitration panel shall be final and binding and shall constitute the sole and exclusive means for resolving any disputes under this Agreement. The determination of the arbitration panel may be reduced to a Final Judgment in any court of competent jurisdiction.

13. Miscellaneous. This Agreement constitutes the entire understanding of the Parties and shall not be amended or otherwise altered, except in writing, and executed by the Parties hereto. This Agreement shall not be construed more stringently against any Party, regardless of which Party may have served as a draftsman hereof. This Agreement and the Resolution of any dispute shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the Parties set their hand and seal on the day and year first above written.

RADIO METRIX, INC.

By: 

SMARTGATE, L.C.

By: 

### Consent and Approval

COMES NOW, SDR Metro, Inc., and for good and valuable consideration in hand received, consents to the attached Sublicensed Agreement between Radio Metrix, Inc. and SmartGate, L.C. SDR Metro agrees to recognize SmartGate, L.C. as a bonafide Sublicensee whose rights shall remain exclusive and perpetual so long as the Sublicense Application remains in effect and SGI is not in material breach of the obligation to pay royalties to SDR Metro, Inc., notwithstanding any subsequent modifications, amendments or termination of the License Agreement between SDR Metro and Radio Metrix, Inc. dated March 14, 1992. By approving this Sublicense, SDR Metro, Inc. does not release Radio Metrix, Inc. from any of its Duties or obligations under the License Agreement between SDR Metro, Inc. and Radio Metrix, Inc. dated March 14, 1992. SDR Metro agrees that the Sublicense Agreement between SDR Metro, Inc. and Radio Metrix, Inc. dated March 14, 1992, is legally binding and is not in breach and is not subject to any defenses, claims or actions which may be asserted by SDR Metro. The license between SDR Metro, Inc. and RMI remains in good standing and is the exclusive, perpetual worldwide right for RMI to commercialize, manufacture, sell, market, apply and utilize the TECHNOLOGY for all applications. The only application for which final product development has been completed is the "parking gate" product for which commercial sales were commenced within eighteen (18) months following final product development and for which RMI's rights under the License Agreement remains exclusive.

SDRMI  
SDR Metro, Incorporated

By:

*By: David Lloyd E. Jones, President*  
David Lloyd E. Jones, President      Date      *5/26/98*

## AMENDMENT TO SUBLICENSE AGREEMENT

THIS AMENDMENT to Sublicense Agreement (the "Amendment") is made and entered into by and between Radio Matrix, Inc. ("RMI"), a Florida corporation, and SmartGate, L.C. ("SGI"), a Florida limited liability company as of March 2, 1999.

### WITNESSETH

WHEREAS, RMI and SGI entered into a Sublicense Agreement dated as of February 14, 1997 (the "Sublicense Agreement"), and

WHEREAS, RMI and SGI wish to enter into this Amendment to: (i) correct the scrivener's error in the introductory paragraph of the Sublicense Agreement where SmartGate, L.C. is referred to as a Florida corporation, (ii) to expand the applications of the Technology under the Sublicense Agreement; (iii) clarify that SGI has been granted the exclusive right to use any servicemark or trademark that RMI registers during the term of the Sublicense Agreement; (iv) confirm that all the rights and obligations of SGI under the Sublicense Agreement will inure to the surviving entity in the event SGI merges or enters into a business combination with an entity; and (v) confirm that the Sublicense Agreement is in good standing and not subject to any claims or acts of default.

NOW THEREFORE, for good and valuable consideration, in hand received, including the mutual covenants and promises of the parties as set forth in this Agreement, the parties mutually agree as follows:

1. The introductory paragraph of the Sublicense Agreement is hereby amended to reflect that SmartGate, L.C. is a Florida limited liability company.
2. Paragraph 1. of the Sublicense Agreement is hereby amended by adding the following.

"The Sublicense granted on February 14, 1997 ("Original Sublicense") is expanded as hereinafter provided. Without limiting in any fashion the Original Sublicense grant, SmartGate is also granted hereby the exclusive perpetual worldwide right to commercialize, manufacture, sell, market and apply the Technology as defined in the Original Sublicense Agreement for safety applications to prevent strikes, damage, injury or entrapment from the movement of all closure devices (the "Extended Sublicense"). Without limitation of the foregoing, the Extended Sublicense grant expressly includes residential garage doors, elevator doors and vehicle windows and doors. The Extended Sublicense grant is expressly limited to applications of the Technology to prevent strikes, damage, injury or entrapment from moving closure devices."

3. Paragraph 2. Of the Sublicense Agreement is hereby amended by replacing the existing paragraph with the following:

2. License of Trademark RMI hereby grants SGI the exclusive right to use, during the term of this Sublicense Agreement, any servicemark or trademark containing the name "SmartGate" which RMI has or will register during the term of this Sublicense Agreement provided; however, that this license shall not restrict or impede the right of RMI to use the name "Smart" in combination with any other words in connection with products other than the Extended Sublicensed Applications

3. Merger. In the event SGI merges or enters into some other form of business combination with any entity ("Surviving Entity"), the parties acknowledge and agree that all of the rights and obligations of SGI under the Sublicense Agreement and this Amendment thereto, shall automatically inure, in all respects, to the Surviving Entity.

4. RMI Estoppel. RMI hereby certifies, acknowledges and agrees, that as of the date of this Amendment, the Sublicense Agreement and all rights granted thereunder to SGI remain in full force and effect, and that SGI is in full compliance with all the terms and conditions of the Sublicense Agreement and that the Sublicense Agreement is in good standing and is not subject to any claims or acts of default whatsoever.

5. Any inconsistency between this Amendment and the Sublicense Agreement shall be construed in favor of this Amendment. All remaining terms and conditions of the Sublicense Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hand and seal as of the day and year first written above.

RADIO METRIX, INC.

By: 

SMARTGATE, L.C.

By: 

---

**Exhibit “E”**

**Registration Rights Agreement**



## REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of February \_\_, 2002, by and among SmartGate Inc., a Nevada corporation (the "Company" or "SmartGate") and the persons and entities set forth on Exhibit "A" (individually a "Purchaser" and collectively, the "Purchasers").

### 1. Securities Laws Representations and Covenants of Purchaser.

The registration rights granted pursuant to Sections 2.2 and 2.3 of this Agreement shall have no force or effect until such time as the Company has otherwise become obligated to file periodic or other reports pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "1934 Act").

### 2. Registration Rights.

2.1 Certain Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

(a) "Commission" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(b) "Common Stock" shall mean the common stock, \$.001 par value, of the Company.

(c) "Form S1", "Form SB-1", "Form S-2", "Form SB-2" and "Form S-3" shall mean Form S-1, Form SB-1, Form S-2, Form SB-2 or Form S-3, respectively, promulgated by the Commission or any substantially similar or successor form then in effect.

(c)(i) "Merger Agreement" shall mean that certain Agreement of Merger and Plan of Reorganization by and among SmartGate, SmartGate/RadioMetrix Acquisition Corp., and Radio Metrix Inc. ("RadioMetrix") dated as of February \_\_, 2002.

(d) "Purchaser" or "Purchasers" shall mean the persons and entities listed on Exhibit "A" and their assigns and successors in interest.

The terms "Register," "Registered" and "Registration" refer to a registration effected by preparing and filing a Registration Statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such Registration Statement.

(e) "Registrable Securities" shall mean the Shares until such time as such shares become eligible for sale under subparagraph (k) of Rule 144 or any successor thereto.

(f) "Registration Expenses" shall mean all expenses incurred by the Company in complying with Section 2, including, without limitation, all federal and state registration, qualification and filing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, the expense of any special audits incident to or required by any such Registration and the reasonable fees and disbursements of counsel for the Selling Shareholders, as selling shareholders.

(g) "Registration Statement" shall mean Form S-1, Form SB-1, Form S-2, Form SB-2 or Form S-3, whichever is applicable.

(h) "Restriction Termination Date" shall mean, with respect to any Registrable Securities, the earliest of (i) the date that such Registrable Securities shall have been Registered and sold or otherwise disposed of in accordance with the intended method of distribution by the seller or sellers thereof set forth in the Registration Statement covering such securities or transferred in compliance with Rule 144, and (ii) the date that an opinion of counsel to the Company containing reasonable assumptions (which opinion shall be subject to the reasonable approval of counsel to any affected Purchaser) shall have been rendered to the effect that any restrictive legend placed upon the Registrable Securities under the Securities Act can be properly removed and such legend shall have been removed.

(i) "Rule 144" shall mean Rule 144 promulgated by the Commission pursuant to the Securities Act and any successor rules thereto.

(j) "Purchasers" shall mean, collectively, the Purchasers, their assignees and transferees, and individually, a Purchaser and any transferee or assignee of such Purchaser.

(k) "Securities Act" shall mean the Securities Act of 1933, as amended.

(l) "Selling Expenses" shall mean all underwriting discounts and selling commissions applicable to the sale of Registrable Securities pursuant to this Agreement.

(m) "Selling Shareholders" shall mean a holder of Registrable Securities who requests Registration under Section 2 herein and whose Shares are sold under a Registration Statement.

(n) "Shares" shall mean the Common Stock issued or to be issued to the Purchasers pursuant to the Merger Agreement or any closing document or agreement thereunder including, but not limited to the Quarterly Revenue Based Payment Agreement and the Promissory Notes.

(o) "Super Majority of the Purchasers" shall mean 75% of the shares of Common Stock issued pursuant to the Merger Agreement.

2.2 Required Registration. On two occasions, upon the demand of a Super Majority of the Purchasers for the Company to effect the Registration of Registrable Securities, the Company shall effect such Registration; provided however, that the Company shall not be obligated to effect any Registration except in accordance with the following provisions:

(a) The Company shall not be obligated to file and cause to become effective more than two (2) registration statements in which Registrable Securities are Registered pursuant to this Section 2.2.

(b) Notwithstanding the foregoing, the Company may include in each such Registration requested pursuant to this Section 2.2 any authorized but unissued shares of Common Stock (or authorized treasury shares) for sale by the Company or any issued and outstanding shares of Common Stock for sale by others, provided however, that, if the number of shares of Common Stock so included pursuant to this clause (b) exceeds the number of Registrable Securities requested by the Super Majority of Purchasers demanding such Registration, then such Registration shall be deemed to be a Registration in accordance with and

pursuant to Section 2.3; and provided further however that the inclusion of such previously authorized but unissued shares of Common Stock by the Company or issued and outstanding shares of Common Stock by others in such Registration shall not prevent the Super Majority of Purchasers demanding such Registration from registering the entire number of Registrable Securities requested by them.

(c) The Company shall not be required to file a registration statement pursuant to this Section 2: (i) within six (6) months after any other registration by the Company (other than under "Excluded Forms," as defined in Section 2.3 (a) below) or (ii) for six (6) months after the demand for registration under this Section 2.2 if the Company is then engaged in negotiations regarding a material transaction which has not otherwise been publicly disclosed, or such shorter period ending on the date, whichever first occurs, that such transaction is publicly disclosed, abandoned or consummated.

### 2.3 Piggyback Registration

(a) For so long as Purchasers hold Registrable Securities, each time that the Company proposes to Register a public offering solely of its Common Stock (not including an offering of Common stock issuable upon conversion or exercise of other securities), other than pursuant to a Registration Statement on Form S-4 or Form S-8 or similar or successor forms (collectively, "Excluded Forms"), the Company shall promptly give written notice of such proposed Registration to the Purchasers, which shall offer such Purchasers the right to request inclusion of any Registrable Securities in the proposed Registration.

(b) Each Purchaser shall have ten (10) days or such longer period as shall be set forth in the notice from the receipt of such notice to deliver to the Company a written request specifying the number of shares of Registrable Securities such Purchaser intends to sell and the Purchaser's intended plan of disposition.

(c) In the event that the proposed Registration by the Company is, in whole or in part, an underwritten public offering of securities of the Company, any request under Section 2.3 (b) may specify that the Registrable Securities be included in the underwriting on the same terms and conditions as the shares of Common Stock, if any, otherwise being sold through underwriters under such Registration.

(d) Upon receipt of a written request pursuant to Section 2.3 (b), the Company shall promptly use its best efforts to cause all such Registrable Securities to be Registered, to the extent required to permit sale or disposition as set forth in the written request.

(e) Notwithstanding the foregoing, if the managing underwriter of an underwritten public offering, determines and advises in writing that the inclusion of all Registrable Securities proposed to be included in the underwritten public offering, together with any other issued and outstanding shares of Common Stock proposed to be included therein by holders other than the holders of Registrable Securities (such other shares hereinafter collectively referred to as the "Other Shares"), would interfere with the successful marketing of the securities proposed to be included in the underwritten public offering, then the number of such shares to be included in such underwritten public offering shall be reduced, and shares shall be excluded from

such underwritten public offering in a number deemed necessary by such managing underwriter, first by excluding shares held by the directors, officers, employees and founders of the Company who are not Purchasers, and then, to the extent necessary, by excluding Registrable Securities participating in such underwritten public offering, pro rata based on the number of shares of Registrable Securities each such non-Purchaser holder proposed to include.

(f) All Shares that are not included in the underwritten public offering shall be withheld from the market by the holders thereof for a period, not to exceed 12 months following a public offering, that the managing underwriter reasonably determines as necessary in order to effect the underwritten public offering. The holders of such Shares shall execute such documentation as the managing underwriter reasonably requests to evidence this lock-up.

2.4 Preparation and Filing. If and whenever the Company is under an obligation pursuant to the provisions of this Section 2 to use its best efforts to effect the Registration of any Registrable Securities, the Company shall, as expeditiously as practicable:

(a) prepare and file with the Commission a Registration Statement with respect to such Registrable Securities and use its best efforts to cause such Registration Statement to become and remain effective in accordance with Section 2.4(b) hereof, keeping each Selling Shareholder advised as to the initiation, progress and completion of the Registration;

(b) prepare and file with the Commission such amendments and supplements to such Registration Statements and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective for nine months and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all Registrable Securities covered by such registration statement;

(c) furnish to each Selling Shareholder such number of copies of any summary prospectus or other prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as such Selling Shareholder may reasonably request in order to facilitate the public sale or other disposition of such Registrable Securities;

(d) use its best efforts to register or qualify the Registrable Securities covered by such registration statement under the securities or blue sky laws of such jurisdictions as each Selling Shareholder shall reasonably request and do any and all other acts or things which may be necessary or advisable to enable such holder to consummate the public sale or other disposition in such jurisdictions of such Registrable Securities; provided however, that the Company shall not be required to consent to general service of process, qualify to do business as a foreign corporation where it would not be otherwise required to qualify or submit to liability for state or local taxes where it is not liable for such taxes; and

(e) at any time when a prospectus covered by such Registration Statement is required to be delivered under the Securities Act within the appropriate period mentioned in Section 2.3(b) hereof, notify each Selling Shareholder of the happening of any event as a result of which the prospectus included in such Registration, as then in effect, includes an untrue

statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing and, at the request of such seller, prepare, file and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statement therein not misleading in the light of the circumstances then existing.

2.5 Expenses. The Company shall pay all Registration Expenses incurred by the Company in complying with this Section 2; provided however that all underwriting discounts and selling commissions applicable to the Registrable Securities covered by registrations effected pursuant to section 2.2 hereof shall be borne by the seller or sellers thereof, in proportion to the number of Registrable Securities sold by such seller or sellers.

2.6 Information Furnished by Purchaser. It shall be a condition precedent to the Company's obligations under this Agreement as to any Selling Shareholder that each Selling Shareholder furnish to the Company in writing such information regarding such Selling Shareholder and the distribution proposed by such Selling Shareholder as the Company may reasonably request.

## 2.7 Indemnification.

2.7.1 Company's Indemnification of Purchasers. The Company shall indemnify each Selling Shareholder, each of its officers, directors and constituent partners, trustees, and each person controlling such Selling Shareholder, and each underwriter thereof, if any, and each of its officers, directors, constituent partners, trustees, and each person who controls such underwriter, against all claims, losses, damages or liabilities (or actions in respect thereof) suffered or incurred by any of them, to the extent such claims, losses, damages or liabilities arise out of or are based upon any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus or any related Registration Statement incident to any such Registration, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by the Company of any rule or regulation promulgated under the Securities Act applicable to the Company and relating to actions or inaction required of the Company in connection with any such Registration; and the Company will reimburse each such Selling Shareholder, each such underwriter, each of their officers, directors and constituent partners, trustees, and each person who controls any such Selling Shareholder or underwriter, for any legal and any other expenses as reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action; provided however, that the indemnity contained in this Section 2.7.1 shall not apply to amounts paid in settlement of any such claim, loss, damage, liability or action if settlement is effected without the consent of the Company (which consent shall not unreasonably be withheld); and provided however, that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based upon any untrue statement or omission based upon written information furnished to the Company by such Selling Shareholder, underwriter, controlling person or other indemnified person and stated to be for use in connection with the offering of securities of the Company.

2.7.2 Selling Shareholder's Indemnification of Company. Each Selling Shareholder shall indemnify the Company, each of its directors and officers, each underwriter, if any, of the Company's Registrable Securities covered by a Registration Statement, each person who controls the Company or such underwriter within the meaning of the Securities Act, and each other Selling Shareholder, each of its officers, directors and constituent partners, trustees, and each person controlling such other Selling Shareholder, against all claims, losses, damages and liabilities (or actions in respect thereof) suffered or incurred by any of them and arising out of or based upon any untrue statement (or alleged untrue statement) of a material fact contained in such Registration Statement or related prospectus, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by such Selling Shareholder of any rule or regulation promulgated under the Securities Act applicable to such Selling Shareholder and relating to actions or inaction required of such Selling Shareholder in connection with the Registration of the Registrable Securities pursuant to such Registration Statement; and will reimburse the Company, such other Selling Shareholders, such directors, officers, partners, persons, underwriters and controlling persons for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action; such indemnification and reimbursement shall be to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such Registration Statement or prospectus in reliance upon and in conformity with written information furnished to the Company by such Selling Shareholder and stated to be specifically for use in connection with the offering of Registrable Securities. Anything in the foregoing to the contrary notwithstanding, in no event shall the aggregate obligations of a Selling Shareholder under this Section 2.7.2 to all parties that may be entitled to indemnification hereunder exceed the amount of proceeds received by such Selling Shareholder in connection with such offering of Registrable Securities.

2.7.3 Indemnification Procedure. Promptly after receipt by an indemnified party under this Section 2.7 of notice of the commencement of any action which may give rise to a claim for indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 2.7, notify the indemnifying party in writing of the commencement thereof and generally summarize such action. The indemnifying party shall have the right to participate in and to assume the defense of such claim, and shall be entitled to select counsel for the defense of such claim with the approval of any parties entitled to indemnification, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the parties entitled to indemnification shall have the right to employ, separate counsel (reasonably satisfactory to the indemnifying party) to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such indemnified parties unless the named parties to such action or proceedings include both the indemnifying party and the indemnified parties and the indemnifying party or such indemnified parties shall have been advised by counsel that there are one or more legal defenses available to the indemnified parties which are different from or additional to those available to the indemnifying party (in which case, if the indemnified parties notify the indemnifying party in writing that they elect to employ separate counsel at the reasonable expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such action or proceeding on behalf of the indemnified parties, it being understood, however, that the indemnifying party shall not, in connection with any such action or proceeding or separate or

substantially similar or related action or proceeding in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate counsel at any time for all indemnified parties, which counsel shall be designated in writing by the holders of a majority of the Registrable Securities).

2.7.4 Contribution. If the indemnification provided for in this Section 2.7 from an indemnifying party is unavailable to an indemnified party hereunder in respect to any losses, claims, damages, liabilities or expenses referred to herein, then the indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and indemnified party in connection with the statements or omissions which result in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such indemnifying party or indemnified party and the parties' relative intent, knowledge, access to information supplied by such indemnifying party or indemnified party and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action, suit, proceeding or claim.

3. Covenants of the Company. The Company agrees to:

(a) Notify the holders of Registrable Securities included in a Registration Statement of the issuance by the Commission of any stop order suspending the effectiveness of such Registration Statement or the initiation of any proceedings for that purpose. The Company will make every reasonable effort to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible time.

(b) If the Common Stock is then listed on a national securities exchange, use its best efforts to cause the Registrable Securities to be listed on such exchange. If the Common Stock is not then listed on a national securities exchange, use its best efforts to facilitate the reporting of the Registrable Securities on NASDAQ or AMEX.

(c) Take all other reasonable actions necessary to expedite and facilitate disposition of the Registrable Securities by the holders thereof pursuant to the Registration Statement.

(d) With a view to making available to the holders of Registrable Securities the benefits of Rule 144 promulgated under the Securities Act and any other rule or regulation of the Commission that may at any time permit the Purchasers to sell securities of the Company to the public without registration, the Company, after it has become obligated to file periodic or other reports pursuant to Section 13 of the 1934 Act agrees to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after 90 days after the effective date of the first Registration Statement filed by the Company for the offering of its securities to the general public;

(ii) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Securities and Exchange Act of 1934 (the "1934 Act"); and

(iii) furnish to each holder of Shares, so long as such holder of Shares owns any Shares, forthwith upon written request: (a) a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time after 90 days after the effective date of the first registration statement filed by the Company), the Securities Act and the 1934 Act (at any time after it has become subject to such reporting requirements), (b) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company and (c) such other information as may be reasonably requested and as is publicly available in availing the holders of Shares of any rule or regulation of the Commission which permits the selling of any such securities without registration.

(e) Prior to the filing of the Registration Statement or any amendment thereto (whether pre-effective or post-effective), and prior to the filing of any prospectus or prospectus supplement related thereto, the Company will provide each Selling Shareholder with copies of all pages thereto, if any, which reference such Selling Shareholder.

#### 4. Acknowledgment of Present and Future Conflicts of Interest

a. SmartGate has been fully advised of the conflicts of interest of the Purchasers and Duffey & Dolan, P.A. (collectively, the "Conflicted Parties"). SmartGate has had full access to all books, records and other documents of RadioMetrix and to ask questions of RadioMetrix' officers and directors. SmartGate appointed an Independent Committee of its Board of Directors (the "Independent Committee of Directors"), and has vested said Independent Committee of Directors with full and complete authority to negotiate, perform due diligence and, in its sole discretion, to enter into and close this Agreement and the Merger Agreement. The conflicts of interest of the Conflicted Parties were expressly waived by the Independent Committee of Directors. Further, the Independent Committee of Directors hereby waives: (i) any defense to the future enforceability or validity of this Agreement arising out of or relating to the conflicts of interest of the Conflicted Parties; and (ii) any claim or cause of action which may be brought by SmartGate against the Conflicted Parties based upon or related to the conflicts of interest.

b. Following the Effective Time of the Merger Agreement, SmartGate shall conduct its business, including all aspects relating to the commercialization, development, product introduction, product marketing and the establishment of product and licensing pricing of the RadioMetrix Technology in a fashion deemed by the Board of Directors to be in the best interest of SmartGate and its stockholders without regard to the interests of the Purchasers or with regard to the Merger Consideration and Additional Merger Consideration issued under the Merger Agreement. The Purchasers hereby acknowledge the absolute discretion of SmartGate and its Independent Committee of Directors to make any and all decisions regarding the manner



in which the RadioMetrix Technology shall be commercialized and hereby waive any right to object thereto. In the event that the Board of Directors identifies any matter before the Board or SmartGate which involves a conflict of interest between SmartGate and the Purchasers, the decision or matters relating to or affected by said conflict of interest shall be exclusively and solely resolved by an Independent Committee of Directors appointed by the Board of Directors. Such Independent Committee of Directors shall have full access to independent legal counsel and independent advisors, including financial advisors. In all such matters, including matters relating to the creation of an Independent Committee of Directors or the determination of whether a conflict of interest may be involved, Purchasers who are directors or officers of SmartGate shall abstain. Any determination as to whether a conflict of interest exists shall be determined by the Independent Members of the Board of Directors with all interested or conflicted Directors abstaining.

5. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be exclusively settled by binding arbitration before the American Arbitration Association situated in Tampa, Florida before a panel of three (3) arbitrators. All aspects of the arbitration shall be governed by the rules then in effect of the American Arbitration Association. Arbitration shall be the sole and exclusive manner for resolving all disputes hereunder. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each party shall pay its respective share of the fees, costs and expenses billed by the American Arbitration Association and the arbitrators, and the prevailing party shall recover from the non-prevailing party all of the prevailing party's costs, expenses and fees it incurred in connection with the arbitration, including reasonable attorneys' fees.

6. Assignment.

a. SmartGate shall not assign this Agreement without first obtaining the written permission of the Super Majority of the Purchasers.

b. Any one or all of the Purchasers may assign this Agreement without the permission of SmartGate.

7. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via telecopy to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to SmartGate:

To: Independent Committee of Directors  
SmartGate Inc.  
4400 Independence Court  
Sarasota, Florida 34234  
Attention: Independent Committee Member, Edmund C. King  
Fax: (941) 355-9373

Copy to:

Spitzer & Feldman, P.C.  
 405 Park Avenue  
 New York, NY 10022  
 Attention: Steven A. Sanders  
 Fax: (212) 838-7472

(b) If to Purchasers:

To: The addresses set forth on Exhibit "A".

8. Rules of Construction. The provisions of Section 8 of the Indemnity Agreement to which this Agreement is attached as Exhibit "B" are incorporated herein by this reference and made an integral part hereof.

9. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement may be executed by the parties hereto in separate counterparts, each of which, when so executed and delivered, shall be an original but all counterparts shall together constitute one and the same instrument. Facsimile signatures to this Agreement are permitted and shall be deemed the same as the original signature of the signing party for all purposes.

IN WITNESS WHEREOF, the Company has executed this Agreement by its duly authorized officer and the Purchasers have executed this Agreement as of the date first above written.

SmartGate Inc.  
 a Nevada Corporation

By:  
 Its:

\_\_\_\_\_  
 Stephen A. Michael

Spencer Charles Duffey  
 Irrevocable Trust u/a/d  
 July 29, 1998

\_\_\_\_\_  
 William W. Dolan, Trustee

Elizabeth Rosemary Duffey  
 Irrevocable Trust u/a/d  
 July 29, 1998

\_\_\_\_\_  
 William W. Dolan, Trustee

\_\_\_\_\_  
 Robert T. Roth

\_\_\_\_\_  
 William W. Dolan

**Exhibit "A"**

**Purchasers**

Stephen A. Michael  
416 Burns Court  
Sarasota, Florida 34236

Spencer Charles Duffey Irrevocable  
Trust u/a/d July 29, 1998  
c/o William W. Dolan, Trustee  
416 Burns Court  
Sarasota, Florida 34236

Elizabeth Rosemary Duffey Irrevocable  
Trust u/a/d July 29, 1998  
c/o William W. Dolan, Trustee  
416 Burns Court  
Sarasota, Florida 34236

Robert T. Roth  
6008 Bay Valley Court  
Orlando, Florida 32819

William W. Dolan  
416 Burns Court  
Sarasota, Florida 34236

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**Exhibit “F”**  
**Indemnity Agreement**

## INDEMNITY AGREEMENT

**THIS INDEMNITY AGREEMENT** (this "Agreement") is made and entered into as of February \_\_, 2002, by and among SmartGate Inc., a Nevada corporation ("SmartGate") and the persons and entities set forth on Schedule "A" and their successors and assigns in interest, collectively hereinafter referred to as ("Indemnitees").

### WITNESSETH:

**WHEREAS**, On even date herewith, SmartGate, SmartGate/RadioMetrix Acquisition Corp. and Radio Metrix Inc. ("RadioMetrix") closed an Agreement ("Merger Agreement") of Merger and Plan of Reorganization ("Merger"); and

**WHEREAS**, the Indemnitees, at the time of the closing of the Merger were either officers, directors or shareholders of RadioMetrix and SmartGate or affiliates of the Indemnitees; and

**WHEREAS**, simultaneous with the closing of the Merger, SmartGate and the Indemnitees (except Duffey & Dolan, P.A.) executed a Quarterly Revenue Based Payment Agreement, dated February \_\_, 2002 ("Quarterly Revenue Based Payment Agreement"), a form of which is attached hereto as Exhibit "A", and a Registration Rights Agreement dated February \_\_, 2002 ("Registration Rights Agreement"), a form of which is attached hereto as Exhibit "B"; and

**WHEREAS**, the Indemnitees, by virtue of their positions with or holdings in SmartGate and RadioMetrix have conflicts of interest with respect to the Merger, and will have future conflicts of interest resulting from the merger transaction or agreements delivered at the closing of the merger transaction or the ongoing commercialization of the RadioMetrix Technology, SmartGate or its subsidiary following the merger transaction; and

**WHEREAS**, the Independent Committee of the Board of Directors of SmartGate, consisting of the non-interested Board members with respect to the merger transaction ("Independent Committee") were made aware of said conflicts of interest and same were fully disclosed by the Indemnitees prior to the entering into and closing of the Merger; and

**WHEREAS**, the Independent Committee, in order to induce the Indemnitees to enter into and close the Merger and continue to hold positions with SmartGate, following the Merger, determined that it was appropriate for SmartGate to indemnify the Indemnitees in accordance with the terms and conditions as set forth hereinbelow; and

**WHEREAS**, the Indemnitees have required that they be indemnified by SmartGate as a condition to entering into and closing the merger transaction with SmartGate.

**NOW, THEREFORE**, in order to induce the Indemnitees to enter into and close the Merger and continue to hold positions with SmartGate and in consideration of their continued service and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and the parties intending to be legally bound agree as follows:

1. **Recitals.** The Recitals are true and correct and are made an integral part of this Agreement.

2. **Indemnification.** Excluding a breach of any representations, warranties or covenants of RadioMetrix as set forth in the Merger Agreement, or a breach of any representations, warranties or covenants of the Indemnitees as set forth in the Quarterly Revenue Based Payment Agreement or the Registration Rights Agreement, SmartGate agrees to indemnify and hold the Indemnitees and RadioMetrix and each of them jointly and severally, harmless from any claim, loss or action, including costs and legal fees, resulting from or in any fashion related to: (i) the merger transaction; (ii) the Merger Agreement and all closing documents and agreements including, but not limited to, the Quarterly Revenue Based Payment Agreement and the Registration Rights Agreement; (iii) conflicts of interest to the extent disclosed to the Independent Committee; and (iv) future conflicts of interest relating to the future implementation of the Merger Agreement and closing documents and agreements including, but not limited to, the Quarterly Revenue Based Payment Agreement and the Registration Rights Agreement or any aspect relating to the commercialization of the RadioMetrix Technology to the extent that such conflict of interest is or has been disclosed to the Independent Committee.

3. **Further Indemnification.** SmartGate further agrees to indemnify and hold the Indemnitees and RadioMetrix and each of them jointly and severally, harmless from any claim, action or expense arising out of or relating to any contract or liability relating to RadioMetrix set forth in the Merger Agreement, Schedules and Exhibits thereto, closing documents or otherwise disclosed in writing to the Independent Committee as part of the Merger.

4 **Acknowledgment of Present and Future Conflicts of Interest.**

a. SmartGate has been fully advised of the conflicts of interest of the Indemnitees. SmartGate has had full access to all books, records and other documents of RadioMetrix and to ask questions of RadioMetrix' officers and directors. SmartGate appointed an Independent Committee, and has vested said Independent Committee with full and complete authority to negotiate, perform due diligence and, in its sole discretion, to enter into and close this Agreement and the Merger Agreement. The conflicts of interest of the Indemnitees were expressly waived by the Independent Committee. Further, the Independent Committee hereby waives: (i) any defense to the future enforceability or validity of this Agreement arising out of or relating to the conflicts of interest of the Indemnitees; and (ii) any claim or cause of action which may be brought by SmartGate against the Indemnitees based upon or related to the conflicts of interest.

b. In an effort to mitigate any potential conflict of interest which may arise subsequent to the date hereof, the Indemnitees acknowledge and agree that following the Effective Time of the Merger Agreement, SmartGate shall conduct its business, including all aspects relating to the commercialization, development, product introduction, product marketing and the establishment of product and licensing pricing of the RadioMetrix Technology in a fashion deemed by the Board of Directors to be in the best interest of SmartGate and its stockholders without regard to the interests of the Indemnitees or with regard to the Merger Consideration and Additional Merger Consideration issued under the Merger Agreement. The Indemnitees hereby acknowledge the absolute discretion of SmartGate and its Independent Committee to make any and all decisions regarding the manner in which the RadioMetrix Technology shall be commercialized and hereby waive any right to object thereto. In the event

that the Board of Directors identifies any matter before the Board or SmartGate which involves a conflict of interest between SmartGate and the Indemnitees, the decision or matters relating to or affected by said conflict of interest shall be exclusively and solely resolved by an Independent Committee appointed by the Board of Directors. Such Independent Committee shall have full access to independent legal counsel and independent advisors, including financial advisors. In all such matters, including matters relating to the creation of an Independent Committee of Directors or the determination of whether a conflict of interest may be involved, all Indemnitees including, but not limited to, Messrs. Michael, Duffey and Dolan, shall abstain. Any determination as to whether a conflict of interest exists shall be determined by the Independent Members of the Board of Directors with all interested or conflicted Directors abstaining.

5. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be exclusively settled by binding arbitration before the American Arbitration Association situated in Tampa, Florida before a panel of three (3) arbitrators. All aspects of the arbitration shall be governed by the rules then in effect of the American Arbitration Association. Arbitration shall be the sole and exclusive manner for resolving all disputes hereunder. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each party shall pay its respective share of the fees, costs and expenses billed by the American Arbitration Association and the arbitrators, and the prevailing party shall recover from the non-prevailing party all of the prevailing party's costs, expenses and fees it incurred in connection with the arbitration, including reasonable attorneys' fees.

6. **Assignment.**

a. SmartGate shall not assign this Agreement without first obtaining the written permission of the Indemnitees.

b. Any one or all of the Indemnitees may assign this Agreement without the permission of SmartGate.

7. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via telecopy to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to SmartGate:

To: Independent Committee  
SmartGate Inc.  
4400 Independence Court  
Sarasota, Florida 34234  
Attention: Independent Committee Member, Edmund C. King  
Fax: (941) 355-9373

Copy to:

Spitzer & Feldman, P.C.  
405 Park Avenue  
New York, NY 10022  
Attention: Steven A. Sanders  
Fax: (212) 838-7472

(b) If to Indemnitees:

To: The addresses set forth on Schedule "A".

8. **Rules of Construction.** This Agreement shall not be construed more stringently against any party regardless of which parties may have served as the draftsman. SmartGate hereby acknowledges and agrees that neither Duffey & Dolan, P.A. nor any of its principals, including Mr. Duffey and Mr. Dolan, provided any legal advice or representation to SmartGate or its Independent Committee regarding this Agreement or any aspect of the merger transaction. SmartGate acknowledges that Spitzer & Feldman PC served as its legal counsel in connection with this Agreement and all aspects of the merger transaction. Duffey & Dolan, P.A. and its principals were expressly authorized to represent RadioMetrix in connection with this Agreement and the merger transaction. Duffey & Dolan, P.A. and its principals were expressly released by the Independent Committee from any conflicts of interest which may result (or which may have the appearance of resulting) from: Duffey & Dolan, P.A.'s representation of SmartGate in matters unrelated to this Agreement; Duffey & Dolan, P.A.'s representation of RadioMetrix in the past and in the merger transaction; the merger transaction; or the ownership of stock, officership or directorship in SmartGate or RadioMetrix by any principal of Duffey & Dolan, P.A. The provisions of this section are incorporated by reference into and made an integral part of the Rules of Construction sections of the Quarterly Revenue Based Payment Agreement and the Registration Rights Agreement which are attached as Exhibits "A" and "B" respectively.

9. **Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement may be executed by the parties hereto in separate counterparts, each of which, when so executed and delivered, shall be an original but all counterparts shall together constitute one and the same instrument. Facsimile signatures to this Agreement are permitted and shall be deemed the same as the original signature of the signing party for all purposes. This Agreement shall remain in full force and effect until terminated by mutual agreement of the parties hereto.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SmartGate Inc.  
a Nevada Corporation

Indemnitees

By:  
Its:

\_\_\_\_\_  
Samuel S. Duffey

\_\_\_\_\_  
Stephen A. Michael

Spencer Charles Duffey Irrevocable  
Trust u/a/d July 29, 1998

\_\_\_\_\_  
William W. Dolan, Trustee

Elizabeth Rosemary Duffey  
Irrevocable Trust u/a/d July 29, 1998

\_\_\_\_\_  
William W. Dolan, Trustee

\_\_\_\_\_  
Robert T. Roth

\_\_\_\_\_  
William W. Dolan

Duffey & Dolan, P.A.

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

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**Schedule "A"**

**INDEMNITEES**

Samuel S. Duffey  
416 Burns Court  
Sarasota, Florida 34236

Stephen A. Michael  
416 Burns Court  
Sarasota, Florida 34236

Spencer Charles Duffey Irrevocable Trust  
u/a/d July 29, 1998, and William W. Dolan, Trustee  
416 Burns Court  
Sarasota, Florida 34236

Elizabeth Rosemary Duffey Irrevocable Trust  
u/a/d July 29, 1998 and William W. Dolan, Trustee  
416 Burns Court  
Sarasota, Florida 34236

Robert T. Roth  
6008 Bay Valley Court  
Orlando, Florida 32819

William W. Dolan  
416 Burns Court  
Sarasota, Florida 34236

Duffey & Dolan, P.A.  
416 Burns Court  
Sarasota, Florida 34236

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**Schedule 1.6(a)(ii)**

**\$800,000 Promissory Note**

Form of \$800,000 Note

**THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES OR "BLUE SKY" LAWS, AND MAY NOT BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, OR OTHERWISE DISPOSED OF UNLESS REGISTERED PURSUANT TO THE PROVISIONS OF SUCH ACT AND BLUE SKY LAWS OR AN EXEMPTION THEREFROM IS AVAILABLE AS ESTABLISHED BY A WRITTEN OPINION OF COUNSEL ACCEPTABLE TO THE MAKER.**

SmartGate Inc.

**PROMISSORY NOTE**

\$ \_\_\_\_\_

Sarasota, Florida  
February \_\_, 2002

**FOR VALUE RECEIVED**, the undersigned, SmartGate Inc., a Nevada corporation (the "Maker"), promises to pay to the order of \_\_\_\_\_ (the "Payee") the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars plus interest in the amount specified below.

The principal amount of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars shall be due and payable in full on April \_\_, 2003. This Promissory Note shall bear interest at seven (7%) percent which shall be paid every thirty (30) days during the term of this Promissory Note, on the last day of each thirty (30) day period during the term of this Promissory Note.

Interest hereon shall be calculated on the basis of a 360 day year applied to the actual number of days elapsed until all accrued and unpaid interest is paid in full. All payments of principal and interest hereon shall be payable in lawful currency of the United States.

If any interest payment or the principal payment is not actually received by the Payee on or before the due date, the Maker agrees to pay Payee a late charge equal to a lesser of eighteen (18%) percent per annum or the highest lawful rate per annum, on the delinquent amount until paid.

Prepayment of the principal of this Promissory Note is permitted, in whole or in part, at anytime, without premium or penalty of any kind.

This Promissory Note may not be changed orally, but only by an agreement in writing signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

The holder of this Promissory Note and all successors thereof shall have all the rights of a holder in due course as provided by the Florida Uniform Commercial Code and the other laws of the state of Florida. Maker hereby waives demand, presentment, protest, notice of protest and/or dishonor and all other notices or requirements that might otherwise be required by law. The Maker promises to pay on demand all costs of collection, including reasonable attorneys' fees and court costs, paid or incurred by Payee to enforce this Promissory Note upon an Event of Default (as defined below) hereunder.

The occurrence of any of the following shall constitute an "Event of Default" under this Promissory Note:

- a. the failure of the Maker to make any payment when due under this Promissory Note;
- b. the institution of proceedings by or against the Maker under any state insolvency laws, federal bankruptcy law, or similar debtor relief laws then in effect.

Upon an Event of Default which has not been cured within ten (10) business days from the date of written notice by Payee, Payee may, at Payee's option and without notice, declare all principal and interest due under this Promissory Note to be due and payable immediately. Payee may waive any default before or after it occurs and may restore this Promissory Note in full effect without impairing the right to declare it due for a subsequent default.

**SMARTGATE INC.**

CORPORATE  
SEAL

By: \_\_\_\_\_  
Edmund C. King  
Its: Chief Financial Officer and  
Independent Committee Member

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**Schedule 1.6(b)(i)(a)**

**\$4,500,000 Promissory Note**

Form of \$4,500,000 Note which will be issued by SmartGate Inc.  
when the condition specified in Paragraph 1.6(b)(i) is satisfied

**THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES OR "BLUE SKY" LAWS, AND MAY NOT BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, OR OTHERWISE DISPOSED OF UNLESS REGISTERED PURSUANT TO THE PROVISIONS OR SUCH ACT AND BLUE SKY LAWS OR AN EXEMPTION THEREFROM IS AVAILABLE AS ESTABLISHED BY A WRITTEN OPINION OF COUNSEL ACCEPTABLE TO THE MAKER.**

SmartGate Inc.

**CONVERTIBLE PROMISSORY NOTE**

\$ \_\_\_\_\_

\_\_\_\_\_  
Sarasota, Florida

**FOR VALUE RECEIVED**, the undersigned, SmartGate Inc., a Nevada corporation (the "Maker") hereby promises to pay to the order of \_\_\_\_\_ (the "Payee"), the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars, plus interest at the rate specified below. The unpaid principal balance outstanding from time to time shall bear interest prior to maturity at an annual rate of interest equal to nine (9%) percent per annum, and all interest accrued on the outstanding principal balance of this Promissory Note shall be due and payable as provided below.

The Maker hereby agrees to pay the entire amount due hereunder, including principal and interest, sixty (60) months from the date of this Promissory Note ("Maturity Date"), on which date all unpaid principal and interest due hereunder shall be paid in full. All payments shall be applied first to interest on the unpaid balance and the remainder to principal.

If the payment of interest and the principal is not actually received by the Payee on or before the Maturity Date, the Maker agrees to pay Payee a late charge equal to a lesser of eighteen (18%) percent per annum or the highest lawful rate per annum, on the delinquent amount until paid.

This Promissory Note may not be changed orally, but only by an agreement in writing signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

The holder of this Promissory Note and all successors thereof shall have all the rights of a holder in due course as provided by the Florida Uniform Commercial Code and the other laws of the state of Florida.

Maker hereby waives demand, presentment, protest, notice or protest and/or dishonor and all other notices or requirements that might otherwise be required by law. The Maker promises to pay on demand all costs of collection, including reasonable attorney's fees and court costs, paid or incurred by Payee in enforcing this Promissory Note upon an Event of Default (as that term is defined below) hereunder.

The occurrence of any of the following shall constitute an "Event of Default" under this Promissory Note:

- (a) The failure of the Maker to make any payment when due under this Promissory Note;
- (b) The institution of legal proceedings by or against the Maker under any state insolvency laws, federal bankruptcy law, or similar debtor relief laws then in effect.

Upon an Event of Default, Payee may, at Payee's option and without notice, declare all principal and interest due under this Promissory Note to be due and payable immediately. Payee may waive any Event of Default before or after it occurs and may restore this Promissory Note in full effect without impairing the right to declare it due for a subsequent default.

**Option to Convert Promissory Note into Shares**

(a) At any time prior to the Maturity Date, Payee shall have the option ("Option") to convert the unpaid principal balance of this Promissory Note, together with all accrued interest, into shares of common stock of the Maker at the conversion ratio of one share for each \$5.00 of unpaid principal and interest ("Shares").

(b) In order to exercise this Option, the Payee shall surrender this Promissory Note to the Maker, accompanied by written notice of the Payee's intention to exercise this Option, which notice shall set forth the principal amount of this Promissory Note to be converted ("Notice of Conversion"). Within ten (10) business days of Maker's receipt of the Notice of Conversion and this Promissory Note, the Maker shall deliver or cause to be delivered to the Payee, written confirmation that the Shares have been issued in the name of the Payee.

(c) Payee shall cooperate with Maker to ensure that any shares issued pursuant to this Option will be issued in compliance with federal and state securities laws or exemptions therefrom. Unless otherwise registered under the Securities Act of 1933 as amended, the certificates evidencing said shares shall reflect such legend restricting transfer as counsel for the Maker may reasonably require.

(d) The Maker shall, at all times, take any and all additional actions as are necessary to maintain the required authority to issue the Shares to the Payee, in the event the Payee exercises the Payee's rights under this Option.

(e) The Shares to be issued upon the exercise of this Option to convert shall be subject to and covered by the Registration Rights Agreement executed by the Maker as part of its acquisition of RadioMetrix, Inc.

**SMARTGATE INC.**

CORPORATE  
SEAL

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



## Schedule 1.6(e)

Stephen A. Michael	42.535953%
Elizabeth Rosemary Duffey Irrevocable Trust	21.267976%
Spencer Charles Duffey Irrevocable Trust	21.267976%
Robert T. Roth	10.066844%
William W. Dolan	4.861251%

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## **Schedule 2.5**

# **RadioMetrix Consents and Approvals**

- RadioMetrix' Board of Directors
- RadioMetrix' Shareholders
- Articles of Merger Filing with Secretary of Sate of Florida and Nevada

**Schedule 2.9**

**RadioMetrix 2000 Federal Tax Return**

10059

Form 1120

U.S. Corporation Income Tax Return

OMB No. 1545-0123

For calendar year 2000 or tax year beginning ending

2000

Department of the Treasury Internal Revenue Service

Instructions are separate. See page 1 for Paperwork Reduction Act Notice.

- A Check if a: 1 Consolidated return (attach Form 951) 2 Personal holding co. (attach Sch. PH) 3 Personal service corp. (as defined in Temporary Regs. sec. 1.441-4) (see instructions)

Use IRS label. Otherwise, print or type.

Name: RADIO METRIX, INC. Number, street, & room or suite no.: 4400 INDEPENDENCE COURT City or town, state, and ZIP code: SARASOTA FL 34234

B Employer identification number: 65-0345382

C Date incorporated: 3/19/92

D Total assets (see page 8 of instructions): \$ 382,724

E Check applicable boxes: (1) Initial return (2) Final return (3) Change of address

Table with 11 columns (1a-11) and 11 rows (1-36) detailing income, deductions, and tax payments. Includes sub-rows for depreciation (20-21a) and tax payments (32a-32g).

Sign Here

Signature of officer: SA [Signature] Date: 9-17-01 Title: [Blank]

Paid

Preparer's signature: [Signature] CPA Date: 9/12/01 Check if self-employed: [Blank] Preparer's SSN or PTIN: P00210570

Preparer's Use Only

Firm's name (or yours if self-employed): RIES & FIGARRA, PA address, and ZIP code: 4837 SWIFT ROAD SUITE 210 SARASOTA, FL 34231 Phone no.: 941-923-2537

10059

Form 1120 (2000) RADIO METRIX, INC.

65-0345382

Page 2

Schedule A Cost of Goods Sold (See page 14 of instructions.)

1	Inventory at beginning of year	1
2	Purchases	2
3	Cost of labor	3
4	Additional section 263A costs (attach schedule)	4
5	Other costs (attach schedule)	5
6	Total. Add lines 1 through 5	6
7	Inventory at end of year	7
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on line 2, page 1	8

9a Check all methods used for valuing closing inventory:

(i)  Cost as described in Regulations section 1.471-3

(ii)  Lower of cost or market as described in Regulations section 1.471-4

(iii)  Other (Specify method used and attach explanation.)

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c)  Yes  No

c Check if the LIFO inventory method was adopted this tax year for any goods (If checked, attach Form 970)  Yes  No

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO

e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation?  Yes  No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation.  Yes  No

Schedule C Dividends and Special Deductions (See page 15 of instructions.)

	(a) Dividends received	(b) %	(c) Special deductions (a) x (b)
1	Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock)	70	
2	Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock)	80	
3	Dividends on debt-financed stock of domestic & foreign corporations (section 246A)	see instr.	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities	42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities	48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs that are subject to the 70% deduction	70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs that are subject to the 80% deduction	80	
8	Dividends from wholly owned foreign subsidiaries subject to the 100% deduction (section 245(b))	100	
9	Total. Add lines 1 through 8. See page 16 of instructions for limitation		
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958	100	
11	Dividends from certain FSCs that are subject to the 100% deduction (section 245(c)(1))	100	
12	Dividends from affiliated group members subject to the 100% deduction (section 243(a)(3))	100	
13	Other dividends from foreign corporations not included on lines 3, 6, 7, 8, or 11		
14	Income from controlled foreign corporations under subpart F (att. Form(s) 5471)		
15	Foreign dividend gross-up (section 78)		
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3 (section 245(d))		
17	Other dividends		
18	Deduction for dividends paid on certain preferred stock of public utilities		
19	Total dividends. Add lines 1 through 17. Enter here and on line 4, page 1		
20	Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on line 29b, page 1		

Schedule E Compensation of Officers (See instructions for line 12, page 1.)

Note: Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1, Form 1120) are \$500,000 or more.

(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned		(f) Amount of compensation
			(d) Common	(e) Preferred	
1		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	
2	Total compensation of officers				
3	Compensation of officers claimed on Schedule A and elsewhere on return				
4	Subtract line 3 from line 2. Enter the result here and on line 12, page 1				

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65-0345382

Page 3

Form 1120 (2000) RADIO METRIX, INC.

Schedule J Tax Computation (See page 17 of instructions.)

1 Check if the corporation is a member of a controlled group (see sections 1561 and 1563)  **Important: Members of a controlled group, see instructions on page 17.**

2a If the box on line 1 is checked, enter the corporation's share of the \$50,000, \$25,000, and \$9,925,000 taxable income brackets (in that order):

(1) \$  (2) \$  (3) \$

b Enter the corporation's share of:

(1) Additional 5% tax (not more than \$11,750) \$

(2) Additional 3% tax (not more than \$100,000) \$

3 Income tax. Check if a qualified personal service corporation under section 448(d)(2) (see page 17)

4 Alternative minimum tax (attach Form 4626)

5 Add lines 3 and 4

6a Foreign tax credit (attach Form 1118)

b Possessions tax credit (attach Form 5735)

c Check:  Nonconventional source fuel credit  QEV credit (att. Form 8834)

d General business credit. Enter here & check which forms are att.:

3800  3468  5884  647B  6765  8586  8830  8826

8835  8844  8845  8846  8820  8847  8861

e Credit for prior year minimum tax (attach Form 8827)

f Qualified zone academy bond credit (attach Form 8860)

7 Total credits. Add lines 6a through 6f

8 Subtract line 7 from line 5

9 Personal holding company tax (attach Schedule PH (Form 1120))

10 Recapture taxes. Check if from:  Form 4255  Form 8611

11 Total tax. Add lines 8 through 10. Enter here and on line 31, page 1

Schedule K Other Information (See page 19 of instructions.)

1 Check method of accounting: a  Cash  Accrual  Other (specify)

2 See page 21 of the instructions and enter the:

a Business activity code no.  541990

b Business activity  DEVELOPMENT

c Product or service  SENSING DEVICE

3 At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).)

If "Yes," attach a schedule showing: (a) name and employer identification number (EIN), (b) percentage owned, and (c) taxable income or (loss) before NOL and special deductions of such corporation for the tax year ending with or within your tax year.

4 Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group?

If "Yes," enter name and EIN of the parent corporation

5 At the end of the tax year, did any individual, partnership, corporation, estate, or trust own, directly or indirectly, 50% or more of the corporation's voting stock? (For rules of attribution, see section 267(c).)

If "Yes," attach a schedule showing name and identifying number. (Do not include any information already entered in 4 above.) Enter percentage owned

6 During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.)

7 At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of (a) the total voting power of all classes of stock of the corporation entitled to vote or (b) the total value of all classes of stock of the corporation?

If "Yes,"

a Enter percentage owned

b Enter owner's country

c The corporation may have to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter number of Forms 5472 attached

8 Check this box if the corporation issued publicly offered debt instruments with original issue discount

If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.

9 Enter the amount of tax-exempt interest received or accrued during the tax year  \$

10 Enter the number of shareholders at the end of the tax year (if 75 or fewer)  3

11 If the corp. has an NOL for the tax year and is electing to forego the carryback period, check here

12 Enter the available NOL carryover from prior tax years (Do not reduce it by any deduction on line 29a.)  \$

Note: If the corporation, at any time during the tax year, had assets or operated a business in a foreign country or U.S. possession, it may be required to attach Schedule N (Form 1120), Foreign Operations of U.S. Corporations, to this return. See Schedule N for details.

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65-0345382

Page 4

Form 1120 (2000) **RADIO METRIX, INC.**

Schedule L	Balance Sheets per Books	Beginning of tax year		End of tax year	
		(a)	(b)	(c)	(d)
<b>Assets</b>					
1	Cash		99		398
2a	Trade notes and accounts receivable				
b	Less allowance for bad debts				
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities (see Instructions)				
6	Other current assets <b>STMT 2</b>		500		7,000
7	Loans to shareholders		8,249		8,249
8	Mortgage and real estate loans				
9	Other investments			13,999	
10a	Buildings and other depreciable assets	13,999		13,999	
b	Less accumulated depreciation	13,999	0	13,999	0
11a	Depletable assets				
b	Less accumulated depletion				
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization				
14	Other assets (attach sch.) <b>STMT 3</b>		383,638		367,077
15	<b>Total assets</b>		<b>392,486</b>		<b>382,724</b>
<b>Liabilities and Shareholder's Equity</b>					
16	Accounts payable		8,994		8,516
17	Mortgages, notes, bonds payable in less than 1 year				
18	Other current liabilities <b>STMT 4</b>		6,900		6,900
19	Loans from shareholders		9,159		8,159
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (att. sch.)				
22	Capital stock: a Preferred stock			575	575
b	Common stock	575	575		
23	Additional paid-in capital		355,425		355,425
24	Retained earnings-Appropriated				
25	Retained earnings-Unappropriated		11,433		3,149
26	Adjustments to S/H equity				
27	Less cost of treasury stock				
28	<b>Total liabilities and shareholders' equity</b>		<b>392,486</b>		<b>382,724</b>

Note: The corporation is not required to complete Schedules M-1 and M-2 if the total assets on line 15, col. (d) of Schedule L are less than \$25,000.

**Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return (See page 20 of instructions.)**

1	Net income (loss) per books	-8,284	7	Income recorded on books this year not included on this return (itemize):	
2	Federal income tax	2,038		Tax-exempt interest	\$
3	Excess of capital losses over capital gains				
4	Income subject to tax not recorded on books this year (itemize):				
5	Expenses recorded on books this year not deducted on this return (itemize):		8	Deductions on this return not charged against book income this year (itemize):	
a	Depreciation	\$	a	Depreciation	\$
b	Contributions carryover	\$	b	Contributions carryover	\$
c	Travel and entertainment	\$			
	<b>STMT 5</b>	5	9	Add lines 7 and 8	
6	Add lines 1 through 5	-6,241	10	Income (line 28, page 1)-line 6 less line 9	-6,241

**Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)**

1	Balance at beginning of year	11,433	5	Distributions:	
2	Net income (loss) per books	-8,284	a	Cash	
3	Other increases (itemize):		b	Stock	
			c	Property	
4	Add lines 1, 2, and 3	3,149	6	Other decreases (itemize):	
			7	Add lines 5 and 6	
			8	Balance at end of year (line 4 less line 7)	3,149

Form 7004  
(Rev. October 2000)

### Application for Automatic Extension of Time To File Corporation Income Tax Return

OMB No. 1545-0233

Department of the Treasury  
Internal Revenue Service

Name of corporation

Employer identification number

**RADIO METRIX, INC.**

**65-0345382**

Number, street, and room or suite no. (if a P.O. box or outside the United States, see instructions.)

**4400 INDEPENDENCE COURT**

City or town, state, and ZIP code

**SARASOTA FL 34234**

Check type of return to be filed:

- Form 990-C
- Form 1120
- Form 1120-A
- Form 1120-F
- Form 1120-FSC
- Form 1120-H
- Form 1120-L
- Form 1120-ND
- Form 1120-PC
- Form 1120-POL
- Form 1120-REIT
- Form 1120-RIC
- Form 1120S
- Form 1120-SF

Form 1120-F filers: Check here if the foreign corporation does not maintain an office or place of business in the United States

**1 Request for Automatic Extension (see instructions)**

a Extension date. I request an automatic 6-month (or, for certain corporations, 3-month) extension of time until 9/17/01 to file the income tax return of the corporation named above for  calendar year 20 00 or  tax year beginning \_\_\_\_\_ and ending \_\_\_\_\_

b Short tax year. If this tax year is for less than 12 months, check reason:  
 Initial return  Final return  Change in accounting period  Consolidated return to be filed

**2 Affiliated group members (see instructions). If this application also covers subsidiaries to be included in a consolidated return, provide the following information:**

Name and address of each member of the affiliated group	Employer identification number	Tax period

**3 Tentative tax (see instructions)** ..... 3 0

**4 Payments and refundable credits: (see instructions)**

a Overpayment credited from prior year	4a		Bal ▶	4d	
b Estimated tax payments for the tax year	4b			4e	
c Less refund for the tax year applied for on Form 4465	4c			4f	
e Credit for tax paid on undistributed capital gains (Form 2439)					
f Credit for Federal tax on fuels (Form 4136)					
5 Total. Add lines 4d through 4f (see instr.)					5

**6 Balance due.** Subtract line 5 from line 3. Deposit this amount using the Electronic Federal Tax Payment System (EFTPS) or with a Federal Tax Deposit (FTD) Coupon (see instructions) ..... 6 0

Signature. Under penalties of perjury, I declare that I have been authorized by the above-named corporation to make this application, and to the best of my knowledge and belief, the statements made are true, correct, and complete.

*[Handwritten Signature]*  
(Signature of officer or agent)

*C.F.A.*  
(Title)

*3/17/01*  
(Date)



10059 Radio Metrix, Inc.  
65-0345382  
FYE: 12/31/2000

## Federal Statements

### Statement 1 - Form 1120, Page 1, Line 26 - Other Deductions

Description	Amount
BANK CHARGES	\$ 95
PROFESSIONAL FEES	1,720
TRAVEL	150
RESEARCH AND DEVELOPMENT COST	25,000
<b>TOTAL</b>	<b>\$ 26,965</b>

### Statement 2 - Form 1120, Page 4, Schedule L, Line 6 - Other Current Assets

Description	Beginning of Year	End of Year
SUBSCRIPTIONS RECEIVABLE	\$ 500	\$ 500
LOAN RECEIVABLE - ROTH		6,500
<b>TOTAL</b>	<b>\$ 500</b>	<b>\$ 7,000</b>

### Statement 3 - Form 1120, Page 4, Schedule L, Line 14 - Other Assets

Description	Beginning of Year	End of Year
DEPOSIT	\$ 1,000	\$ 1,000
NOTE RECEIVABLE - SMART GATE	330,500	330,500
DUE FROM SMART GATE	1,515	
INTEREST RECEIVABLE	50,623	35,577
<b>TOTAL</b>	<b>\$ 383,638</b>	<b>\$ 367,077</b>

### Statement 4 - Form 1120, Page 4, Schedule L, Line 18 - Other Current Liabilities

Description	Beginning of Year	End of Year
DUE TO DUFFEY & DOLAN	\$ 6,900	\$ 6,900
<b>TOTAL</b>	<b>\$ 6,900</b>	<b>\$ 6,900</b>

### Statement 5 - Form 1120, Page 4, Schedule M-1, Line 5 - Expenses on Books Not on Return

Description	Amount
PENALTY	\$ 5
<b>TOTAL</b>	<b>\$ 5</b>

10059 Radio Metrix, Inc.  
 65-0345382  
 FYE: 12/31/2000

**Federal Asset Report**  
**Regular Depreciation**

Asset	Description	Date In Service	Cost	Bus % 179	Basis	Per Conv Meth	Prior	Current
<b>Prior MACRS:</b>								
1	Computer Equipment	5/31/97	13,999	X	0	5 HY 200DB	13,999	0
			<u>13,999</u>		<u>0</u>		<u>13,999</u>	<u>0</u>
	<b>Grand Totals</b>		13,999		0		13,999	0
	<b>Less: Dispositions</b>		<u>0</u>		<u>0</u>		<u>0</u>	<u>0</u>
	<b>Net Grand Totals</b>		<u>13,999</u>		<u>0</u>		<u>13,999</u>	<u>0</u>

10059 Radio Metrix, Inc.  
65-0345382  
FYE: 12/31/2000

## Federal Statements

### Schedule L - Loans to Shareholders

<u>Description</u>	<u>Beginning of Year</u>	<u>End of Year</u>
SHAREHOLDER LOAN - STEVE	\$ 8,249	\$ 8,249
TOTAL	\$ 8,249	\$ 8,249

### Schedule L - Loans from Stockholders

<u>Description</u>	<u>Beginning of Year</u>	<u>End of Year</u>
SHAREHOLDER LOAN - DUFFEY	\$ 8,159	\$ 8,159
SHAREHOLDER LOAN - ROTH	1,000	
TOTAL	\$ 9,159	\$ 8,159

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**Schedule 2.10**

**Material Contracts**

**See Exhibits “C” and “D”**

**and**

**The Attached List of Contracts**

## Schedule 2.10 List of Material Contracts

- Net Profit Royalty Letter Agreement between Radio Metrix Inc. and Pete Lefferson dated September 23, 1993 as amended by Letter Agreement dated December 1, 1994 ("Lefferson Royalty Agreement").
- Agreement between Radio Metrix Inc. and Carl Burnett dated October 13, 1996 ("Burnett Agreement").
- The Agreement between Radio Metrix Inc. and Namaqua Limited Partnership ("Namaqua") dated December 13, 1993 ("Namaqua Agreement"), and related Security Agreement ("Namaqua Security Agreement").
- Agreement between Radio Metrix Inc. and Robert Wilson dated March 18, 1992 ("Wilson Agreement").
- License Agreement between Radio Metrix Inc. and SDR Metro Inc. dated March 14, 1992 and Amendment to License Agreement dated February 14, 1997 and May 26, 1998.
- Agreement between Radio Metrix Inc., SDR Metro Inc. and Brent Simon dated October 9, 2000 re: patent purchase; and Extension Agreement between Radio Metrix Inc., SDR Metro Inc. and Brent Simon dated September 5, 2001.
- Closing Agreement between Radio Metrix Inc., SDR Metro Inc. and Brent Simon dated January 8, 2002.
- Promissory Note to SDR Metro Inc. dated January 8, 2002.
- Security Agreement between Radio Metrix Inc. and SDR Metro Inc. dated January 8, 2002; UCC-1 filed in Florida Secured Transaction Registry; confirmation of Security Interest filed with Patent and Trademark Office.
- Remedy Upon Default Agreement between Radio Metrix Inc. and SDR Metro Inc. dated January 8, 2002.
- Consulting Agreement Memo re: Brent Simon dated August 28, 2000.
- Assignment of License Agreement from SDR Metro Inc. to Radio Metrix Inc. dated January 8, 2002.
- Secured Promissory Note from Radio Metrix to SmartGate Inc. dated January 8, 2002.
- Security Agreement between Radio Metrix Inc. and SmartGate Inc. dated January 8, 2002.
- Assignment of Right of Redemption Agreement from Radio Metrix Inc. to SmartGate Inc. dated January 8, 2002.
- Sublicense Letter Agreement between Radio Metrix Inc. and SmartGate Inc. dated January 8, 2002.

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**Schedule 2.13**  
**Undisclosed Liabilities**

**None**

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**Schedule 2.14**  
**RadioMetrix Tax Matters**

**None**

**Schedule 2.20**  
**Indebtedness and Accounts Payable**

\$75,000 payable to Stephen A. Michael in connection with services rendered. \*

\$100,000 payable to Duffey & Dolan, P.A. for services rendered.\*

Costs and expenses associated with this Agreement or the Closing thereof.

Robert T. Roth, a stockholder and member of management of RadioMetrix, Inc. owes RadioMetrix \$7,500 plus interest at 8.5% from February 16, 2000. At Closing, this Promissory Note will be deemed cancelled by RadioMetrix, terminating the obligation of Mr. Roth.

Debts set forth in the promissory notes and agreements listed in Schedule 2.10 including, but not limited to, the obligations under the Namaqua Agreement which are estimated at approximately \$50,000, and the potential obligations under the Wilson Agreement which may be due should the unilateral termination of the Wilson Agreement not be legally effective.

\* Amounts due reflect accruals for services rendered. Stephen A. Michael, Samuel S. Duffey and Duffey & Dolan, P.A. have waived any entitlement to any additional consideration, receivable or entitlement from RadioMetrix as otherwise disclosed herein. Estoppel Certificates will be issued by all parties at Closing as requested by SmartGate. Both Mr. Michael and Duffey & Dolan, P.A. agree that the account payable shall remain unpaid and is contingent upon such time as the Company has received an aggregate of \$2,000,000 in additional capital subsequent to the Closing of this Agreement.



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**Schedule 2.24**  
**Employee Benefit Plans**

**None**

## **Schedule 3.5**

### **SmartGate Consents and Approvals**

- SmartGate, Inc.'s Board of Directors
- SmartGate/RadioMetrix Acquisition Corp.'s Board of Directors and Sole Shareholder, SmartGate, Inc.
- Article of Merger Filing with Secretary of State of Florida and Nevada

**Schedule 3.8**  
**SmartGate Financial Statements**

**SmartGate**  
**Consolidated Balance Sheet**  
As of September 30, 2001

	1-Sep
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
10500 · First Union Checking	308,555.49
10550 · Regions Bank Checking	77.10
10510 · First Union Money Market Ac	1,153,926.61
10600 · Petty Cash	54.95
<b>Total Checking/Savings</b>	<b>1,462,614.15</b>
<b>Accounts Receivable</b>	
11000 · Accounts Receivable	24,083.59
<b>Total Accounts Receivable</b>	<b>24,083.59</b>
<b>Other Current Assets</b>	
12100 · N/R SGLC Loan	0.00
13100 · Inventory Asset-Finished	28,553.20
13200 · Inventory Asset-Parts	88,232.39
14000 · N/R-STannehill	2,000.00
14050 · N/R-CParks	3,500.00
<b>Total Other Current Assets</b>	<b>122,285.59</b>
<b>Total Current Assets</b>	<b>1,608,983.33</b>
<b>Fixed Assets</b>	
15000 · Furniture & Fixtures	19,317.46
15050 · Computer Equipmt & Software	55,542.24
15100 · Shop Equipment	4,526.27
15150 · Office Equipment	3,369.62
15400 · Leasehold Improvements	4,055.44
17000 · Accum Depreciation- Furniture	(2,971.61)
17050 · Accum Depreciation - Comptr Eqt	(14,171.14)
17100 · Accum Depreciation-Shop Equipm	(4,798.06)
17150 · Accum Depreciation -Off Equipmt	(2,404.19)
17400 · Accum Depreciation -Leasehold	(765.00)
<b>Total Fixed Assets</b>	<b>61,701.03</b>
<b>Other Assets</b>	
19000 · Deposits	9,783.60
19100 · Investment in SmartGate LC	0.00
<b>Total Other Assets</b>	<b>9,783.60</b>
<b>TOTAL ASSETS</b>	<b>1,680,467.96</b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Accounts Payable</b>	
20000 · Accounts Payable	74,184.12

Unaudited - Prepared for Internal Management Use  
Does not include usual and customary disclosures in notes required by General Accepted Accounting Principles

**SmartGate**  
**Consolidated Balance Sheet**  
As of September 30, 2001

	1-Sep
<b>Total Accounts Payable</b>	74,184.12
<b>Other Current Liabilities</b>	
23000 - Accrued Expenses	0.00
23025 - Accrued Interest Payable	1,185.78
23050 - Accrued Interest Payable	59,258.20
23400 - Payroll Liabilities	13,766.94
23500 - FUTA Tax Payable	162.64
23700 - SUTA Tax Payable	908.86
27800 - N/P-HRWFLP	29,545.24
28000 - Affiliated Co. Advances	6,121.35
24000 - Accrued Liabilities-Audit	4,000.00
24100 - Accrued Liabilities-Other	8,794.88
27000 - Bonus Payable	120,000.00
27100 - Accrued Salaries	40,720.00
<b>Total Other Current Liabilities</b>	284,463.89
<b>Total Current Liabilities</b>	358,648.01
<b>Long Term Liabilities</b>	
25000 - Regions LOC	98,402.00
26000 - Due to Radio Metrix	(2,765.00)
27000 - N/P-RMI	330,500.00
27850 - N/P-SGI	0.00
28600 - Due to Employees	(10,000.00)
<b>Total Long Term Liabilities</b>	416,137.00
<b>Total Liabilities</b>	774,785.01
<b>Equity</b>	
38000 - Opening Bal Equity	0.00
39000 - Retained Earnings	(1,829,175.81)
Net Income	(1,410,075.39)
39500 - CS Par Value	11,555.00
39600 - Paid In Capital	5,118,379.15
39700 - Stock SubscRec	(985,000.00)
<b>Total Equity</b>	905,682.95
<b>TOTAL LIABILITIES &amp; EQUITY</b>	1,680,467.96

Unaudited - Prepared for Internal Management Use

Does not include usual and customary disclosures in notes required by General Accepted Accounting Principles

**SmartGate**  
**Consolidated Profit Loss**  
**Qtr and YTD Comparison**  
**SEPTEMBER 2001**

	<u>Sep '01</u>	<u>Qtr 3</u>	<u>Jan'01 - Sep '01</u>
<b>Ordinary Income/Expense</b>			
<b>Income</b>			
40000 - Sales	10,828.50	32,796.48	88,588.87
<b>Total Income</b>	<u>10,828.50</u>	<u>32,796.48</u>	<u>88,588.87</u>
<b>Cost of Goods Sold</b>			
50000 - Cost of Goods Sold	4,338.97	12,032.62	30,424.30
57000 - COGS-Labor	1,606.25	5,493.75	14,987.20
57500 - Shipping & Handling	635.96	826.61	3,441.54
<b>Total COGS</b>	<u>6,581.18</u>	<u>18,352.98</u>	<u>48,853.04</u>
<b>Gross Profit</b>	4,247.32	14,443.50	39,735.83
<b>Expense</b>			
60100 - Alarm Expense	117.70	663.11	1,436.40
60200 - Depreciation Expense	750.00	2,250.00	6,750.00
60500 - Advertising Expense	19,020.55	44,296.42	83,272.01
60700 - Bad Debt Expense	0.00	0.00	583.48
60800 - Bank Service Charges	42.00	609.96	667.96
61000 - Cleaning & Maintenance	65.23	278.16	929.44
61150 - Compensation Expense	5,080.00	15,240.00	45,720.00
61250 - Discounts	17.12	24.20	482.00
61300 - Dues and Subscriptions	0.00	140.00	2,473.93
61500 - Education Expense	0.00	0.00	0.00
61600 - Gifts	195.00	195.00	195.00
61800 - Insurance	9,734.30	29,826.90	65,026.82
62200 - Interest Exp-Regions	615.72	2,209.20	8,637.04
62225 - Interest Expense-HRW	163.91	502.65	1,656.92
62250 - Interest Expense-RMI	3,100.00	6,200.00	18,000.00
62300 - Licenses and Permits	37.50	37.50	172.50
62350 - Printing and Reproduction	407.60	3,124.33	5,242.84
62440 - Freight & Delivery (In)	126.97	483.45	842.18
62500 - Professional-Management Fees	544.43	1,633.29	4,067.44
62550 - Professional-Patent Legal Fees	11,394.64	30,060.28	38,718.39
62600 - Professional-Accounting	0.00	0.00	27,687.00
62650 - Professional-Consulting	17,545.00	55,232.03	179,619.10
62700 - Rent or Lease Expense	5,336.69	16,010.07	44,588.36
62750 - Repairs-Building	0.00	0.00	3,286.47
62800 - Repairs-Office Equipment	0.00	166.86	999.81
63000 - Postage and Delivery	241.50	1,315.18	7,027.19
63500 - T&E-Travel	2,544.56	99,653.48	171,822.04
63550 - T&E-Meals & Entertainment	94.89	1,403.15	11,179.55
64000 - Telephone	2,143.16	5,213.63	15,640.71
64050 - Telephone-ISDN	0.00	0.00	2,678.66
64500 - Gas and Electric	831.83	2,240.17	4,352.71
64550 - Trash & Water	89.16	288.11	608.61

Unaudited - Prepared for Internal Management Use

Does not include usual and customary disclosures in notes required by General Accepted Accounting Principles

**SmartGate**  
**Consolidated Profit Loss**  
**Qtr and YTD Comparison**  
**SEPTEMBER 2001**

	<u>Sep '01</u>	<u>Qtr 3</u>	<u>Jan'01 - Sep '01</u>
64600 • Office Expense & Supplies	4,460.14	16,756.20	31,717.63
64650 • Coffee & Water Svc	137.01	4,459.06	1,464.78
65700 • Salary-Office/ R&D/Mfg	32,523.15	96,811.35	258,982.20
65800 • Salary-Commissions	451.84	1,767.80	5,122.69
66000 • R&D/Shop Expenses	803.90	4,886.13	10,983.58
66100 • R&D Products & Materials	2,016.08	9,860.84	34,564.34
66200 • Reference Materials	0.00	119.78	2,208.25
68000 • Marketing & Trade Shows	51,491.84	86,757.00	168,770.18
65600 • Officer Payroll & Expense	19,654.96	59,139.91	171,627.20
68100 • Taxes-Payroll	2,645.45	7,961.58	21,350.54
68150 • Taxes-Payroll Unemployment Exp.	324.37	1,043.51	5,983.74
68200 • Taxes-Property	0.00	0.00	0.00
68300 • Taxes-Penalties & Interest	0.00	0.00	438.20
68350 • EA	0.00	0.00	900.00
<b>Total Expense</b>	<u>194,748.20</u>	<u>608,860.29</u>	<u>1,468,477.89</u>
<b>Net Ordinary Loss</b>	<u>(190,500.88)</u>	<u>(594,416.79)</u>	<u>(1,428,742.06)</u>
<b>Other Income/Expense</b>			
<b>Other Income</b>			
70100 - Interest Income	2,919.84	10,159.65	18,666.67
<b>Net Loss</b>	<u>(187,581.04)</u>	<u>(584,257.14)</u>	<u>(1,410,075.39)</u>

Unaudited - Prepared for Internal Management Use  
Does not include usual and customary disclosures in notes required by General Accepted Accounting Principles

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CONSOLIDATED FINANCIAL STATEMENTS  
AND REPORT OF INDEPENDENT  
CERTIFIED PUBLIC ACCOUNTANTS

SMARTGATE, INC.  
(A DEVELOPMENT STAGE ENTERPRISE)

March 31, 1999 and 2000



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Accountants and  
Management Consultants

The US Member Firm of  
Grant Thornton International

Grant Thornton   
GRANT THORNTON LLP

Report of Independent Certified Public Accountants

Board of Directors and Stockholders  
SmartGate, Inc.

We have audited the consolidated balance sheets of SmartGate, Inc. (a development stage enterprise) as of March 31, 1999 and 2000 and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the two years ended March 31, 2000 and the period February 1997 (inception) through March 31, 2000. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of SmartGate, Inc. as of March 31, 1999 and 2000 and the consolidated results of operations and cash flows for each of the two years ended March 31, 2000 and the period February 1997 (inception) through March 31, 2000 in conformity with accounting principles generally accepted in the United States.

*Grant Thornton LLP*

Tampa, Florida  
April 21, 2000

Suite 3850  
101 E. Kennedy Blvd.  
Tampa, FL 33602-5154  
Tel: 813 229-7201  
Fax: 813 223-3015

SMARTGATE, INC.  
(A Development Stage Enterprise)  
CONSOLIDATED BALANCE SHEETS

	March 31,	
ASSETS	1999	2000
Current assets:		
Cash and cash equivalents	\$ 142,154	\$ 843,017
Accounts receivable	9,984	6,642
Inventories	14,013	140,528
Prepaid expenses and other current assets	<u>-</u>	<u>2,000</u>
Total current assets	166,151	992,187
Furniture, fixtures and equipment, net	8,403	35,910
Other assets	<u>1,345</u>	<u>8,010</u>
Total assets	<u>\$ 175,899</u>	<u>\$ 1,036,107</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Current liabilities:		
Accounts payable, trade	\$ 21,408	\$ 36,221
Accrued expenses	32,409	137,302
Current portion of notes payable	-	25,000
Due to related party	<u>8,886</u>	<u>6,121</u>
Total current liabilities	62,703	204,644
Line of credit	-	116,247
Notes payable	355,500	330,500
Due to employees	124,625	146,150
Stockholders' equity (deficit):		
Common stock; 25,000,000 shares authorized (\$.001 par value), 6,670,808 and 10,410,481 shares issued and outstanding, respectively	6,671	10,410
Additional paid-in capital	227,219	2,606,907
Stock subscriptions receivable	-	(985,000)
Deficit accumulated during the development stage	<u>(600,819)</u>	<u>(1,393,751)</u>
Total stockholders' equity (deficit)	<u>(366,929)</u>	<u>238,566</u>
Total liabilities and stockholders' equity (deficit)	<u>\$ 175,899</u>	<u>\$ 1,036,107</u>

The accompanying notes are an integral part of these statements.

SMARTGATE, INC.  
(A Development Stage Enterprise)

CONSOLIDATED STATEMENTS OF OPERATIONS

	<u>1999</u>	<u>2000</u>	<u>February 17, 1997 (Inception) Through March 31, 2000</u>
Net sales	\$ 30,540	\$ 38,070	\$ 77,762
Cost of goods sold	<u>15,262</u>	<u>14,379</u>	<u>31,722</u>
Gross profit	15,278	23,691	46,040
Research and development costs	190,656	538,135	1,031,562
Selling, general and administrative expenses	<u>53,602</u>	<u>248,854</u>	<u>348,188</u>
Loss from operations	(228,980)	(763,298)	(1,333,710)
Interest expense	<u>20,632</u>	<u>29,634</u>	<u>60,041</u>
Net loss	<u>\$(249,612)</u>	<u>\$(792,932)</u>	<u>\$(1,393,751)</u>
Net loss per common share:			
Basic and diluted	\$ <u>(0.04)</u>	\$ <u>(0.12)</u>	
Weighted average common stock shares outstanding - basic and diluted	<u>6,159,294</u>	<u>6,853,011</u>	

The accompanying notes are an integral part of these statements.

SMARTGATE, INC.  
(A Development Stage Enterprise)

CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY

	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Stock Subscriptions Receivable	Deficit Accumulated During the Development Stage	Total
February 17, 1997 (inception)		\$ -	\$ -	\$ -	\$ -	\$ -
Issuance of common stock to founders	5,980,049	5,980	(5,980)	-	(351,207)	(351,207)
Net loss						
Balance at March 31, 1998	5,980,049	5,980	(5,980)	-	(351,207)	(351,207)
Issuance of common stock for cash	690,759	691	233,199	-	-	233,890
Net loss					(249,612)	(249,612)
Balance at March 31, 1999	6,670,808	6,671	227,219	-	(600,819)	(366,929)
Issuance of common stock for rent	125,079	125	64,743	-	-	64,868
Exercise of stock options	924,214	924	984,076	(985,000)	-	230,000
Issuance of common stock related to reorganization	2,009,000	2,009	227,991	-	-	1,103,559
Issuance of common stock for cash	681,380	681	1,102,878	-	(792,932)	(792,932)
Net loss						
Balance at March 31, 2000	10,410,481	\$ 10,410	\$ 2,606,297	\$ (985,000)	\$ (1,393,751)	\$ 238,566

The accompanying notes are an integral part of this statement.

SMARTGATE, INC.  
(A Development Stage Enterprise)

CONSOLIDATED STATEMENTS OF CASH FLOWS

	<u>Year Ended March 31,</u>		February 17, 1997
	<u>1999</u>	<u>2000</u>	(inception) through <u>March 31,</u> <u>2000</u>
Cash flows from operating activities:			
Net loss	\$(249,612)	\$ (792,932)	\$(1,393,751)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation	2,449	5,572	9,581
Common stock exchanged for rent	-	64,868	64,868
Changes in operating assets and liabilities			
Accounts receivable	(8,948)	3,342	(6,642)
Inventories	19,267	(126,515)	(140,528)
Prepaid expenses and other assets	185	(8,665)	(10,010)
Accounts payable	1,511	14,813	36,221
Accrued expenses	16,181	102,128	143,423
Due to employees	<u>102,125</u>	<u>21,525</u>	<u>146,150</u>
Net cash used in operating activities	(116,842)	(715,864)	(1,150,688)
Cash flows from investing activities:			
Purchases of furniture, fixtures and equipment	(703)	(33,079)	(45,491)
Net cash used in investing activities	(703)	(33,079)	(45,491)
Cash flows from financing activities:			
Proceeds from line of credit	-	116,247	116,247
Proceeds from notes payable	25,000	-	355,500
Proceeds from sale of common stock, net	233,890	1,103,559	1,337,449
Advanced funds associated with merger	-	<u>230,000</u>	<u>230,000</u>
Net cash provided by financing activities	258,890	1,449,806	2,039,196
Net increase in cash	141,345	700,863	843,017
Cash at beginning of period	<u>809</u>	<u>142,154</u>	<u>-</u>
Cash at end of period	<u>\$ 142,154</u>	<u>\$ 843,017</u>	<u>\$ 843,017</u>
Supplemental disclosure of cash flow information			
Cash paid during the year for interest	\$ -	\$ 11,400	\$ 11,400
Cash paid during the year for income taxes	\$ -	\$ -	\$ -

The accompanying notes are an integral part of these statements.

SMARTGATE, INC.  
(A Development Stage Enterprise)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

March 31, 1999 and 2000

NOTE A - DESCRIPTION OF ORGANIZATION AND BUSINESS

SmartGate, Inc. ("the Company") is a development stage enterprise that incorporates safety system technology and products into automated closure devices, such as parking gates, sliding gates, overhead garage doors and commercial overhead doors. The Company has not fully implemented its sales and marketing plan and has therefore not generated significant revenue since its inception in 1997. The Company is related through common ownership to Radio Metrix, Inc. (RMI), which owns the proprietary rights to the underlying safety system.

NOTE B - BUSINESS COMBINATION

Effective February 9, 2000, the Company acquired all of the membership units of SmartGate L.C. in exchange (the Exchange) for approximately 7,744,000 shares of common stock, representing 74% of the Company's common stock outstanding at that time. Prior to the Exchange, SmartGate, Inc. (a privately held company formed in February 1998) had substantially no operations. For accounting purposes, the Exchange was recorded as a reverse acquisition, with SmartGate L.C. as the accounting acquirer. As a result, the historical financial information presented prior to the Exchange is solely that of SmartGate L.C. The operating results of SmartGate, Inc. are combined with those of SmartGate L.C. following the Exchange.

The stockholders' equity presented prior to the Exchange represents the number of the Company's shares of common stock exchanged for shares of SmartGate L.C. in connection with the Exchange. The Company's net assets were recognized as of the Exchange date at historical cost.

NOTE C - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation

The consolidated financial statements as of March 31, 2000 include the accounts of SmartGate, Inc. and its wholly owned subsidiary, SmartGate L.C. All intercompany balances and transactions have been eliminated.

Use of Estimates

In preparing the consolidated financial statements in conformity with generally accepted accounting principles in the United States, management makes estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expense during the reporting period. Actual results could differ from those estimates.

SMARTGATE, INC.  
(A Development Stage Enterprise)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

March 31, 1999 and 2000

NOTE C - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued

Cash and cash equivalents

The Company considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents.

Accounts Receivable

Accounts receivable are due primarily from companies in the gate manufacturing industry located throughout the United States. Credit is extended based on an evaluation of the customers' financial condition and, generally, collateral is not required. Bad debts have not been significant and there are no significant concentrations of credit risk related to accounts receivable.

Inventories

Inventories are stated at the lower of cost or market. Cost is determined using the first-in, first-out method.

Furniture, Fixtures and Equipment

Furniture, fixtures, and equipment are depreciated on a straight-line basis over their estimated useful lives, principally five years. Leasehold improvements are amortized over the term of the lease or their estimated useful lives, whichever is shorter. Accumulated depreciation and amortization was \$9,581 and \$4,009 at March 31, 2000 and 1999, respectively. During 2000, the Company purchased furniture from a shareholder at a cost of \$7,500. Accelerated methods are used for tax depreciation.

Revenue Recognition

Sales are recognized as revenue upon shipment of product.

Research and Development Costs

Research and development costs consist of direct and indirect costs that are clearly associated with the development of the safety sensor device. These costs are expensed as incurred.

Advertising Costs

The Company expenses advertising costs as incurred. During the years ended March 31, 1999 and 2000, advertising expense was \$0 and \$13,400, respectively.



SMARTGATE, INC.  
(A Development Stage Enterprise)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

March 31, 1999 and 2000

NOTE C - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued

Income Taxes

The Company elected to be taxed as a partnership under the Internal Revenue Code for periods prior to the Exchange. Therefore, the stockholders reported income, deductions, and certain credits on their individual income tax returns. Following the Exchange, the Company adopted Statement of Financial Accounting Standards (SFAS) No. 109, *Accounting for Income Taxes*.

Financial Instruments

The Company's financial instruments include cash and cash equivalents, accounts receivable, accounts payable, notes payable and long-term debt. The carrying amounts of these financial instruments approximate their fair value, due to the short-term nature of these items.

Impairment of Long-Lived Assets

The Company evaluates the recoverability of its long-lived assets whenever adverse events or changes in business climate indicate that the expected undiscounted future cash flows from the related asset may be less than previously anticipated. If the net book value of the related asset exceeds the undiscounted future cash flows of the asset, the carrying amount would be reduced to the present value of its expected future cash flows and an impairment loss would be recognized. There have been no impairment losses in any of the periods presented.

Earnings per common share

Basic and diluted earnings per share are computed based on the weighted average number of common stock outstanding during the period. Common stock equivalents are not considered in the calculation of diluted earnings per share for the periods presented because their effect would be anti-dilutive.

Stock Based Compensation

The Company presents only the disclosure provisions of SFAS No 123, *Accounting for Stock Based Compensation* as it relates to stock options granted to employees. The Company applies Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* and related interpretations, in measuring compensation for stock options granted. The Company recognizes the fair value of options granted to non-employees when granted.

SMARTGATE, INC.  
(A Development Stage Enterprise)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

March 31, 1999 and 2000

NOTE D - INVENTORIES

Inventories consist of the following:

	March 31.	
	1999	2000
Finished goods	\$ 4,900	\$ 19,800
Work in process and raw materials	<u>9,113</u>	<u>120,728</u>
	<u>\$14,013</u>	<u>\$140,528</u>

NOTE E - ACCRUED EXPENSES

Accrued expenses consist of the following:

	1999	2000
Accrued compensation	\$ -	\$ 64,939
Accrued interest	30,468	55,700
Other accrued expenses	<u>1,941</u>	<u>16,663</u>
	<u>\$32,409</u>	<u>\$137,302</u>

NOTE F - LINE OF CREDIT

The line of credit at March 31, 2000 consists of a \$150,000 secured working capital line of credit with a bank maturing on April 15, 2001. Interest is payable monthly at prime plus one percent, or approximately 10.0% at March 31, 2000. Approximately \$34,000 is available for borrowing under the line of credit as of March 31, 2000. The line of credit may only be used to purchase inventory and all inventory is pledged as security.

SMARTGATE, INC.  
(A Development Stage Enterprise)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

March 31, 1999 and 2000

NOTE G - NOTES PAYABLE

Notes payable consist of the following at March 31,

	<u>1999</u>	<u>2000</u>
Notes payable to RMI, due in installments from February 21, 2007 through March 11, 2008, together with interest at 6% compounded annually	\$330,500	\$330,500
Note payable, due March 31, 2001, together with interest at prime compounded annually	<u>25,000</u>	<u>25,000</u>
	355,500	355,500
Less current maturities	<u>          </u>	<u>25,000</u>
	<u>\$355,500</u>	<u>\$330,500</u>

At March 31, 2000, aggregate maturities of notes payable are as follows:

Year ending March 31,	
2001	\$ 25,000
2002	-
2003	-
2004	-
2005	-
Thereafter	<u>330,500</u>
	<u>\$355,500</u>

NOTE H - DUE TO EMPLOYEES

Due to employees consists of deferred payments of base compensation payable to two principal shareholders. The amounts payable are non-interest bearing and are due April 30, 2001.

SMARTGATE, INC.  
(A Development Stage Enterprise)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

March 31, 1999 and 2000

NOTE I - LOSS PER SHARE

The following table sets forth the computation of basic and diluted net loss per share:

	<u>1999</u>	<u>2000</u>
Numerator:		
Net loss	\$ <u>(249,612)</u>	\$ <u>(792,932)</u>
Denominator:		
For basic loss per share - weighted average shares	6,159,294	6,853,011
Effect of dilutive securities - stock options	<u>          -</u>	<u>          -</u>
For diluted loss per share	<u>6,159,294</u>	<u>6,853,011</u>
Net loss per common share - basic	\$ <u>(0.04)</u>	\$ <u>(0.12)</u>
Net loss per common share -- diluted	\$ <u>(0.04)</u>	\$ <u>(0.12)</u>

Options to purchase 1,385,092 and 460,878 shares of common stock as of March 31, 1999 and 2000 are not considered in the calculation of diluted loss per share because the effect would be anti-dilutive.

NOTE J - COMMON STOCK OPTIONS

On March 9, 1999, the Company granted to employees options to purchase 924,214 shares of the Company's common stock at an exercise price of approximately \$1.07 per share. The Company applied a minimum value method to value the stock options. Because the present value of the exercise price exceeded the estimated market price of the common stock at the grant date, no value was assigned to the stock options. All of the stock options were exercised on December 29, 1999 in exchange for promissory notes with a term of five years, reflected as stock subscriptions receivable of \$985,000 as of March 31, 2000. The promissory notes may be re-paid either in cash or through the tender of stock by the employee to the Company. No employee stock options are outstanding as of March 31, 2000.

During March 1999, the Company granted options to purchase 460,878 shares to non-employees at an exercise price of approximately \$1.07 per share. No significant services were associated with these grants and the present value of the exercise price exceeded the estimated market price of the common stock at the grant date. Therefore, no value was assigned to the stock options. The stock options were exercisable on the grant date and substantially all of these stock options expire on December 31, 2001.

SMARTGATE, INC.  
(A Development Stage Enterprise)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

March 31, 1999 and 2000

NOTE K - COMMITMENTS AND CONTINGENCIES

Operating Leases

The Company leases its manufacturing and office space under an operating lease agreement from a shareholder. The lease agreement expires on March 23, 2001. The lease agreement allows for payment of rent in either cash or shares of the Company's common stock. The lease also provides the Company with an option to purchase the property on March 31, 2001 for \$725,000. Future minimum lease payments for the operating lease are as follows:

<u>Year Ending March 31,</u>	
2001	\$52,956

Total related party rent expense during the years ended March 31, 1999 and 2000 amounted to \$30,980 and \$64,868, respectively.

Legal and Other Matters

The Company is, from time to time, subject to litigation related to claims arising out of its operations in the ordinary course of business. The Company believes that no such claims should have a material adverse impact on its financial condition or results of operations.

NOTE L - RELATED PARTY TRANSACTIONS

Patent License

The Company is party to a sublicense agreement with RMI for the proprietary safety technology used in the Company's products. The sublicense agreement contains the same financial terms and conditions included in the primary license agreement between RMI and an unrelated third-party entity. Those terms provide for the payment of royalties calculated based on an adjusted earnings amount. Due to the losses incurred since inception of the Company, no payments have been required under the license agreement.

Employment agreements

Effective February 1999, the Company has entered into five-year employment agreements with two of its principal shareholders. Each of these agreements provides for the payment of an annual salary of \$120,000 and other fringe benefits, subject to increases based upon attainment of certain operating goals. Total compensation expense under these employment agreements, bonus plans, and other previous arrangements was approximately \$108,000 and \$361,000 in 1999 and 2000, respectively. Each employment agreement also provides for either a fully paid life insurance policy that will yield a \$2,000,000 death benefit or continued base compensation payable for five years following the death of either officer.

SMARTGATE, INC.  
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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

March 31, 1999 and 2000

NOTE L - RELATED PARTY TRANSACTIONS - Continued

Legal and Consulting Expenses

The Company paid legal and consulting fees totaling \$6,000 and \$32,000 in the years ended March 31, 1999 and 2000, respectively, to a law firm of which one of the partners is a principal shareholder.

Stock Repurchase Agreement

In connection with the Exchange, the Company has the right to repurchase shares of its common stock from a certain shareholder at par value. The number of shares subject to this right, however, depends on this shareholder's prospective performance levels related to the placement of the Company's common stock. The number of shares actually subject to repurchase, therefore, is not currently determinable. However, management believes that the number of shares ultimately repurchased, if any, will be immaterial.

NOTE M - INCOME TAXES

Historical Income Taxes

Deferred taxes were recorded for all existing temporary differences in the Company's assets and liabilities basis for income and financial reporting purposes at the date of conversion to a C Corporation, which resulted in the recognition of a deferred tax asset of approximately \$285,000. Due to the valuation allowance for deferred tax assets, as noted below, there was no net deferred tax benefit or expense for the year ended March 31, 2000.

Reconciliation of the federal statutory income tax rate of 34.0% to the effective income tax rate for the year ended March 31, 2000 is as follows:

Federal statutory income tax rate	(34.0)%
State income taxes, net of federal tax benefit	(3.5)
Net loss allocated to the partnership period	21.7
Non-deductible employee compensation	9.5
Deferred tax asset valuation allowance	<u>6.3</u>
	<u>      </u> - %

SMARTGATE, INC.  
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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

March 31, 1999 and 2000

NOTE M - INCOME TAXES - Continued

Deferred tax asset components were as follows as of March 31, 2000:

Deferred tax assets:	
Compensation payable	\$ 77,306
Net operating loss	27,924
Basis difference for C Corporation conversion	<u>230,392</u>
	<u>335,622</u>
Less valuation allowance	<u>(335,622)</u>
Net deferred income taxes	\$ <u>          </u>

The deferred tax valuation allowance was determined based on the development stage status of the Company and the historical losses incurred since inception.

Pro forma Income Taxes

In conjunction with the Exchange, the Company terminated its partnership status. For pro forma purposes, the Company recognized a Federal and State income tax benefit (net of Federal tax benefit) using statutory rates of 34% and 3.5%, respectively, for the period February 17, 1997 (inception) through the date of the Exchange. For pro forma income tax purposes the deferred tax asset associated with SmartGate L.C.'s cumulative net operating losses in each period presented is offset by a valuation allowance. Accordingly, no pro forma income taxes are presented.

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**Schedule 7(b)**

**\$500,000 Promissory Note**



Form of \$500,000 Note

**THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES OR "BLUE SKY" LAWS, AND MAY NOT BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, OR OTHERWISE DISPOSED OF UNLESS REGISTERED PURSUANT TO THE PROVISIONS OF SUCH ACT AND BLUE SKY LAWS OR AN EXEMPTION THEREFROM IS AVAILABLE AS ESTABLISHED BY A WRITTEN OPINION OF COUNSEL ACCEPTABLE TO THE MAKER.**

SmartGate Inc.

PROMISSORY NOTE

\$ \_\_\_\_\_

Sarasota, Florida  
February \_\_\_\_, 2002

**FOR VALUE RECEIVED**, the undersigned, SmartGate Inc., a Nevada corporation (the "Maker"), promises to pay to the order of \_\_\_\_\_ (the "Payee") the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars plus interest in the amount specified below. The principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars shall be due and payable in one installment on February \_\_\_\_, 2006. During the first one hundred eighty (180) days, this Promissory Note shall bear interest at ten (10%) percent per annum and said interest shall be paid every thirty (30) days on the last day of each of the first six (6) thirty (30) day periods of the term of this Promissory Note, and thereafter, the interest for the balance of the term of this Promissory Note shall be fifteen (15%) percent per annum and shall be paid every thirty (30) days on the last day of each thirty (30) day period for the balance of the term of this Promissory Note.

Interest hereon shall be calculated on the basis of a three hundred sixty (360) day year applied to the actual number of days elapsed until all accrued and unpaid interest is paid in full. All payments of principal and interest hereon shall be payable in lawful currency of the United States.

If any interest payment or the principal payment is not actually received by the Payee on or before the due date, the Maker agrees to pay Payee a late charge equal to a lesser of eighteen (18%) percent per annum or the highest lawful rate per annum, on the delinquent amount until paid.

Prepayment of the principal of this Promissory Note is permitted, in whole or in part, at any time, without premium or penalty of any kind.

This Promissory Note may not be changed orally, but only by an agreement in writing signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

The holder of this Promissory Note and all successors thereof shall have all the rights of a holder in due course as provided by the Florida Uniform Commercial Code and the other laws of the state of Florida. Maker hereby waives demand, presentment, protest, notice of protest and/or dishonor and all other notices or requirements that might otherwise be required by law. The Maker promises to pay on demand all costs of collection, including reasonable attorneys' fees

and court costs, paid or incurred by Payee to enforce this Promissory Note upon an Event of Default (as defined below) hereunder.

The occurrence of any of the following shall constitute an "Event of Default" under this Promissory Note:

- a. the failure of the Maker to make any payment when due under this Promissory Note;
- b. the institution of proceedings by or against the Maker under any state insolvency laws, federal bankruptcy law, or similar debtor relief laws then in effect.

Upon an Event of Default which has not been cured within ten (10) business days from the date of written notice by Payee, Payee may, at Payee's option and without notice, declare all principal and interest due under this Promissory Note to be due and payable immediately. Payee may waive any default before or after it occurs and may restore this Promissory Note in full effect without impairing the right to declare it due for a subsequent default.

**SMARTGATE INC.**

CORPORATE  
SEAL

By: \_\_\_\_\_  
Edmund C. King  
Its: Chief Financial Officer and  
Independent Committee Member