



MASTER SERVICE AGREEMENT

This **MASTER SERVICE AGREEMENT** (“AGREEMENT”) is entered into between **INTELLETRACE INC.**, a **California** corporation (hereinafter “INTELLETRACE”), and the CUSTOMER (hereinafter “CUSTOMER”), for the provision of Services as defined herein. CUSTOMER and INTELLETRACE shall individually be referred to as a “Party” and collectively as the “Parties.” This Agreement includes by reference (i) applicable written service order or quote, as submitted from time to time and accepted by INTELLETRACE as provided herein (each “Order” or “Service Order”), (ii) the attached Service Schedule, Customer Premise Equipment and Managed Services (collectively the “Professional Service Addendum”); (iii) the service level agreements (the “SLAs”), which are attached herein and incorporated by reference; (iv) INTELLETRACE Customer Protection notice as posted on INTELLETRACE’s website; and (v) INTELLETRACE Acceptable Use Policy as posted on INTELLETRACE’s website. These documents provide the terms and conditions applicable to the Services, including Services ordered, pricing and the associated guarantees and credits. All of the terms are made a part of this Agreement through incorporation by reference. The person accepting this Agreement represents that he/she has read and agreed to such terms and the terms of this Agreement.

WHEREAS, INTELLETRACE, by or through its affiliates, is in the business of providing services to its CUSTOMERS;

WHEREAS, CUSTOMER desires to purchase certain services as set forth herein and in certain Service Orders associated herewith; and

WHEREAS, INTELLETRACE is willing to sell such services to CUSTOMER on the terms and conditions set forth in this AGREEMENT, attached Service Orders and Schedule(s), and any associated tariffs if applicable;

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein and other good and valuable consideration, the Parties hereby agree as follows:

ARTICLE I: DEFINITIONS

The following underlined terms shall have the following meanings:

- 1.1 AGREEMENT shall mean this Master Service Agreement, including all addendums and Service Orders.
- 1.2 CUSTOMER shall mean the person or entity to which Service is sold pursuant to this AGREEMENT.
- 1.3 CUSTOMER Equipment means the equipment that will be inserted at the Facility.
- 1.4 Documentation shall mean user manuals and other documentation related to the Services which are made available to CUSTOMER by INTELLETRACE, in the form of recorded documentation on optical or magnetic media, accessible via the Internet or in the form of printed media.
- 1.5 Due Date shall mean the date payment must be received by INTELLETRACE for the Service provided to CUSTOMER under this AGREEMENT. The Due Date applicable to Service provided hereunder shall be as set forth herein.
- 1.6 Effective Date shall mean the date on which Service is deemed to have commenced under this AGREEMENT. Unless otherwise agreed, the Effective Date shall be the earlier of: (i) the first date of use of the Service by CUSTOMER; or (ii) the Firm Order Completion (“FOC”) date as conveyed to CUSTOMER prior to the FOC date; or (iii) the date CUSTOMER has been notified services are available.
- 1.7 End User shall mean a person or entity to which CUSTOMER will provide services utilizing, in whole or in

part, the Service provided by INTELLETRACE to CUSTOMER under this AGREEMENT.

1.8 Facility shall mean each data center and/or third-Party facility.

1.9 Implementation Services means the services selected by CUSTOMER, as indicated on the Service Order, to be provided by INTELLETRACE in connection with the set up and implementation of the Services. As part of the implementation of Services, CUSTOMER will receive limited training in the set up and activation of the Services during the hours of 8 a.m. to 5 p.m. (PT) Monday through Friday. Activations outside this window incur a non-recurring fee.

1.10 Initial Payment means the initial payment set forth in the Service Order consisting of the fees for implementation of Services and the Service Fees for the first month.

1.11 Login means each separate, named individual login account within a CUSTOMER account.

1.12 Service or Services shall mean any service provided by INTELLETRACE to CUSTOMER under this AGREEMENT. Specific Service terms and conditions that shall apply in addition to the terms and conditions contained in this AGREEMENT, are found in one or more Schedule(s) or Addendum(s) found on the INTELLETRACE website, and/or Order Form(s). Services will include, but not limited to, Colocation Services described in Article II, Dedicated Internet Access Services described in Article III and the Service Attachment, Section 20 attached hereto and incorporated herein by reference, Private Line Transportation Services described in Article IV, MPLS Service described in Article V, and Intellex SIP, Hosted PBX and Related Voice Services described in Article VI and the Service Attachment, Section 21 attached hereto and incorporated herein by reference.

1.13 Service Fee or Service Fees means the monthly or annual fees set forth in the Service Order to be paid by CUSTOMER to INTELLETRACE as consideration for INTELLETRACE provision to CUSTOMER of the Services.

1.14 Service Order shall mean the written executed request by CUSTOMER for Service using the INTELLETRACE Order Form in effect at the time of the order. A Service Order shall be deemed incorporated herein at the time it is executed and approved by INTELLETRACE.

1.15 Service Order Term shall mean the minimum period of time for which CUSTOMER commits to purchase the Service specified in the Order Form. If no Service Order Term is notated, then the Service Order Term will default to twelve (12) months.

ARTICLE II - COLOCATION SERVICE

2.1 *Description of Colocation Service.* INTELLETRACE offers half cabinets, and cage space at various locations throughout the United States. In compliance with the security policies and procedures applicable to each Facility, the facility provider ("Facility Provider") shall provide, on a commercially reasonable basis, the CUSTOMER access to the Facility. To facilitate access to the Facility, INTELLETRACE shall provide the Facility Provider the names of CUSTOMER's personnel who need access to the Facility.

2.2 *Shared Cabinet Space.* If CUSTOMER is purchasing shared cabinet space the following additional conditions shall apply:

2.2.1 Neither CUSTOMER nor any of its personnel will be allowed access to the shared cabinet or the Facility without INTELLETRACE personnel escort. All Services required by CUSTOMER or any of its personnel including, but not limited to, installation of equipment in the shared cabinet must be performed as Remote Hands Service at an hourly rate.

2.2.2 The CUSTOMER's power charge shall be outlined on the Service Order.

2.3 *Multi-Firm Cabinet.* If CUSTOMER wishes to provide shared space in a cabinet ("Multi-Firm Cabinet") to a third Party (a "Multi-Firm Cabinet Customer") the following additional terms and conditions shall apply:

2.3.1 CUSTOMER shall submit a written request to INTELLETRACE for approval to use a cabinet as a Multi-Firm Cabinet. The request must include the names of each Multi-Firm Cabinet Customer that will be located in the Multi-Firm Cabinet.

2.3.2 INTELLETRACE may approve or reject such request for any reason in INTELLETRACE's sole discretion.

2.3.3 If the request is approved by INTELLETRACE, CUSTOMER agrees to pay the non-recurring Multi-Firm Cabinet Surcharge.

2.3.4 CUSTOMER must provide INTELLETRACE with written notice of any changes to its Multi-Firm Cabinet Customer(s) at least on a quarterly basis.

2.3.5 CUSTOMER's failure to provide the written request as set forth in 2.3.4 above may be considered a material breach of this Agreement and INTELLETRACE shall have the right to terminate this Agreement as provided below and, where applicable, collection an applicable penalty fee.

2.4 *Power Origin.* CUSTOMER agrees that power may be drawn from multiple power feeds. Each power circuit provided in a co-located cabinet has an amperage rating capacity. The National Electric Code standard enforced by the Occupational Health and Safety Association ("OSHA") warns that a power circuit consistently over eighty (80%) percent of its capacity may cause safety hazards to personnel and potential property damage. Therefore, at no time shall the combined power load drawn from the circuit paid exceed eight (80%) percent of the breakered capacity of a single circuit. If, through power usage reports, INTELLETRACE determines that CUSTOMER is drawing more than eighty (80%) percent of the breakered capacity of a single circuit over the circuit pair, CUSTOMER shall have thirty (30) days from the date of a power overage notification to (i) reduce circuit pair power consumption to within eighty (80%) percent of the breakered capacity of a single circuit; or (ii) if additional power is available, order an additional circuit pair (collectively, a "Power Overage Cure"). Failure of CUSTOMER to implement a Power Overage Cure may be considered a material breach of this Agreement and INTELLETRACE shall have the right to terminate this Agreement as provided below. In addition, during the month(s) of the overage, CUSTOMER will be charged two times the ongoing monthly fee for the cabinet associated with the circuit experiencing the power overage.

2.5 *Remote Hands Service.* INTELLETRACE will charge CUSTOMER for Remote Hands Service provided Monday through Friday, 6:30 a.m. – 9:00 p.m. colocation center local time, excluding holidays observed by INTELLETRACE, at an hourly rate. All Remote Hands Services provided during any other hours shall be charged at the After Hours/Expedited Rate. Technicians will be available to assist with installation, configuration, troubleshooting, documentation, maintenance, packaging and handling of CUSTOMER equipment for shipping ("Remote Hands Service"). CUSTOMER is required to provide detailed written instructions necessary to complete any Remote Hands Service requested via email to support@inteltrace.com. Billing amounts will be calculated in fifteen (15) minute increments. A minimum charge of fifteen (15) minutes will be applied to all Remote Hands Services.

2.6 *Ownership and Return of Equipment.* CUSTOMER warrants and represents that all CUSTOMER Equipment installed by CUSTOMER is the sole property of CUSTOMER. CUSTOMER assumes the responsibility for the risk of loss and liability for all damage to, or loss or, any other CUSTOMER Equipment, except to the extent such damage or loss is due to the willful misconduct, gross negligence, or fraud of INTELLETRACE, its agents or subcontractors. CUSTOMER shall be liable for securing all necessary rights and licenses for software, programs, and code placed on CPUs and storage devices. INTELLETRACE disclaims any and all liability for CPUs and the contents of such CPUs and storage devices.

2.7 *Proprietary / Confidential Information.*

2.7.1 CUSTOMER acknowledges that the Service, systems, and the part(s) thereof are trade secrets proprietary and unique to INTELLETRACE, and that copyright and patent rights of INTELLETRACE may also exist. CUSTOMER acknowledges and agrees that INTELLETRACE's third Party vendors and service providers, including, but not limited to software, data, communications, and other service providers, have exclusive proprietary rights in their respective information, data and systems. INTELLETRACE agrees to keep proprietary the CUSTOMER Equipment and any other information that is marked "Proprietary" and is provided to INTELLETRACE for purposes of performing the Services.

2.7.2 CUSTOMER acknowledges and agrees that, during the Term of this Agreement, it may obtain confidential and/or proprietary information related to INTELLETRACE and its systems, INTELLETRACE Equipment, other INTELLETRACE customers or other information whether oral or written, that is provided by INTELLETRACE, its service providers or that CUSTOMER may have access to while at the Facility (collectively "Confidential Information").

2.7.3 All such Confidential Information shall be deemed confidential upon disclosure to CUSTOMER. CUSTOMER shall use the Confidential Information solely in a manner consistent with the purposes of this Agreement; shall hold such Confidential Information in confidence; and shall not use, disclose, copy, or publish any such Confidential Information without the prior written approval of INTELLETRACE.

2.7.4 CUSTOMER may not make any copies of Confidential Information except for those copies required for use by CUSTOMER Personnel in connection with CUSTOMER's performance of obligations or exercise of rights under this Agreement. Each copy, including its storage media, shall be marked CONFIDENTIAL and include all notices, which appear on the original. CUSTOMER shall implement and maintain any appropriate security program including appropriate physical, electronic, and procedural safeguards, to: (i) provide for the security and confidentiality of Confidential Information; (ii) protect against any threats or hazards to the security or integrity of Confidential Information; and (iii) prevent unauthorized access to or use of Confidential Information. CUSTOMER shall promptly notify INTELLETRACE of: (i) any disclosure, access to or use of its Confidential Information in breach of this Agreement; and (ii) any unauthorized intrusion into any systems or equipment containing Confidential Information of INTELLETRACE or a third Party.

2.7.5 Notes and other documents referencing or relating to Confidential Information may be made and kept by CUSTOMER, but shall be governed by this Agreement until they are destroyed. All intellectual property rights associated with the Confidential Information, including without limitation, patent, trademark, copyright, trade secrets, and moral rights shall remain INTELLETRACE's, or the applicable third Party's property rights.

2.7.6 Notwithstanding the foregoing, CUSTOMER may disclose Confidential Information: (i) to the extent requested by a court or a government agency with regulatory jurisdiction over CUSTOMER; or (ii) to their respective employees, directors, and other agents solely for use consistent with the purposes of this Agreement. The duties in this section do not apply to data, information, or techniques that are: (i) lawfully within CUSTOMER's possession prior to the date of this Agreement and not under a duty of non-disclosure; (ii) voluntarily disclosed to CUSTOMER by a third-Party, so long as CUSTOMER is not aware that the third-Party is under an obligation not to reveal such data, information or techniques; (iii) developed by CUSTOMER independently of the disclosure; or (iv) generally known or revealed to the public. Except as set forth above, the obligation of non-disclosure shall survive indefinitely.

2.7.7 CUSTOMER acknowledges that INTELLETRACE, because of the nature of the Confidential Information, would suffer irreparable harm in the event of a material breach of the provisions of this section of this Agreement in that monetary damages would be inadequate to compensate INTELLETRACE for such a breach, and that in the event of any material breach or threatened material breach by of the provisions of this section, INTELLETRACE shall be entitled, in addition to such other legal or equitable remedies which might be available, to injunctive relief in any court of competent jurisdiction against the threatened material breach or continuation of any such material breach without showing or proving any actual damages sustained. If INTELLETRACE prevails in any action brought to enjoin a material breach or threatened breach of this provision, it shall be entitled to reasonable attorneys' fees and costs in connection with such legal proceeding.

2.8 *Regulatory Obligations.* CUSTOMER AGREES THAT INTELLETRACE, WHEN REQUIRED TO DO SO IN FULFILLMENT OF STATUTORY OBLIGATIONS, MAY TEMPORARILY OR PERMANENTLY, UNILATERALLY CONDITION, MODIFY, OR TERMINATE THE RIGHT OF ANY OR ALL INDIVIDUALS OR ENTITIES TO RECEIVE OR USE THE SERVICE. INTELLETRACE SHALL UNDERTAKE REASONABLE EFFORTS TO NOTIFY CUSTOMER OF ANY SUCH CONDITION, MODIFICATION, OR TERMINATION, AND CUSTOMER SHALL PROMPTLY COMPLY WITH ANY SUCH NOTICE WITHIN SUCH PERIOD OF TIME AS MAY BE DETERMINED IN GOOD FAITH BY INTELLETRACE TO BE NECESSARY, CONSISTENT WITH ITS STATUTORY OBLIGATION. ANY INDIVIDUAL OR

ENTITY THAT RECEIVES SUCH NOTICE SHALL HAVE AVAILABLE TO IT SUCH PROCEDURAL PROTECTION AS IS PROVIDED TO IT BY THE SECURITIES EXCHANGE ACT OF 1934 AND THE APPLICABLE RULES THEREUNDER.

2.9 *Security Obligations.* CUSTOMER and its personnel, when deemed appropriate by INTELLETRACE in its sole discretion, will be issued a visitor identification card by INTELLETRACE. Such cards will be surrendered by CUSTOMER and its personnel upon demand by INTELLETRACE and without further demand upon expiration or termination of this Agreement.

ARTICLE III – DEDICATED INTERNET ACCESS

3.1 *Description of Dedicated Internet Access Services.* Services include but are not limited to DS1, DS3, OC3, OC12, OC48, OC192, Ethernet over Copper, Fast Ethernet, Gigabit Ethernet, and 10 Gigabit Ethernet. Services are available at CUSTOMER-designated locations. Service will be provided by INTELLETRACE and Underlying Carrier (“CARRIER”). The entire usable bandwidth for each Service is available to CUSTOMER for its exclusive use, twenty-four hours a day, seven days a week. INTELLETRACE will provide to CUSTOMER and CUSTOMER will procure from INTELLETRACE certain Internet Access Service as described on the Service Order.

3.2 *Domain Name Service.* Domain Name Service (“DNS”) is a cornerstone capability/requirement in any use of the Internet. Domain names and DNS servers are essential to the proper function of anyone who uses or provides services via the Internet. As specified by Internet RFC’s 1034 and 1035, “[t]here must be a valid Internet Domain Name attached to any network connected to the Internet.” As such, CUSTOMER must have a registered Internet Domain Name before INTELLETRACE can host primary DNS for CUSTOMER’s network, or provide secondary DNS for CUSTOMER’s network.

3.3 Working Connection validation:

The following methods will be used by Intelletrace to validate that its Dedicated Internet Access is functioning between the CARRIER’s equipment and CUSTOMER’s equipment, as specified, further. These methods will determine whether INTELLETRACE has met its obligations to provide a working interconnection with the CARRIER’s routing equipment.

3.3.1

CUSTOMER has no terminating equipment installed at CUSTOMER’s end of the Dedicated Internet Access. The Dedicated Internet Access is considered functioning or working when the circuit is available for customer use and the CUSTOMER is notified by INTELLETRACE of its availability.

3.3.2

Customer has working router attached to the Dedicated Internet Access. Intelletrace will send a series of PING’s to the router and watch for the PING’s to be echoed back without errors. If the Physical link test is affirmative and the data returns without error, INTELLETRACE has met its obligation for connectivity between CUSTOMER’s location and CARRIER’S terminating equipment.

3.3.3

Reserved for future use.

3.4 CUSTOMER’s network, CUSTOMER will be charged time and materials at INTELLETRACE’s prevailing rates. INTELLETRACE requires that CUSTOMER uses static routing protocol according to the specifications contained in RFC1812. BGP4 routing protocol may be used if approved by INTELLETRACE’s Professional Service (IPS) department prior to implementation and use of the BGP4 protocol. If BGP4 is approved, CUSTOMER will be allowed to transit CUSTOMER’s approved autonomous system number across CARRIER’S network. Requests to transit any additional autonomous system numbers across CARRIER’S network may be approved on a case-by-case basis and for a fee to be determined at the time of request. CARRIER broadcasts its BGP4 information to its network neighbors according to specifications contained in RFC1267. CUSTOMER may request that INTELLETRACE respond to route failures. If the failure is caused by CUSTOMER’s network, this CUSTOMER will be charged time and materials at INTELLETRACE’s prevailing rates.

3.5 *Burstable Internet Service.* With Burstable Service, CUSTOMER receives full Internet Dedicated Service access to the CARRIER and can burst to the lesser of the full bandwidth of the Local Access Loop or Internet Port. Monthly billing is based on the Bandwidth Commitment level selected by CUSTOMER.

3.6 *Measured Use Level.* To calculate CUSTOMER's Measured Use Level, the CARRIER will take samples of CUSTOMER's usage every five (5) minutes (i.e., 8640 samples in a 30-day month). The CARRIER will then discard the highest five percent (5%) of the samples taken (i.e., 432 samples), and determine the Usage Level based on the highest remaining sample for that month. CUSTOMER will be charged for over usage at prevailing rates.

3.7 *Equipment or Software Not Provided by INTELLETRACE.*

3.7.1. Except as otherwise agreed to by the parties, INTELLETRACE shall not be responsible for the provision and installation of equipment or software not provided by INTELLETRACE; nor shall INTELLETRACE be responsible for the transmission or reception of information by equipment or software not provided by INTELLETRACE.

3.7.2 It is expressly understood that CUSTOMER shall be responsible for the use and compatibility of equipment or software not provided by INTELLETRACE. In the event that CUSTOMER uses equipment or software not provided by INTELLETRACE that impairs CUSTOMER's use of the Service, CUSTOMER shall nonetheless be liable for payment for the Service. Upon notice from INTELLETRACE that the equipment or software not provided by INTELLETRACE is causing or is likely to cause hazard, interference or Service obstruction, CUSTOMER shall eliminate the likelihood of hazard, interference or Service obstruction. At CUSTOMER's request, INTELLETRACE will trouble shoot difficulties caused by equipment or software not provided by INTELLETRACE. CUSTOMER shall pay INTELLETRACE for these troubleshooting Services at current prevailing rates.

3.7.3 INTELLETRACE shall not be liable if changes in the Service cause CUSTOMER's equipment or hardware to become obsolete, require modification or alteration, or otherwise affect performance of equipment or hardware.

3.7.4 In the event CUSTOMER provides one or more routers to interface with the Service, the following terms apply:

3.7.4.1 INTELLETRACE reserves the right to allow or reject the make, model, and or software revision of CUSTOMER-provided router to be used as the gateway to the Service.

3.7.4.2 CUSTOMER will cooperate with INTELLETRACE in setting the initial configuration for the router's interface into the Service.

ARTICLE IV - PRIVATE LINE TRANSPORT SERVICE

4.1 *Description of Private Line Transport Services.* INTELLETRACE offers the following types of Private Line Transport Services:

4.1.1 *Services.* As indicated in Section 3.1 above, Services include but not limited to DS1, DS3, OC3, OC12, OC48, OC192, Ethernet over Copper, Fast Ethernet, Gigabit Ethernet, and 10 Gigabit Ethernet. Services are available between CUSTOMER-designated locations, including two CUSTOMER end locations between an INTELLETRACE or underlying carrier hub and a CUSTOMER premise, or between two carrier hubs. Each Service is billed on a fixed monthly basis. The entire usable bandwidth for each Service is available to CUSTOMER for its exclusive use, twenty-four hours a day, seven days a week.

4.1.2 *Dedicated SONET Systems.* A dedicated SONET system is a physically diverse synchronous optical network ("SONET") ring built for the exclusive use of CUSTOMER. CUSTOMER equips the system by purchasing ports. All capacity on the dedicated system is for the exclusive use of the CUSTOMER. Each ring has a minimum of two nodes.

4.1.3 *DS-1 Service.* DS-1 Service is a dedicated, high-capacity, full duplex channel with a line speed of

1.544 Mbps synchronous data having a line signal format of either Alternate Mark Inversion (AMI) or Binary 8 Zero Substitution (B8ZS) and either Superframe (D4) or Extended Superframe Formats (ESF). DS-1 Service has the equivalent capacity of 24 Voice Grade (VG) Services. AMI can support 24 each 56 Kbps channels and B8ZS can support 24 each 64 Kbps channels.

4.1.4 *DS-3 Service.* DS-3 Service is a dedicated, high-capacity, full duplex channel with a line speed of 44,736 Mbps synchronous data having a line code of bipolar with three zero substitution (B3ZS). DS-3 Service has the equivalent capacity of 28 DS-1 Services at 1.544 Mbps or 672 Voice Grade (VG) Services.

4.1.5 *OC-3 Service.* OC-3 Service is a dedicated, high-capacity, full duplex channel with a line speed of 155.52 Mbps synchronous data. OC-3 Service has the equivalent capacity of 3 DS-3 Services, 84 DS-1 Services, or 2,016 VG Services.

4.1.6 *OC-12 Service.* OC-12 Service is a dedicated, high-capacity, full duplex channel with a line speed of 622.08 Mbps synchronous data. OC-12 Service has the equivalent capacity of 4 OC-3 Services, 12 DS-3 Services, 336 DS-1 Services, or 8,064 VG Services.

4.1.7 *OC-48 Service.* OC-48 Service is a dedicated, high-capacity, full duplex channel with a line speed of 2,488 Mbps synchronous data. OC-48 Service has the equivalent capacity of 4 OC-12 Services, 16 OC-3 Services, 48 DS-3 Services, 1,344 DS-1 Services, or 32,256 Services.

4.1.8 *OC-192 Service.* OC-192 Service is a dedicated, high-capacity, full duplex channel with a line speed of 9,953 Mbps synchronous data. OC-192 Service has the equivalent capacity of 4 OC-48 Services, 16 OC-12 Services, 48 OC-3 Services, 5,376 DS-1 Services, or 129,024 VG Services.

4.1.9 *Gigabit Ethernet Service.* Gigabit Ethernet Service is a dedicated, high-capacity, full duplex data. The point-to-point Gigabit Ethernet Service supports bandwidths between 100 Mbps and 1000 Mbps. This Service is protocol agnostic, for Layer 2 Ethernet control protocols.

4.1.10 *Fast Ethernet Service.* Fast Ethernet Service is a dedicated, high-capacity, full duplex data. The point-to-point Fast Ethernet Service supports bandwidths up to 100 Mbps. This Service is protocol agnostic, for Layer 2 Ethernet control protocols.

4.1.11 *Optical Wavelength Service.* Optical Wavelength Service is a dedicated, linear routed, unprotected, point-to-point transport service. Service handoff types may vary, and diversity may be offered at the CUSTOMER's request, and is subject to availability.

4.2 *Interface Requirements for Private Line Transport Service.*

4.2.1 *DS-1 Interface Requirements.* The interface at Network Interface and Local Loop Interface will be at DSX-1 cross connect. CUSTOMER must specify signal and frame format when ordering Service.

4.2.2 *DS-3 Interface Requirements.* The interface at Network Interface and Local Loop Interface will be at DSX-3 cross connect located in the CUSTOMER DSX-3.

4.2.3 *OC-3 Interface Requirements.* The interface at Network Interface and Local Loop Interface will be at the CARRIER demarcation point in the CARRIER Point of Termination.

4.2.4 *OC-12 Interface Requirements.* The interface at Network Interface and Local Loop Interface will be at the CARRIER demarcation point in the CARRIER Point of Termination.

4.2.5 *OC-48 Interface Requirements.* The interface at Network Interface and Local Loop Interface will be at the CARRIER demarcation point in the CARRIER Point of Termination.

4.2.6 *OC-192 Interface Requirements.* The interface at Network Interface and Local Loop interface will be at the CARRIER demarcation point in the CARRIER Point of Termination.

4.2.7 *Fast Ethernet*. The interface at Network Interface and Local Loop Interface will be at the CARRIER demarcation point in the CARRIER Point of Termination.

4.2.8 *Gigabit Ethernet Requirements*. The interface and local loop interface will be at the CARRIER demarcation point in the CARRIER Point of Termination.

4.2.9 *Wavelength Service Interface Requirements*. The interface at Network Interface and Local Loop Interface will be at the CARRIER demarcation point in the CARRIER Point of Termination.

ARTICLE V – MPLS SERVICE

5.1 *Description of MPLS Service*. INTELLETRACE's MPLS Service provides customers with secure, any-to-any connectivity between their enterprise sites. The MPLS protocol is utilized to interconnect the CUSTOMER network and maintain data privacy. Service will be provided by INTELLETRACE and the underlying carrier. The entire usable bandwidth for each Service is available to CUSTOMER for its exclusive use.

5.2 *MPLS Core Service Components*.

5.2.1 *Local Access Facilities*. Customer will pay INTELLETRACE a Monthly Recurring Charge (hereafter the "MRC") and Non-Recurring Charge (hereinafter the "NRC") for Local Access Facilities which connect the CUSTOMER to the MPLS Port.

5.2.2 *MPLS Port*. Each CUSTOMER location will require a MPLS Port. CUSTOMER will pay INTELLETRACE a MRC and a NRC for each MPLS Port.

5.2.3 Additional network configurations of capabilities, including Class of Service (hereafter the "CoS"), may be available. Depending on the specific CUSTOMER solution, additional pricing may apply.

5.3 *Demonstration of a Working Connection*. The following methods demonstrate that CARRIER's Internet data network is functioning between the CARRIER's equipment and CUSTOMER's equipment, further demonstrating that INTELLETRACE has met its obligations to provide a working interconnection with the CARRIER's routing equipment. Where a CUSTOMER has a working router attached sending data to the router and watching for them to be echoed back without errors; if the physical link test is affirmative and the data returns without errors, INTELLETRACE has met its obligation for connectivity between CUSTOMER's location and CARRIER'S terminating equipment.

5.4 *Installation*. Installation may be scheduled between the hours of 9 a.m. and 6 p.m. (PT), Monday through Friday (excluding holidays). If installation is required outside of these hours, there is an additional fee.

5.5 *Equipment or Software not Provided by INTELLETRACE*.

5.5.1 Except as otherwise agreed to by the parties, INTELLETRACE shall not be responsible for the provision and installation of equipment or software not provided by INTELLETRACE; nor shall INTELLETRACE be responsible for the transmission or reception of information by equipment or software not provided by INTELLETRACE.

5.5.2 It is expressly understood that CUSTOMER shall be wholly responsible for the use and compatibility of equipment or software not provided by INTELLETRACE. In the event that CUSTOMER uses equipment or software not provided by INTELLETRACE, which impairs CUSTOMER's use of the Service, CUSTOMER shall nonetheless be liable for payment for the Service. Upon notice from INTELLETRACE that the equipment or software not provided by INTELLETRACE is causing or is likely to cause a hazard, interference, or Service obstruction/interruption, CUSTOMER shall eliminate the likelihood of hazard, interference, or Service obstruction/interruption at CUSTOMER's own expense. At CUSTOMER's request, INTELLETRACE will trouble shoot difficulties caused by equipment or software not provided by INTELLETRACE. CUSTOMER shall pay INTELLETRACE for these troubleshooting Services at current prevailing rates.

5.5.3 INTELLETRACE shall not be liable if changes in the Service cause CUSTOMER's equipment or hardware to become obsolete, require modification or alteration, or otherwise affect performance of equipment or hardware.

5.5.4 In the event CUSTOMER provides one or more routers to interface with the Service, the following terms apply:

5.5.4.1 INTELLETRACE reserves the right to allow or reject the make, model, and or software revision of CUSTOMER-provided router to be used as the gateway to the Service.

5.5.4.2 CUSTOMER will cooperate with INTELLETRACE in setting the initial configuration for the router's interface into the Service.

ARTICLE VI – VOICE SERVICES

6.1. *Description of Voice Service.* INTELLETRACE offers certain SIP, Hosted PBX, and related Voice Services (hereinafter "INTELLEVOX") including telephone and other equipment (collectively "Equipment") subject to terms and conditions herein. INTELLETRACE hereby grants CUSTOMER access to the Services for use by the number of Agents and Logins set forth in the Service Order, for CUSTOMER's own internal business purposes, which shall be deemed to include activities CUSTOMER may perform on behalf of its own Customers. INTELLETRACE grants CUSTOMER the right to use the Documentation in connection with its use of the Services.

6.1.1 *Conditions.* CUSTOMER acknowledges and agrees that INTELLETRACE's obligations to provide the Services are expressly conditioned upon (i) CUSTOMER's payment for Services (as described in section 6.1.4) and all Service Fees as and when due, and (ii) CUSTOMER's satisfaction of the technical requirements set forth in the Documentation for the Services made available to CUSTOMER by INTELLETRACE, as the same may be updated by INTELLETRACE from time to time.

6.1.2 *Additional Services.* At CUSTOMER's option, the number of Services may be increased at any time during the Initial Term or Renewal Term (any such increase, "Additional Services") by agreeing to a Service Order or Addendum, signed by CUSTOMER and setting forth the specific Additional Services desired. Each Service Order or Addendum shall be subject to INTELLETRACE's acceptance, which shall be given if INTELLETRACE thereafter provides Additional Services. Upon acceptance by INTELLETRACE, such Service Order or Addendum shall be deemed an amendment to the AGREEMENT, subject to all of the terms and conditions herein, and the Service Fees shall be increased to reflect the Additional Services, subject to the same pricing and payment terms as are set forth in the Service Order. Additional Services shall be provided for a term that is coterminous with the Initial Term or Renewal Term of this Agreement.

6.1.3 *Implementation Services.* INTELLETRACE will use commercially reasonable efforts to perform the Implementation Services covered in the Initial Payment.

6.1.4 *Additional Professional Services.* If CUSTOMER requests Professional Services, such as support services not provided under this AGREEMENT, training, or other consulting services, INTELLETRACE may (but has no obligation to) provide such Professional Services or recommend appropriate outside consultants. If INTELLETRACE agrees to provide such additional Professional Services at CUSTOMER's request, fees for such Professional Services may be provided pursuant to a fixed fee or INTELLETRACE's standard time and material rates. Such additional Professional Services will be provided pursuant to an addendum and the other terms and conditions of this AGREEMENT, and may be described in an agreed-upon statement of work.

ARTICLE VII - TERM; SCOPE OF AGREEMENT

7.1 *Agreement Term.* The term of the AGREEMENT shall begin on the Effective Date and shall continue for an

Initial Term as stated on the Order Form (the "Initial Term"). At the end of the Initial Term, this AGREEMENT will automatically renew for an additional twelve (12) months (the "Renewal Term") until either Party serves the other Party with written notice as outlined in section 7.3 herein of such Party's intent not to renew the Services at least sixty (60) days prior to expiration of the then current term. The Initial Term and any Renewal Term are collectively referred to as the "Agreement Term".

7.2 *Service Term.* The term for each Service provided on the applicable Service Order shall have a minimum term as notated on the Service Order (the "Initial Term"). If no term is specified in the applicable Service Order, the term will be twelve (12) months. At the end of the Initial Term, the Service contained on the Service Order shall automatically renew for an additional twelve (12) months (the "Renewal Term") until either Party serves the other Party with written notice as outlined in section 7.3 herein of such Party's intent not to renew the Service at least sixty (60) days prior to the expiration of the then current term. The rights and obligations of the Parties with regard to such Service, including the price for such Service, shall continue to be governed by this AGREEMENT and any ATTACHMENT until the expiration of such Service Order Term even if the expiration of the Service Order is after the expiration of this AGREEMENT. In the event of early termination of this AGREEMENT by CUSTOMER, or in the event CUSTOMER cancels a Service prior to expiration of the applicable Service Order Term, CUSTOMER shall be subject to an early termination charge. The early termination charge shall be equal to One Hundred Percent (100%) of the total unpaid charges for Service through the end of the term selected on the Order Form. Additionally, One Hundred Percent (100%) of the Installation Charges will apply, even if those charges had been initially waived.

7.3 *Written Notice.* No verbal communication between CUSTOMER and INTELLETRACE is an acceptable method of notice. All communication regarding termination, cancellation, and disconnection of AGREEMENT or Service Order, is required to be provided to the other Party via written notice. Allowable methods of written notice are limited to email, USPS mail, overnight delivery, and fax. It is the responsibility of CUSTOMER to obtain acknowledgment from INTELLETRACE that written notice has been received by INTELLETRACE. Failure to secure such acknowledgement from INTELLETRACE deems the written notice invalid.

7.4 *Provision of Services.* Subject to the terms and conditions set forth in this AGREEMENT, INTELLETRACE shall provide to CUSTOMER, and CUSTOMER shall accept and pay for, the Services as requested by CUSTOMER in the Service Order(s) accepted by INTELLETRACE. INTELLETRACE shall not be obligated to accept any Service Order. A new Service Order is required for each addition/change in any Service covered by a previous Service Order. Each Service Order shall specify a minimum Service Order Term for which CUSTOMER shall be committed to purchase each specified service. If no Service Order Term is specified, the Service Order Term will default to twelve (12) months. Once the Service Order is executed by the authorized company representative of CUSTOMER and accepted by INTELLETRACE by countersigning the Service Order prior to INTELLETRACE's delivery of the Service to CUSTOMER, it shall be deemed effective.

7.5 *Title to Equipment.* This AGREEMENT shall not, and shall not be deemed to, convey to CUSTOMER, or any End User, title to any transmission facilities, equipment used by INTELLETRACE to provide the Service under this AGREEMENT.

7.6 *System Maintenance.* In the event INTELLETRACE, or its underlying carrier, determines it is necessary to interrupt and/or temporarily disconnect Services or there is a potential for Services to be interrupted for the performance of system maintenance, INTELLETRACE will use commercially reasonable efforts to notify CUSTOMER prior to the performance of such maintenance. In no event will interruption of and/or temporary disconnection of Services for system maintenance constitute a failure of performance by INTELLETRACE.

ARTICLE VIII - RELATIONSHIP WITH END USERS

8.1 Where the CUSTOMER is not the End User, CUSTOMER shall be the exclusive CUSTOMER of record for all of the Services and shall be responsible for all obligations associated with the taking of Service hereunder, including without limitation, all payment obligations. INTELLETRACE shall have no obligation to deal directly with any End User of CUSTOMER for any purpose relating to the Services, including but not limited to sales, ordering, billing, maintenance, or repair. CUSTOMER is solely responsible for all products and services it provides to its End Users, for collecting amount owed to CUSTOMER by End Users and CUSTOMER's inability to obtain such payment(s) shall not excuse CUSTOMER from any obligation to INTELLETRACE hereunder.

8.2 No End User or any other third party shall be considered a party to or beneficiary of this AGREEMENT or have any claim under this AGREEMENT against either INTELLETRACE or CUSTOMER. CUSTOMER agrees to indemnify and hold harmless INTELLETRACE from any and all claims by its End Users (including without limitation any claim with respect to any Service provided by CUSTOMER which may incorporate any of the INTELLETRACE Service provided hereunder).

ARTICLE IX – SUSPENSION/TERMINATION

9.1 Either Party to this AGREEMENT may terminate this AGREEMENT and all Service Orders on Thirty (30) days' written notice if the other Party materially breaches this AGREEMENT and the breaching Party fails to cure the breach within such written notice and cure period, *provided that* the notice and cure period for breach of any of CUSTOMER's payment obligations hereunder (including the Credit Schedule) or any obligations under Article XIV (Compliance With Laws) shall be Two (2) business days. This AGREEMENT may be immediately suspended or terminated by INTELLETRACE without notice if INTELLETRACE, in its reasonable business judgment, determines that its network integrity is in jeopardy, that any Service is being used, or planned to be used, in an unlawful manner, or as provided in Sections 11 and 13 herein.

9.2 If this AGREEMENT is suspended or terminated after the Effective Date by INTELLETRACE for CUSTOMER's breach pursuant to Section 9.1 above, or by CUSTOMER except as permitted under Section 9.1 above, CUSTOMER shall pay to INTELLETRACE, immediately upon demand, all sums due and unpaid whether those sums have been reflected on an invoice or not. CUSTOMER shall also pay to INTELLETRACE, immediately upon demand, any unsatisfied minimum usage and/or early termination charges as set forth in all applicable Service Order(s) and Service Attachment.

9.3 *Specific Provisions Regarding the Cancellation of a Pending Service Order.* Subject to the above, a CUSTOMER may, by written notice, cancel an order subsequent to its submission to INTELLETRACE but prior to installation. In such circumstances, however, INTELLETRACE will impose the following per circuit cancellation charges:

10GigE	GigE	FastE	OC-12	OC-3	DS-3	DS-1
\$5,500	\$4,000	\$3,500	\$5,000	\$3,000	\$1,300	\$400

If CUSTOMER terminates AGREEMENT prior to installation date for Tariffed and non-Tariffed Services, one hundred percent (100%) of Installation Charges will apply, even if those charges had been initially waived. INTELLETRACE shall also have the right to pass through any and all charges assessed by third Parties for facilities or services associated with the canceled order(s), including all recurring and non-recurring charges and charges for local access facilities. Where special construction of facilities has been started prior to the cancellation, INTELLETRACE shall have the right to pass through all the costs it has incurred or has been billed in connection with the special construction. Special construction is considered to have started when a third Party or INTELLETRACE incurs any expense in connection therewith, or in preparation therefore.

9.4 CUSTOMER understands and agrees that any breach by CUSTOMER of its obligations under this AGREEMENT shall also be deemed a breach by CUSTOMER of its obligations under any other agreements it has entered into with INTELLETRACE and/or its affiliates and understands and agrees that such breach shall authorize INTELLETRACE and/or any of its affiliates to immediately suspend performance under, and/or terminate, said agreements with CUSTOMER for default if such breach(es) have not been cured within the time provided for in this AGREEMENT. In addition, as set forth herein below, CUSTOMER understands and agrees that INTELLETRACE shall have the right to offset any amounts owed by CUSTOMER under this AGREEMENT against any amounts owed by INTELLETRACE to CUSTOMER, including any affiliated entity or person, under any other Agreement or otherwise.

9.5. Nothing in this Section shall be deemed to lessen any specific right set forth in Section 11.3 hereof.

ARTICLE X- RATES AND CHARGES

10.1 *Rates and Charges.* The rates and charges for the Services shall be those set forth in the applicable Service Order(s). This AGREEMENT is also subject to INTELLETRACE's state and federal tariffs, if any, as applicable and as amended by INTELLETRACE in its discretion from time to time. INTELLETRACE shall not have any obligation to provide actual notice to CUSTOMER of any change in its tariffs. For any INTELLETRACE service used by CUSTOMER for which a rate is not specified in this AGREEMENT or in INTELLETRACE's tariffs, the Parties shall mutually agree on the applicable rate for the Service, but if the Parties do not agree and CUSTOMER utilizes the Service, INTELLETRACE's standard business rate shall apply.

10.2 *Demarcation of Service.* All pricing quoted or contained on the Service Order, unless otherwise specified, is valid to the underlying carrier's Minimum Point of Entry (MPOE). Additional non-recurring demarcation extension fees may apply should an extended demarcation be requested by CUSTOMER. Such non-recurring demarcation extension fee is building specific and varies depending upon the distance and difficulty of the demarcation extension. Should CUSTOMER request a demarcation extension, and if the non-recurring demarcation fee totals one thousand dollars (\$1,000.00) or less, CUSTOMER hereby approves such fee.

10.3 *Expedite and Change Orders.* In the event CUSTOMER requests expedited services and/or changes to Service Orders ("Expedite Orders"), and INTELLETRACE agrees to such request, INTELLETRACE shall have the right to pass through to CUSTOMER the charges INTELLETRACE is assessed by any supplying Parties (e.g., local access providers) for such expedited services and/or changes to Service orders involved at the same rate to CUSTOMER as well as any internal costs incurred by INTELLETRACE in connection with such services. INTELLETRACE may condition its agreement to expedite upon CUSTOMER's pre-payment of such additional charges to INTELLETRACE. In addition to these pass-through charges and costs, CUSTOMER shall pay to INTELLETRACE a one-time fee of \$1,500.00

("Expedite Fee"). This fee shall be paid in full at the time that each request is made. While INTELLETRACE will process all Expedited Orders on a priority basis, such priority processing is not a guarantee of an earlier FOC date, and CUSTOMER shall not be entitled to a refund of any third-Party charges, internal costs, or the Expedite Fee, in whole or part, in such event.

10.3.1 *Change of Requested Service Date Charges.* The following charges apply when a change of the Requested Service Date is the only CUSTOMER requested modification to the original Service Order applicable to the Service in question.

10GigE	GigE	FastE	OC-12	OC-3	DS-3	DS-1
\$1,500	\$700	\$700	\$1,000	\$700	\$500	\$400

10.3.2 *Change of Order Charges.* Change of Order Charges apply when CUSTOMER requests a modification to the information contained in a fully executed or binding Service Order prior to completion of installation of the circuit (ICOM) other than a change of Requested Service Date.

10GigE	GigE	FastE	OC-12	OC-3	DS-3	DS-1
\$2,500	\$1,400	\$1,400	\$2,000	\$2,000	\$1,000	\$400

10.3.3 *Change of Service Charges.* Change of Service Charges apply to CUSTOMER orders for changes made after installation of a circuit has been completed. Change of Service Orders placed after the installation of a circuit result in a new Initial Term of the circuit equal to that of the original Initial Term when the order was first placed.

10GigE	GigE	FastE	OC-12	OC-3	DS-3	DS-1
\$2,000	\$1,500	\$1,500	\$1,500	\$1,500	\$1,000	\$500

10.3.4 *Change Order Request.* Change Orders identified under Section 10.2 are not accepted if such requests are made less than five (5) business days prior to the FOC Date. If such requests are made during the above timeframe, the existing order will be completed as originally requested and a subsequent new change order must be submitted to make the necessary changes required. CUSTOMER acknowledges that when placing a Change Order, the term of the AGREEMENT starts over with a new Initial Term as stated on the Change Order.

10.4 *Taxes.* In addition to the rates and charges for the Service(s), CUSTOMER shall be responsible for payment of all sales, use, gross receipts, excise, and other local, state, and federal taxes, fees, charges, and surcharges (including without limitation any universal service fund, payphone, or other surcharges that INTELLETRACE and other telecommunications carriers collect from), however designated, imposed on or based upon the provision, sale or use of the Services, excluding taxes based on INTELLETRACE's net income. The Local Access Loop associated to an Internet Port and MPLS Port is considered as Interstate Service.

10.4.1 To the extent CUSTOMER claims that a sale is to be for resale and thus subject to tax exemption, CUSTOMER shall furnish INTELLETRACE a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to provide said resale tax exemption certificate upon execution of this AGREEMENT will result in no exemption being available to CUSTOMER for any period prior to the date that the CUSTOMER presents and INTELLETRACE accepts valid certificate(s).

**ARTICLE XI –
PAYMENT FOR SERVICE/DISPUTES/SECURITY**

11.1 *Payment Terms.* Unless otherwise set forth herein or agreed in writing, all payments due hereunder shall be made within thirty (30) days of the date appearing on the invoice ("Due Date"). Billing for a Service shall commence on the Effective Date. INTELLETRACE shall invoice CUSTOMER for the monthly recurring charges one (1) month in advance of the due date of the current invoice. Where amounts are due in addition to monthly recurring charges, including for usage over the allotted amount, INTELLETRACE shall use reasonable commercial efforts to invoice these charges to CUSTOMER within One (1) year of the end of the billing period to which such additional amounts apply. If CUSTOMER fails to pay all charges not disputed in accordance with the provisions of section 11.3 hereof by the Due

Date, CUSTOMER also shall pay INTELLETRACE a monthly late charge amount equal to 1.5% of the unpaid balance due (or such lesser amount as is the maximum amount permitted under applicable law). If INTELLETRACE initiates legal proceedings to collect any amount due hereunder and INTELLETRACE prevails in whole or part in such proceedings, then CUSTOMER shall pay the reasonable attorneys' fees and costs incurred by INTELLETRACE in prosecuting such proceedings and any appeals there from. In addition to INTELLETRACE's remedies under section 9 hereof, and notwithstanding any of the provisions hereof, INTELLETRACE shall have the right to immediately and without further notice suspend Services to CUSTOMER in the event of nonpayment by the Due Date of any charges not disputed in accordance with the provisions of Section 11.3. Any suspended account, will be subject to a minimum charge of \$500.00 to reactivate each circuit.

11.2 *Billing.* INTELLETRACE will email a PDF version of the entire invoice to the email address specified by the CUSTOMER during the provisioning phase of deployment. CUSTOMER may request a monthly paper statement via US Mail, however, an administrative fee of \$10.00 per month will be assessed.

11.3 *Billing Disputes.* Only written disputes made in good faith, in a timely manner and properly documented as required herein will be considered by INTELLETRACE. To meet these requirements, CUSTOMER must provide INTELLETRACE with written notice in accordance with section 7.3 of any disputed charge(s) within thirty (30) days after the date appearing on the invoice. Any failure by CUSTOMER to provide such notice, regardless of cause, shall be deemed an irrevocable waiver by CUSTOMER of its rights to dispute any of the charges appearing on that invoice. Along with the notice, CUSTOMER shall set forth in detail all bases for disputing each charge and CUSTOMER shall provide all documents supporting each dispute along with the notice of dispute. Dispute with respect to a portion of the amount shown as due and owing on an invoice shall not be cause to withhold payment of any past or current amount that has not been properly disputed, and CUSTOMER may only withhold payment of amounts properly disputed as required herein where all other outstanding amounts due are paid in full. INTELLETRACE and CUSTOMER shall attempt in good faith promptly to resolve all disputes within thirty (30) days of INTELLETRACE's receipt of notice of that dispute. If a dispute is not resolved, INTELLETRACE shall have the right to determine the merit of each dispute and CUSTOMER's payment obligation. If INTELLETRACE determines that any amount withheld in dispute is owed, CUSTOMER shall pay that amount within ten (10) days written notice from INTELLETRACE of such decision, plus interest at the rate specified above, from the original Due Date. Failure to pay such amount in full within such ten (10) business day period shall be material breach hereof and shall entitle INTELLETRACE to terminate all Services to CUSTOMER without notice and without liability of any kind or amount. If INTELLETRACE determines that any amount withheld in dispute is not owed, INTELLETRACE shall issue a credit for that amount on the first invoice issued by INTELLETRACE for a full billing cycle after INTELLETRACE's determination is made. CUSTOMER's exclusive remedy for issues relating, whether directly or indirectly, to any disputes shall be in the forum and pursuant to the laws as set forth in the Dispute Resolution terms hereof.

11.4 *Credit Approval/Payment History.* The commencement and/or any continuation of Service hereunder is expressly subject to CUSTOMER's timely payment of all amounts due hereunder and to INTELLETRACE'S continuing approval of CUSTOMER's financial condition and credit. Upon request by INTELLETRACE, CUSTOMER shall provide INTELLETRACE with financial statements accurately setting forth the current financial condition of CUSTOMER. Such financial statements shall be provided within forty-eight (48) hours of CUSTOMER's receipt of each such request. INTELLETRACE shall use reasonable commercial efforts to ensure that such financial statements and the information therein are protected as the confidential information of CUSTOMER. If CUSTOMER's financial condition or payment history is or becomes unacceptable to INTELLETRACE, or if CUSTOMER exceeds its credit limit, then INTELLETRACE may require alteration of the Credit terms applicable to CUSTOMER, which could include requiring prepayments, and/or a deposit of up to two (2) months projected usage or two (2) times the current amount due and owing (whichever is greater), and/or a combination of deposit, an irrevocable letter of credit, or some other form of security acceptable to INTELLETRACE. If such security is not provided within forty-eight (48) hours following INTELLETRACE's request, then INTELLETRACE shall have the right to terminate this AGREEMENT and/or terminate or suspend any Service to the CUSTOMER immediately and without liability or further notice. Nothing herein shall be deemed to lessen INTELLETRACE's rights under section 9.1 of the AGREEMENT.

11.5 INTELLETRACE shall have the right to offset any amount for which CUSTOMER, or any CUSTOMER affiliate, has been invoiced by INTELLETRACE, due and outstanding for more than ten (10) days, against any undisputed balance of any invoice from CUSTOMER or any CUSTOMER affiliate to INTELLETRACE (including any commission or credit amounts due hereunder). INTELLETRACE shall apply credit toward that invoice upon notification to CUSTOMER that INTELLETRACE is exercising its right to offset, and CUSTOMER shall not be re-invoiced the offset amount.

**ARTICLE XII
EVENTS OF DEFAULT**

12.1 Without limitation or exclusion, the occurrence of the following events shall constitute a default under this AGREEMENT:

- 12.1.1 insolvency, corporate reorganization, receivership, or dissolution by either Party;
- 12.1.2 institution of bankruptcy proceedings by or against either Party (unless dismissed within sixty days);
- 12.1.3 attempted assignment by either Party of this AGREEMENT without the other Party's prior written consent;
- 12.1.4 the failure by CUSTOMER to pay any undisputed amount by the Due Date; or
- 12.1.5 the breach by CUSTOMER of any other material term hereof.

12.2 Rights Upon the Occurrence of an Event of Default. Except as otherwise stated herein, this AGREEMENT may be terminated by INTELLETRACE upon the occurrence of an Event of Default that is not cured within forty-eight (48) hours of written notice thereof. Notwithstanding any other term hereof, INTELLETRACE may terminate this AGREEMENT immediately and without prior notice in the event that INTELLETRACE believes that CUSTOMER is engaged in fraudulent conduct, does not intend to pay amounts due and owing, and/or is engaged in conduct that threatens the viability or security of any Service or Facility.

**ARTICLE XIII –
WARRANTY AND LIMITATIONS OF LIABILITY**

13.1 INTELLETRACE MAKES NO WARRANTIES ABOUT THE SERVICE PROVIDED HEREUNDER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13.2 IN NO EVENT SHALL INTELLETRACE BE LIABLE UNDER AND CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL EXEMPLARY OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR POTENTIAL BUSINESS OR DATA OR SERVICES, OR LOSS OF CUSTOMER'S CLIENTS OR GOODWILL, WORK STOPPAGE, IN EACH CASE WHETHER SUCH LOSSES WERE FORSEEABLE AND EVEN IF INTELLETRACE IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING IN ANY MANNER, WHETHER DIRECTLY OR INDIRECTLY, FROM THIS AGREEMENT AND/OR THE PERFORMANCE OR NONPERFORMANCE HEREUNDER. WITHOUT LIMITING THE SCOPE OR EFFECT OF THE PRIOR SENTENCE, IN NO EVENT SHALL INTELLETRACE'S TOTAL LIABILITY HEREUNDER EXCEED AN AMOUNT EQUAL TO THE TOTAL INVOICED CHARGES APPLICABLE UNDER THIS AGREEMENT FOR THE PERIOD DURING WHICH SERVICES WERE MATERIALLY ADVERSELY AFFECTED AND DURING WHICH CUSTOMER PROVIDED NOTICE OF SUCH ADVERSE EFFECT OR OTHER DISPUTE. FOR THOSE SERVICES WITH MONTHLY RECURRING CHARGES, THE LIABILITY OF INTELLETRACE IS LIMITED TO AN AMOUNT EQUAL TO THE PROPORTIONATE MONTHLY RECURRING CHARGES FOR THE PERIOD DURING WHICH SERVICE WAS AFFECTED. IN ADDITION, AND NOT IN LIMITATION OF ANY OTHER DISCLAIMER OR LIMITATION OF LIABILITY CONTAINED IN THE AGREEMENT, INTELLETRACE AND ITS SUPPLIERS WILL NOT BE RESPONSIBLE FOR ANY DAMAGES, LOSSES, EXPENSES, OR COSTS THAT CUSTOMER SUFFERS AS A RESULT OF THE SERVICES, SOFTWARE, AND PRODUCTS, INCLUDING BUT NOT LIMITED TO: (i) ANY INTERRUPTION OR FAILURE OF THE SERVICES, SOFTWARE OR PRODUCTS; (ii) THE DOWNLOADING OR USE OF ANY INFORMATION, DATA, SOFTWARE OR PRODUCTS; (iii) ANY FAILURE TO COMPLETE A TRANSACTION ON THE INTERNET OR WHILE USING THE SERVICES; (iv) ANY INTERRUPTION OR UNAUTHORIZED USE OF, OR MODIFICATION TO, THE PRODUCTS, SOFTWARE OR SERVICES OR THE COMBINATION OF THE PRODUCTS, SOFTWARE AND/OR SERVICES WITH OTHER SERVICES OR PRODUCTS; OR (vi) ANY UNAUTHORIZED ACCESS, ALTERATION, THEFT, OR DESTRUCTION TO CUSTOMER'S DATA, PERSONAL INFORMATION, COMPUTERS, NETWORK, PHONE SYSTEM, EMAIL SYSTEMS, DATA BACKUP SYSTEMS, SERVERS OR VIRTUAL SERVERS, PRGRAMS, OR WEBSITES.

13.3 *Force Majeure.* Neither Party shall be liable for any delay or failure in performance of any Party of this AGREEMENT, other than for any delay or failure in an obligation to pay money, to the extent such delay or failure is caused by but not limited to, acts of God, fire, flood, explosion, power blackout, accident, earthquake, tsunami, accident, riot, war, terrorism, war strike, embargoes, government intervention, government requirement, civil or military authority, strikes, labor difficulties, equipment failure, later delivery by suppliers, or other difficulties of INTELLETRACE as may occur beyond INTELLETRACE's reasonable control. Any such delay or failure shall suspend this AGREEMENT until the Force Majeure ceases and the term shall be extended by the length of the suspension.

ARTICLE XIV – COMPLIANCE WITH LAWS

14.1 CUSTOMER shall comply with all applicable laws, regulations, court decisions, or administrative rulings regarding the provision or use of the Services or the sales and/or marketing of any telecommunications services or the use of any telecommunications service in connection with any sales or marketing activity. Failure to do so shall constitute a material breach of the AGREEMENT. Specifically, but without limitation, CUSTOMER represents and warrants that it is fully familiar with state and federal laws and regulations governing the use of telecommunications services for the delivery of facsimile transmissions or for outbound voice dialing and that the Services purchased hereunder will be used only for lawful purposes and in a manner that is fully consistent with all such laws and regulations. CUSTOMER also acknowledges and agrees that, to the extent that the Services are used for the delivery of facsimile transmissions or for outbound voice dialing, the CUSTOMER is doing so without INTELLETRACE's knowledge or consent and that INTELLETRACE has no involvement whatsoever in the selection of the persons or entities to whom such facsimiles are being delivered or calls made, the text or content of any messages delivered, nor does INTELLETRACE have any involvement or responsibility for the creation, operation or management of any "Do Not Call" or similar list(s). INTELLETRACE reserves the right to terminate this AGREEMENT and the provision of Services immediately and without notice or liability to CUSTOMER in the event that CUSTOMER uses or attempts to use the Services in a manner that is inconsistent with its representations hereunder. CUSTOMER shall indemnify and hold harmless INTELLETRACE, its stockholders, officers, directors, employees, contractors, affiliates, and agents from any and all third-Party claims, fines, penalties, losses, costs, damages, expenses, causes of action or liabilities of any kind, whether to a person, entity or governmental authority, including, without limitation, court costs and reasonable attorneys' fees, arising out of, in whole or in part, directly or indirectly, the breach of its representations hereunder, specifically its illegal use, gross negligence, willful misconduct or any other misuse of an Services, laws, rules or regulations (including any and all illegal use or misuse by its employees, agents and contractors); and shall reimburse INTELLETRACE for all attorney fees and costs, including INTELLETRACE management and employee costs, incurred as a result of any subpoenas or other legal process received or legal proceeding commenced in connection with such breach. Without exclusion as to the other terms hereof, all rights set forth in this paragraph shall survive the termination or cancellation of this AGREEMENT.

14.2 Where CUSTOMER is a reseller, CUSTOMER represents and warrants that it has obtained all certifications necessary to provide its services to End Users. CUSTOMER further warrants that CUSTOMER shall maintain all such certifications for the duration of this AGREEMENT. Upon INTELLETRACE's request, CUSTOMER shall provide INTELLETRACE with CUSTOMER's certifications. CUSTOMER shall indemnify, defend and hold INTELLETRACE harmless against all taxes, fees, assessments, or similar amounts, if any, as set forth in section 10.4 above which may be assessed against CUSTOMER or INTELLETRACE for CUSTOMER's use of the Services hereunder. In all circumstances, CUSTOMER shall indemnify, defend and hold harmless INTELLETRACE against all claims or liability due to or arising out of failure of CUSTOMER to obtain any permit or other consent as may be required from any local government or other regulatory body associated with the use and/or resale of any Service obtained hereunder.

ARTICLE XV – UNAUTHORIZED USE

15.1 CUSTOMER expressly acknowledges and agrees that it shall make payment in full to INTELLETRACE for all Services provided by INTELLETRACE pursuant to this AGREEMENT and billed to CUSTOMER, whether authorized or not, it being the express intention of the Parties that CUSTOMER, and not INTELLETRACE, shall bear the risk of loss arising from any unauthorized or fraudulent usage of Services provided under this AGREEMENT to CUSTOMER. INTELLETRACE reserves the right, but is not required, to take any and all action it deems appropriate (including blocking access to particular calling numbers or geographic areas) to prevent or terminate any fraud or abuse in connection with the Services, or any use thereof, provided, however, that any such action shall be consistent with applicable federal and state laws, rules, and regulations.

ARTICLE XVI – CONFIDENTIALITY

16.1 During the term of this AGREEMENT and for a period of two (2) years thereafter, neither Party shall disclose any terms of this AGREEMENT or any other Confidential Information of the other Party. For purposes of this AGREEMENT, the term “Confidential Information” shall include any information relating to the prices charged by INTELLETRACE for any Service hereunder, or the facilities or Services provided by INTELLETRACE to CUSTOMER, as well as any other information in written or other tangible form specifically labeled as such when disclosed by a Party. Any confidential information transmitted orally shall be identified as such at the time of its disclosure. All confidential information shall remain the property of the disclosing Party. A Party receiving confidential information shall: (i) use or reproduce such information only when necessary to perform this AGREEMENT; (ii) provide at least the same care to avoid disclosure or unauthorized use of such information as it provides to protect its own confidential information; (iii) limit access to such information to its employees or agents who need such information to perform this AGREEMENT; and (iv) return or destroy all such information, including copies, after the need for it has expired, upon request of the disclosing Party, or upon termination of this AGREEMENT.

16.2 The Party to whom confidential information is disclosed shall have no obligation to preserve the proprietary nature of any confidential information which: (i) was previously known to such Party free of any obligation to keep it confidential; (ii) is or becomes publicly available by other than unauthorized disclosure; (iii) is developed by or on behalf of such Party independent of any confidential information furnished under this AGREEMENT; (iv) is received from a third Party whose disclosure does not violate any confidentiality obligation; or (v) is disclosed pursuant to the requirement or request of a governmental agency or court of competent jurisdiction to the extent such disclosure is required by a valid law, regulation or court order.

ARTICLE XVII – ACCEPTABLE USE POLICY

17.1 CUSTOMER agrees that the Services are provided subject to the online Acceptable Use Policy prohibitions maintained by INTERLLETRACE and available to all customers and to the public at <http://www.INTELLETRACE.com/legal>. Modifications to the on-line Acceptable Use Policy document will supersede the prohibitions listed herein. CUSTOMER will comply with (and will ensure all users of the Service comply with) INTELLETRACE’s Acceptable Use Policy. INTELLETRACE may suspend or cancel the Services if CUSTOMER (or anyone that uses CUSTOMER’s Services) violates this policy. In most cases, INTELLETRACE will endeavor to notify CUSTOMER of such violations before taking such action, but INTELLETRACE may act without such notice and without liability to prevent harm or damage to INTELLETRACE’s, CUSTOMER’s, or a third-Party’s property, network, or systems. CUSTOMER further acknowledges that INTELLETRACE may amend the Policy from time to time without notice, and CUSTOMER is responsible for compliance with the current versions of the Policy.

ARTICLE XVIII – MISCELLANEOUS

18.1 *Notices.* No verbal communication between CUSTOMER and INTELLETRACE is an acceptable method of notice. All notices are required to be provided to the other Party via written notice. Allowable methods of written notice are limited to email, US mail, overnight delivery, and fax. It is the responsibility of the sending Party to secure and retain proof that the receiving Party indeed received the notice. Failure to secure such proof deems the notice invalid.

18.2 *Waiver.* No term or provision herein shall be waived, and no breach or default excused, unless such waiver or consent is in writing and signed by the Party to which it is attributed. No consent by a Party to, or waiver of, a breach or default by the other, whether expressed or implied, shall constitute a consent to or waiver of, any subsequent breach or default.

18.3 *Assignment.* Neither this AGREEMENT, nor any rights or obligations under it, may be assigned by either Party without the prior express written consent of the other Party. Subject to the foregoing, this AGREEMENT shall be binding upon the heirs, representatives, successors, and permitted assigns of INTELLETRACE and CUSTOMER.

18.4 *Modification of AGREEMENT.* This AGREEMENT, including its Schedule(s), may only be amended, modified or supplemented by a separate written document duly executed by authorized representatives of both INTELLETRACE and CUSTOMER.

18.5 *Partial Invalidity.* If any provision of this AGREEMENT shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render this AGREEMENT unenforceable, but rather this AGREEMENT shall be construed as if not containing the invalid or unenforceable provision. However, if such provision is an essential element of this AGREEMENT, the Parties shall promptly attempt to negotiate a substitute therefore.

18.6 *Representation of Authority.* By executing below, each Party represents and warrants that he/she has the full authority to bind the Party on whose behalf he/she is signing to each of the obligations set forth herein and that the approvals of any third Party or Parties is/are not required to perfect such authority.

18.7 *Dispute Resolution; Governing Law; Jurisdiction.* This AGREEMENT shall be interpreted, construed and enforced in accordance with the laws of the State of California. All disputes arising under or related to this AGREEMENT or any Service provided hereunder, shall be subject to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association at its offices in or about San Francisco, California. Where the arbitration demand is filed by INTELLETRACE, and relates in whole or part to a failure to pay amounts due hereunder, the arbitration shall be handled in an expedited manner, with a final award issued no later than ninety (90) days following the date of the arbitration demand. In no event shall the Arbitrator be entitled to grant relief that is greater than the maximum allowed hereunder or that is otherwise inconsistent with the provisions of this AGREEMENT, including without limitation, the grant of any incidental, consequential, exemplary, or punitive damages, and CUSTOMER expressly agrees that such limitation shall not have any impact on the right or jurisdiction of the AAA or the Arbitrator to hear disputes arising hereunder, and that it shall not be deemed to create any right to bring an action in any judicial forum. All decisions, orders, and awards issued by the AAA and/or the Arbitration shall be enforceable exclusively in the Courts of the State of California and each Party irrevocably consents to the personal jurisdiction of such Courts and waives any objection to such exclusive jurisdiction.

18.8 *Order of Precedence.* In the event of any conflict between the terms set forth in the main body of this AGREEMENT, any Service Order, or the Service Attachment to this AGREEMENT, the following order of precedence shall apply: (i) Service Order; (ii) Attachment/Addendum, if any; and (iii) Master Service Agreement.

18.9 *Relationship of Parties.* Neither this AGREEMENT nor the provision of Service hereunder shall be deemed to create any joint venture, partnership, or agency between INTELLETRACE and CUSTOMER. The Parties are independent contractors and shall not be deemed to have any other relationship. Neither Party shall have, or hold itself out as having, the power or authority to bind or create liability for the other by its intentional or negligent act.

18.10 *Entire AGREEMENT.* This AGREEMENT, together with all Attachment(s) and Addendums(s), and all Service Orders, represents the entire AGREEMENT of the Parties with respect to the subject matter hereof and supersedes all other Agreements, written or oral, between the Parties relating to the Service. This AGREEMENT supersedes any and all prior Agreements between INTELLETRACE and CUSTOMER with respect to the provision of Services. As of the Effective Date hereof, all said prior Agreements shall be rendered null and void and have no further force or effect. Further, as of the Effective Date hereof, any and all Service provided pursuant to said prior Agreements, if any, shall henceforth be governed by and provided subject to the terms of this AGREEMENT.

18.11 *Use of Customer Name.* CUSTOMER agrees that INTELLETRACE may refer to the CUSTOMER and may briefly describe the CUSTOMER's line of business in INTELLETRACE's marketing materials and on the INTELLETRACE website. CUSTOMER hereby grants INTELLETRACE a limited license to use any CUSTOMER trade names and trademarks only to this purpose.

ARTICLE XIV - OTHER TERMS AND CONDITIONS

19.1 *Other Terms and Conditions.* Circuit Non-Availability or Service Outage shall not be deemed to have occurred (and a Percentage Credit as defined in the Service Level Agreement attached are not due to CUSTOMER) in the event a Circuit is unavailable due to any of the following:

- (i) Force Majeure events.
- (ii) Interruptions on Circuits that are not "Accepted Circuits" (i.e., an Accepted Circuit is one that INTELLETRACE or the underlying carrier and the CUSTOMER have tested and mutually agree is working as ordered).
- (iii) The negligence, act, error, or omission of CUSTOMER or others authorized by CUSTOMER to

use CUSTOMER's service.

- (iv) Service Outages attributable to installation of a new circuit, customer premise equipment (CPE), INTELLETRACE provided equipment, third Party equipment or any customer application on a circuit.
- (v) Any act or omission on the part of CUSTOMER, its contractors, agents or vendors, including any refusal to release a circuit to INTELLETRACE and its underlying carrier for testing or maintenance.
- (vi) INTELLETRACE and its underlying carrier not being afforded access to the premises where the access lines associated with CUSTOMER's service originate or terminate.
- (vii) CUSTOMER or user has released services to INTELLETRACE and its underlying carrier for maintenance or rearrangement purpose, or for the installation of CUSTOMER's Service Order.
- (viii) CUSTOMER elects not to release the service(s) for testing and/or repair and continues to use it on an impaired basis.
- (ix) The failure of an underlying local exchange carrier where the local access circuit was not provided by INTELLETRACE or its underlying carrier.
- (x) CUSTOMER's use of services in an unauthorized or unlawful manner.
- (xi) INTELLETRACE disconnects services for non-payment.
- (xii) CUSTOMER submits an incorrect Service Order.
- (xiii) The failure of power at the CUSTOMER's premises or failure or poor performance of customer premise equipment.
- (xiv) The underlying carrier or its agents not being afforded access to the premises where the access lines associated with CUSTOMER's service originate or terminate.
- (xv) CUSTOMER or user has released service to INTELLETRACE or its underlying carrier for maintenance or rearrangement purposes, or for the installation of CUSTOMER's service order.
- (xvi) Underlying Carrier maintenance deemed to be an emergency.

Major network failures affecting the entire underlying carrier network will be handled on an individual case basis as determined by INTELLETRACE and any resolution will be applied in a nondiscriminatory manner.