



**END USER SERVICE AGREEMENT**

This End User Service Agreement (the “Agreement” or the “EUSA”) is made and entered into as of the date shown below by and between EnTelegent Solutions, Inc. (“Service Provider”), a North Carolina Corporation with its principal business at 2520 Whitehall Park Dr. Suite 200, Charlotte, NC 28273, and the End User identified below. “Party” means Service Provider or End User, as applicable.

**End User:**

Name	[company name]
Street Address 1	[company address]
Street Address 2	[company address]
City/State/Zip	[company address]
Primary Contact	[Name of primary contact for End User]
Primary Contact Title	[title of primary contact]
Contact Email	[email of primary contact if available – otherwise delete this row]
Contact Phone	[phone of primary contact if available – otherwise delete this row]
Contact Fax	[fax of primary contact if available – otherwise delete this row]

End User
Signature of Authorized Representative*
<i>[Primary Contact]</i>
Print Name: [Primary Contact]
Title: [Primary Contact Title]
Date: [today’s date]

Service Provider
Signature of Authorized Representative
<i>Tom Turpin</i>
Print Name: Tom Turpin
Title: President
Date: [today’s date]

\*Executed for and on behalf of End User by its authorized agent.

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1. **Incorporated Documents.** All Service Orders (defined in Section 2.2) shall be subject to approval by Service Provider. This Agreement includes any Exhibit for specific services provided hereunder.
2. **Term.**
  - 2.1 Unless otherwise terminated as provided herein, this Agreement shall remain in effect for the duration of the term of any Service placed under this Agreement .
  - 2.2 Service Provider will provide to End User the services set forth in an Exhibit to this EUSA (Services) and as specifically set forth in one or more Service Order or Orders. The term for each Service ordered by End User will be as indicated on the applicable Service Order ("Service Term"). At the end of the Service Term, the Services will continue on a month-to-month basis until terminated by either Party upon no less than 45 days advance notice.
3. **Payment.** All undisputed amounts stated on each invoice are due and payable in U.S. dollars within thirty (30) calendar days of the invoice date (the "Due Date") unless other payment terms are expressly set forth on the invoice. Invoices may be rendered by third parties that are authorized by Service Provider to invoice and provide Service support to End User hereunder.
4. **Early Termination Charge.** If End User terminates any Service, in whole or in part, prior to the end of the then current Service Term applicable to that Service, in addition to any outstanding invoices (including previously disputed invoice amounts) and any other damages or liability of End User resulting from such termination, End User must pay Service Provider a lump sum Early Termination charge equal to: 100% of all remaining months of the then-current Service Term plus any charges previously waived by Service Provider or its underlying provider(s), including but not limited to construction, set-up or installation charges.
5. **LIMITATION OF LIABILITY.** EXCEPT AS PROVIDED OTHERWISE IN SECTIONS 7 AND 16, THIS AGREEMENT, AND EXCLUDING AMOUNTS DUE TO SERVICE PROVIDER FOR SERVICES PROVIDED HEREUNDER AND/OR EARLY TERMINATION CHARGES, EITHER PARTY'S LIABILITY ARISING UNDER THE AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY END USER TO SERVICE PROVIDER FOR THE AFFECTED SERVICES IN THE IMMEDIATELY PRECEDING THREE (3) BILLING PERIODS. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, ACTUAL, OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, EVEN IF FORESEEABLE.
6. **WARRANTY.** SERVICE PROVIDER WARRANTS THAT ALL SERVICES PROVIDED HEREIN SHALL CONFORM TO THE SPECIFICATIONS AS SET FORTH IN THIS AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH ABOVE, SERVICE PROVIDER MAKES NO WARRANTY WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF THE SERVICES OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY SERVICE PROVIDER ARE HEREBY EXCLUDED AND DISCLAIMED. FOR THE PURPOSE OF THIS SECTION, THE TERM "SERVICE PROVIDER" AND "END USER" SHALL BE DEEMED TO INCLUDE SERVICE PROVIDER, END USER, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, OFFICERS, DIRECTORS AND AFFILIATES.
7. **Property & Personal Injury Indemnity.** Each Party will indemnify and defend the other Party, its directors, officers, employees, agents and their successors from and against all third party claims for damages, losses, or liabilities, including attorneys' fees, arising directly from performance of this Agreement and relating to personal injury, death, or damage to personal property that is alleged to have resulted from the negligent or willful acts or omissions of the indemnifying Party or its subcontractors, directors, officers, employees, or agents.
8. **Notices.** Notices required under this Agreement must be submitted in writing to the parties' addresses shown on the signature page above. The notice is effective on the earlier of three (3) days after sending the notice by registered mail return receipt requested, or the actual date of receipt as established by proof of delivery.
9. **Integration & Amendment.** This Agreement, any Exhibits, and Service Orders, shall supersede all previous agreements, whether written or oral, and shall constitute the entire agreement between the Parties as to the matters contained herein and all transactions between the Parties shall be governed in writing and signed by the Parties. Any and all prior offers, contracts, agreements, representations and understandings made to or with End User by Service Provider or any affiliate or predecessors-in-interest with respect to the subject matter under this Agreement, whether oral or written, shall be superseded by this Agreement.

Except as expressly provided for in this Agreement, any amendment to this Agreement shall not be valid unless such amendment is made in writing and signed by both Parties.

**10. Acceptable Use of the Services.** All use of any Service provided by Service Provider shall comply with Service Provider's Acceptable Use Policy ("AUP") as set forth on the Service Provider website at <http://www.entelegent.com/AUP.pdf>. Service Provider will use its best efforts not to terminate End User Service without notice and an opportunity to address any non-compliance issue with respect to the AUP. End User agrees to defend, indemnify and hold harmless Service Provider, its affiliates, and contractor Service Providers from any and all liabilities, costs and expense, including reasonable attorneys' fees, arising from or related to any non-compliant use of the Service. Any violation of the AUP or conduct that Service Provider, in its reasonable discretion, believes may subject Service Provider to civil or criminal litigation or liability, charges and/or damages will be considered to be a breach of this Agreement for which Service Provider may, in addition to any other available remedies, suspend or terminate any Service. If Service Provider suspends any Service pursuant to this Section, Service Provider may require a reinstatement fee in order to resume Service.

## 11. Equipment.

- 11.1. Provided by End User. Service Provider shall have no liability for or obligation to make changes to End User's equipment. Any equipment provided by End User shall meet all industry standards and technical requirements for compatibility for underlying provider(s) of Service Provider. End User will: (1) ensure that all equipment and any related applications, systems and software used with or connected to the Services, comply with all applicable laws, licenses, industry standards and reasonable instructions provided by Service Provider; and (2) understand that if any equipment or related applications, systems, or software impairs End User's use of the Services, End User will remain liable for applicable Service charges.
- 11.2. Provided by Service Provider. Service Provider, or its underlying vendors may, if expressly ordered by End User, provide Customer Premise Equipment ("CPE") as part of the Services. Service Provider's responsibility for CPE will only be as expressly set forth in this EUSA. End User acknowledges that CPE may be removed or changed by Service Provider or its underlying vendors as required to provide Service to End User. End User shall reasonably cooperate to provide access to such CPE as requested by Service Provider. End User shall bear the risk of loss while CPE is on its premises, and shall not sell, transfer, lease, encumber or assign any part of the CPE. Further, End User shall not remove, attempt to repair or otherwise tamper with CPE, nor shall it permit others to do so. In the event of loss, sale, transfer, lease, encumbrance or assignment of any CPE, End User will be responsible for payment of charges in the event maintenance, inspection, repair or replacement of the CPE is required. End User shall be responsible for fire, theft or other casualty at End User's locations. Service Provider or Service Provider's underlying vendors retain title to all CPE provided as part of a Service.
- 11.3. Upon expiration or termination of the Service Term of a Service Order or expiration or termination of the Agreement, End User or its agent shall, within thirty (30) days after such expiration or termination of the Service Term, return CPE to Service Provider or its underlying vendors as directed by Service Provider. If End User fails to return the CPE in the time period outlined within this section, or returns the equipment in a damaged condition (reasonable wear and tear excepted), End User shall pay Service Provider the replacement cost of any such CPE in the amount of \$200.00.
- 11.4. Shipping, Risk of Loss and Acceptance. CPE will be shipped to the address designated on End User's Service Order. Title and risk of loss pass to End User, and acceptance occurs, upon delivery to End User or End User's agent at the address designated on End User's Service Order. Service Provider may charge End User for shipping.

**12. Suspension/Termination.** Service Provider may suspend and/or terminate Services, in whole or in part, upon written notice to End User upon the occurrence of any of the following:

- 12.1.1. End User engages in any fraudulent activities.
- 12.1.2. End User violates the AUP.
- 12.1.3. Uncured breach of this Agreement.

**13. Choice of Law/Venue.** The Agreement is governed and to be construed in accordance with the laws of the jurisdiction of North Carolina without regard to its choice of law principles and subject to the clause entitled Injunctive Relief, the state or federal courts of Charlotte, North Carolina will have exclusive jurisdiction in respect of any dispute(s) arising out of or in connection with the relevant Order or the Agreement, as applicable. Each Party irrevocably waives, to the fullest extent allowed by applicable law, any right it may have to a trial by jury in any legal action, the defense of an inconvenient forum and lack of personal jurisdiction in any such action or proceeding

- 14. Injunctive Relief.** Nothing in the Agreement precludes either Party from seeking interim, interlocutory or permanent injunctive relief on an urgent basis from any court of competent jurisdiction.
- 15. Force Majeure.** Neither Party will be responsible for any delay, interruption, or other failure to perform under this Agreement due to acts beyond its control including, without limitation: Acts of God (e.g., natural disasters, lightning); pandemic, epidemic, wars, riots, terrorist activities, and civil commotions; inability to obtain equipment from third party suppliers; cable cuts by third-parties, a LEC, ILEC, CLEC or other Service Provider and Service Provider activities, and other acts of third-parties; explosions and fires; embargoes, strikes, and labor disputes; and laws, orders, rules, regulations, directives, or actions of any government authority. The Party claiming relief under this Section shall notify the other in writing of the existence of the force majeure event relied on and shall be excused on a day-by-day basis to the extent of such delay, interruption or interference until the cessation or termination of said force majeure event.
- 16. Confidentiality.** Except as required by law or regulation, each Party shall, during and for no less than three (3) years after the termination or expiration of the Agreement: (i) use the other Party's Confidential Information (as defined below) only for purposes of the Agreement; (ii) not disclose it to third parties except as provided below; and (iii) protect it from disclosure using the same degree of care it uses for its own similar Confidential Information (but no less than a reasonable degree of care). Either Party may disclose the other Party's Confidential Information only to its employees, agents, and subcontractors (including professional advisors and auditors), who have a need to know for purposes of the Agreement, and who are bound to protect it from unauthorized use and disclosure under the terms of a written agreement at least as protective of the other Party's Confidential Information as the related terms of the Agreement. In addition, information, whether or not Confidential Information, may be disclosed by a receiving Party as may be required or authorized by applicable law, rule, regulation, or lawful process provided that the receiving Party, to the extent practicable and permitted by applicable law, rule, regulation or lawful process, first notifies the disclosing Party in order to permit the disclosing Party to seek protective arrangements. Confidential Information remains the property of the disclosing Party and, upon written request of the disclosing Party, must be returned or destroyed provided however that a Party may retain one copy of the other Party's Confidential Information solely for archiving and auditing purposes or as otherwise may be required by law or regulation. Any such retained Confidential Information will continue to be subject to requirements of confidentiality set out in this clause entitled Confidentiality.
- "Confidential Information" means information (in whatever form): (a) designated as confidential; (b) relating to the Agreement including the existence of the Agreement itself; (c) relating to the Party's business affairs, customers, products, developments, trade secrets, intellectual property rights, know-how or personnel; or (d) received or discovered at any time that the Agreement is in effect, or otherwise in connection with the Agreement, by a Party (including through an agent), which information should reasonably have been understood as Confidential Information of the Party (or one of its subcontractors), either because of legends or other markings, the circumstances of disclosure or the nature of the information itself. Confidential Information does not include information that: (i) is in the possession of the receiving Party free of any obligation of confidentiality at the time of its disclosure; (ii) is or becomes publicly known other than by a breach of this provision; (iii) is received without restriction from a third party free to disclose it; or (iv) is developed independently by the receiving Party without reference to the Confidential Information.
- 17. Records Retention.** Both Parties agree to maintain at their principal place of business for seven (7) years from the date of their preparation, records created during the normal course of business related to his Agreement.
- 18. Dispute Resolution.** In the event either Party commences any legal action, upon final resolution of the matters in controversy, the prevailing Party in such action shall be entitled to recover its reasonable out-of-pocket expenses, court costs and reasonable attorney's fees incurred.
- 19. Assignment.** This Agreement shall be binding on End User and its respective affiliates, successors and assigns. End User shall not assign, sell or transfer this Agreement or the right to receive the Services provided hereunder, whether by operation of law or otherwise, without the prior written consent of Service Provider.
- 20. Relationship.** Neither Party shall have the authority to bind the other by contract or otherwise make any representations or guarantees on behalf of the other. Both Parties acknowledge and agree that the relationship arising from this Agreement does not constitute an agency, joint venture, partnership, employee relationship or franchise.

21. **Waiver.** The terms, covenants, representations and warranties of this Agreement may be waived only by a written instrument executed by the Party waiving compliance. The failure of either Party at any time to require performance of any provision hereof shall not affect the right at a later date to enforce the same. No waiver by either Party of any breach of any term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such breach or the breach of any other term, covenant, representation or warranty of this Agreement.
22. **Rate Adjustments and Material Changes.** Service Provider may adjust its rates and charges, or impose additional rates or surcharges, to End User to recover amounts Service Provider is required by governmental, quasi-governmental or other regulatory authorities to collect on their behalf or to pay to others in support of statutory or regulatory programs, plus allocable amounts related to the administrative costs incurred by Service Provider associated with these charges or programs. Service Provider may also perform periodic reviews of the End User’s accounts and services and reserves the right to adjust End User’s rates and charges upon 30 days written notice in the event of changes in the underlying costs imposed by a third party on Service Provider for the Services provided to End User. Furthermore, Service Provider reserves the right to eliminate any Service offerings and/or modify any charges for Service offerings upon written notice to End User.
23. **Authorization to Sign.** By signing below, each signator warrants and represents that he/she is authorized to execute this Agreement on behalf of the applicable Party and bind such Party to all terms and conditions contained herein.

<b>End User</b>
Signature of Authorized Representative
Print Name:
Title:
Date:

<b>Service Provider</b>
Signature of Authorized Representative
Print Name:
Title:
Date:

**Exhibit E – Telecommunication Services**

This Exhibit and/or Service Orders, is part of, and subject to, the EUSA. All Services provided hereunder are subject to the EUSA, and in the event of a conflict between the EUSA and this Exhibit, this Exhibit will prevail.

1. **Term.** The initial term of this Service (the Service Term) shall be as specified in the applicable Service Order. The initial Service Term shall commence upon the installation of Service.
2. **Product Description.** Telecom carrier services for various communications services, including but not limited to voice, data, and Internet services as requested.
3. **Charges and Rates.** Subject to Section 22 of the EUSA, all charges for Services, including recurring charges and any monthly minimums are specified in the Service Orders and Attachments, if any.
  - 3.1. **Installation and Non-recurring Charges.** Installation and any non-recurring charges shall be specified in the Service Orders or Attachments. If End User terminates the Service request prior to the installation of Service, End User agrees to pay for all costs for pre-engineering and other installation efforts undertaken on behalf of End User plus Early Termination charges, if any, incurred by Service Provider from an underlying carrier.
  - 3.2. **Billing.** Billing shall commence on the day that End User's Service Order has been completed. In the event that Service Provider has provisioned the loop(s) necessary to provide Service, but the End User is not ready to cut over to the facilities, billing will commence no later than 5 days after the loop was installed.
4. **End User Responsibilities.** End User shall be solely responsible for the following; (a) any costs associated with CPE which, if requested by End User, may be provided by Service Provider pursuant to the terms of an separate CPE agreement; and/or (b) local access and access-related charges, including any charges for interconnection, installation, local loops, inside wiring, construction, distance and termination charges and other access-related charges whether assessed by a LEC or otherwise (collectively referred to as "Local Access").
5. **End User Information Requirements.** End User shall provide the necessary information for each Service location set forth in the Order or as otherwise may be requested by Service Provider from time to time.

**Exhibit E-6 –DSL & Cable Internet**

This Exhibit and/or Service Orders, is part of, and subject to, the EUSA. All Services provided hereunder are subject to the EUSA, and in the event of a conflict between the EUSA and this Exhibit, this Exhibit will prevail.

1. **Scope.** If ordered by End User, and accepted by Service Provider, Service Provider shall provide Internet Access Services (“Services”) to End User as described in this Exhibit and at the rates and terms set forth in the associated Service Orders.
2. **Description of Services.**
  - 2.1. **Service Provider Cable Internet** consists of an internet connection using an existing coaxial cable or fiber optic facilities from one of several underlying carriers.
    - 2.1.1. End User may be responsible for providing, or paying for, CPE.
    - 2.1.2. For Cable Internet, End User acknowledges that the Service at times may not deliver the full selected upstream and downstream rate of the selected bandwidth. End User further acknowledges that Service Provider makes no representations, warranties, or guarantees regarding any minimum bandwidth.
    - 2.1.3. For Cable Internet, End User acknowledges that additional construction costs may be identified during the Order and installation process. The End User must pay those construction costs before the installation process begins. If construction costs are identified, the End User will have the option to cancel the Order for the affected Service location without penalty.
3. **IP Addresses.** End User agrees that any IP address assignments and allocations from Service Provider are based on the address lending policy of American Registry for Internet Numbers and applicable agencies. It is an express condition of this Exhibit and the loan of such IP addresses that such assignments and allocations shall terminate and the IP addresses be returned to Service Provider when this Agreement and/or any applicable Exhibit or Service Order expires or terminates. Service Provider reserves the right to recover any IP address space due to inadequate utilization or an AUP violation.