



PRODUCTS AND SERVICES AGREEMENT

This Products and Services Agreement (“Agreement”) is entered into on the date of the last signature below (the “Effective Date”) by and between **INTELLETRACE INC.**, a **California** corporation (hereinafter “INTELLETRACE”), and the CUSTOMER identified below (hereinafter “CUSTOMER”), for the provision of telecommunications services. CUSTOMER and INTELLETRACE shall individually be referred to as a “Party” and collectively as the “Parties.”

WHEREAS, INTELLETRACE, by or through its affiliates, is in the business of reselling telecommunications services provided by others to its CUSTOMERS;

WHEREAS, CUSTOMER desires to purchase certain of these telecommunications services as set forth herein and in certain Attachments and 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 Schedule(s), and any associated tariffs;

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 capitalized terms shall have the following meanings:

- 1.1 Agreement shall mean this Products and Services Agreement, including all Attachments and Service Orders.
- 1.2 CUSTOMER shall mean the person or entity to whom Service is sold pursuant to this Agreement.
- 1.3 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.
- 1.4 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.
- 1.5 End User shall mean a person or entity to which CUSTOMER will provide telecommunications services utilizing, in whole or in part, the Service provided by INTELLETRACE to CUSTOMER under this Agreement.
- 1.6 Service shall mean any telecommunications 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 the main body of this Agreement, are attached hereto in one or more Attachment(s) and/or Service Order(s).
- 1.7 Service Order shall mean the written executed request by CUSTOMER for Service using the INTELLETRACE Service 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.
- 1.8 Service Order Term shall mean the minimum period of time specified in a Service Order for which CUSTOMER commits to purchase the Service specified in the Service Order.

**ARTICLE II -
TERM; SCOPE OF AGREEMENT**

2.1 *Agreement Term.* The term of the Agreement shall begin on the Effective Date and shall continue for an Initial Term of ____ year(s) (the “Initial Term”), unless earlier terminated as provided in Section 4 of this Agreement. If the Service provided is presently on a term other than month-to-month, CUSTOMER must notify INTELLETRACE in writing, sixty (60) days in advance of the end of its service term to cancel or change the Service, or the Service will automatically renew for an additional twelve (12) months (the “Renewal Term”). If the Service is on a month-to-month term, CUSTOMER must notify INTELLETRACE in writing thirty (30) days in advance to cancel or change the Service. The Initial Term and any Renewal Term are collectively referred to as the “Agreement Term”.

2.2 *Individual Service In-Service Periods.* Notwithstanding the foregoing, the term for each Service provided pursuant to this Agreement shall have a minimum term as set forth in the applicable Service Order. 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 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.

2.3 *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 add/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. The Service Order shall be 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.

2.4 *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.

2.5 *CUSTOMER Responsibilities.* CUSTOMER has sole responsibility for installation, testing and operation of all facilities, services and equipment other than those that INTELLETRACE has specifically agreed to provide as part of this Products and Services Agreement or any Attachment or Service Order. In no event will the untimely installation or inoperability of any CUSTOMER-provided facility relieve CUSTOMER of its obligation to pay any charges for the Services provided hereunder.

2.6 *System Maintenance.* In the event INTELLETRACE, or its underlying carrier, determines it is necessary to interrupt 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 for system maintenance constitute a failure of performance by INTELLETRACE.

**ARTICLE III -
RELATIONSHIP WITH END USERS**

3.1 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.

3.2 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 IV –
SUSPENSION/TERMINATION**

4.1 Either Party 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 9 (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 6 and 8 herein.

4.2 If this Agreement is suspended or terminated after the Effective Date by INTELLETRACE for CUSTOMER's breach pursuant to Section 4.1 above, or by CUSTOMER except as permitted under Section 4.1 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 Schedule(s).

4.3 *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:

GigE	FastE	OC-12	OC-3	DS-3	DS-1	DS-0
\$4,000	\$3,500	\$5,000	\$3,000	\$1,300	\$400.00	\$200.00

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.

4.4 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 hereinbelow, 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.

4.5. Nothing in this Section shall be deemed to lessen any specific right set forth in Section 6.3 hereof.

**ARTICLE V –
RATES AND CHARGES**

5.1 *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.

5.2 *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 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.

5.2.1. *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

GigE	FastE	OC-12	OC-3	DS-3	DS-1	DS-0
\$700	\$700	\$1,000	\$700	\$500	\$200	\$200

5.2.2. *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.

GigE	FastE	OC-12	OC-3	DS-3	DS-1	DS-0
\$1,400	\$1,400	\$2,000	\$2,000	\$1,000	\$200	\$200

5.2.3. *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.

GigE	FastE	OC-12	OC-3	DS-3	DS-1	DS-0
\$1,500	\$1,500	\$1,500	\$1,500	\$1,000	\$500	\$300

5.2.4. *Change Order Request.* Change Orders identified under Section 5.2 are not accepted if such requests are made less than four (4) business days prior to the FOC Date on DS-0 and DS-1 orders and less than five (5) business days prior to the FOC Date on DS-3, OC-n, and Ethernet orders. If such requests are made during the above timeframes, the existing order will be completed as originally requested and a subsequent new change order must be submitted to make the necessary changes required.

5.3 *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. 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 VI –
PAYMENT FOR SERVICE/DISPUTES/ SECURITY**

6.1 *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 earlier of: (i) use of the Service by CUSTOMER; or (ii) FOC 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 Six (6) months of the end of the billing period to which the such additional amounts apply. If CUSTOMER fails to pay all charges not disputed in accordance with the provisions of Section 6.2 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 4 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 6.2. Any interrupted account, will be subject to a minimum charge of \$500.00 to reactivate the service.

6.2 *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 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.

6.3 *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 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 4.1 of the Agreement.

6.4 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 receive credit toward that invoice upon notification to CUSTOMER that INTELLETRACE is exercising its right to offset, and CUSTOMER shall not re-invoice the offset amount.

ARTICLE VII EVENTS OF DEFAULT

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

- 7.1.1 insolvency, corporate reorganization, receivership or dissolution by a CUSTOMER;
- 7.1.2 institution of bankruptcy proceedings by or against CUSTOMER (unless dismissed within sixty days);
- 7.1.3 attempted assignment by CUSTOMER of this Agreement without INTELLETRACE's prior written consent;

7.1.4 the failure by CUSTOMER to pay any undisputed amount by the Due Date; or

7.1.5 the breach by CUSTOMER of any other material term hereof.

7.2 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 seventy two (72) 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 VIII – WARRANTY AND LIMITATIONS OF LIABILITY

8.1 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.

8.2 IN NO EVENT SHALL INTELLETRACE BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF CUSTOMER'S CLIENTS OR GOODWILL, 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. NOTWITHSTANDING THE ABOVE, IN NO EVENT SHALL INTELLETRACE'S TOTAL LIABILITY HEREUNDER EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS.

8.3 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 fire, flood, explosion, accident, war strike, embargo, governmental requirement, civil or military authority, Act of God, inability to secure materials or labor of any other causes beyond their 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 IX – COMPLIANCE WITH LAWS

9.1 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 and agents from any and all fines, penalties, losses, costs, damages, expenses 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 and shall reimburse INTELLETRACE for all attorneys 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.

9.2 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 5.4 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 X – UNAUTHORIZED USE

10.1 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 XI – CONFIDENTIALITY

11.1 During the term of this Agreement and for a period of one (1) year 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.

11.2 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.

11.3 This Agreement confers no right to use the name, service marks, trademarks, copyrights, or patents of either Party except as expressly provided herein. Neither Party shall take any action, which would compromise the registered copyrights or service marks of the other.

ARTICLE XII – MISCELLANEOUS

12.1 *Notices.* All notices and communications under this Agreement shall be in writing and shall be given by personal delivery, by registered or certified mail, return receipt requested, or by facsimile transmission (confirmed by sender's equipment), or by email notification (confirmed by sender's equipment) addressed to the respective Party as set forth below or to such other address as may be designated in writing by such Party. Notice shall be deemed given upon receipt.

12.2 *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.

12.3 *Assignment.* Neither this Agreement, nor any rights or obligations under it may be assigned by CUSTOMER without the prior express written consent of INTELLETRACE.

12.4 *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 Parties.

12.5 *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.

12.6 *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.

12.7 *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.

12.8 *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 any Service Schedule to this Agreement, the following order of precedence shall apply: (i) Service Order; (ii) Attachments; (iii) terms in the main body of the Products and Agreement.

12.9 *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.

12.10 *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.

IN WITNESS WHEREOF, duly authorized representatives of the Parties have executed this Agreement as set forth below. This Agreement shall only be valid if executed by an INTELLETRACE Director or higher level officer.

CUSTOMER

By: _____
 Print Name: _____
 Title: _____
 Date: _____

INTELLETRACE, INC

By: _____
 Print Name: _____
 Title: _____
 Date: _____

Address for Notices:

Address for Notices:

CUSTOMER:	Intellectrace, Inc.
	448 Ignacio Blvd, #222
	Novato, CA 94949
Attn:	
Email:	Attn: Contracts Manager
FAX Number:	FAX number: 415 598-2108

With a copy to:

With a copy to:

	Please use above address for Notices to Intellectrace

SERVICE SCHEDULE

CUSTOMER PREMISE EQUIPMENT AND MANAGED SERVICES

1. Applicability. This INTELLETRACE Customer Premise Equipment (“CPE”) and Managed Services Schedule applies only to CUSTOMERs ordering either or both Service offerings.

2. Service Description. If CUSTOMER has ordered or is purchasing certain telecommunication services from INTELLETRACE, CUSTOMER may also order INTELLETRACE provided CPE (defined below) and/or Managed Services (defined below). CPE means equipment owned or leased by INTELLETRACE (i.e. routers, switches, cabling, firewalls, network monitoring devices or other telecommunication appliance), associated firmware or related software, that is placed at Customer’s premise for use in conjunction with INTELLETRACE Services purchased under the Agreement. The term “CPE Service” means CPE “Installation Service”, and “Monitoring and Management Service” offered by INTELLETRACE pursuant to this Schedule. CUSTOMER has the option of having INTELLETRACE maintain operational control over the CPE.

3. Ownership of CPE. In order to provide CPE or Managed Services, CPE owned or leased by INTELLETRACE, but not purchased or subleased by CUSTOMER, will be placed at the CUSTOMER premise and the charges for use of the CPE will be outlined in the Customer Order Form. Title to the CPE shall not pass to CUSTOMER. However, the title to CPE will be passed to CUSTOMER once CUSTOMER has paid full amount of the CPE price as outlined in the Customer Order Form.

4. CPE Service Levels. If the CPE provided hereunder causes an unscheduled, continuous and/or interrupted, period of time during which the telecommunication service does not conform to the Availability Service Level as set forth in the relevant telecommunication Service Level Agreement, the CUSTOMER will be entitled to a service credit for such unavailability, if any, provided under such Service Schedule, subject to the exceptions set forth therein. CUSTOMER shall only receive a service credit under such Service Schedule, and shall not receive any additional service credit under this Schedule. A failure of any cable or physical connection that connects to CPE shall not entitle CUSTOMER to any service credit.

5. Payment or Credit Default. Notwithstanding anything to the contrary of the Agreement, and in addition to the remedies stated therein, if CUSTOMER fails to pay any sums when due, or otherwise fails to perform any material obligation, in addition to other remedies available to INTELLETRACE at law or in equity, INTELLETRACE may: (i) cease to provide Managed Services; (ii) enter CUSTOMER’S premises upon reasonable notice and take possession of and remove the CPE, retaining all sums paid. CUSTOMER shall indemnify and hold INTELLETRACE harmless from any claims for loss or damage resulting from INTELLETRACE exercising of its rights under this Schedule.

6. Service Term.

(A) The Service Term shall be identified on the Service Order Form and shall begin upon the date that INTELLETRACE delivers the service as outlined in the Service Order Form. “Delivery” of the Service includes CPE, the telecommunication service purchased in conjunction with this Schedule and the local access service (if purchased by INTELLETRACE), are all fully functioning and ready for CUSTOMER’S use. If CUSTOMER purchases its own local access service and/or CPE, INTELLETRACE shall begin billing once the associated INTELLETRACE Service is ready for use.

(B) The Managed Service shall automatically terminate when and if the associated telecommunication services expires or is terminated for any reason. CUSTOMER shall pay the cancellation and termination charges as set forth in the Agreement if such termination occurs prior to the specified term for the Managed Service in the relevant Service Order.

(C) If CUSTOMER is Leasing or Renting CPE from INTELLETRACE, at the end of the Service Term, CUSTOMER shall, upon INTELLETRACE’S request, provide INTELLETRACE with access to CUSTOMER’S premise and the CPE to allow INTELLETRACE remove the CPE.

7. Installation of CPE.

(A) Installation of CPE at CUSTOMER premise. INTELLETRACE will procure, receive, stage, configure, and test the CPE prior to installation at CUSTOMER’S premise. If CPE is installed at CUSTOMER premise, installation of CPE will take place at a mutually agree upon time from 8:00 am to 5:00 pm PT Monday through Friday (“Normal Business Hours”), excluding Holidays, or such other time and day as mutually agreed by the parties which may result in an additional fee. INTELLETRACE may, in its sole discretion,

outsource some or all of the installation of the CPE to a third party that is capable of performing the installation; provided, however, INTELLETRACE shall remain responsible for any such outsourced installation supplied by a third party. Customer shall not move the CPE to a different location within the CUSTOMER premises or to another facility for any reason after installation without INTELLETRACE'S prior written consent. CUSTOMER may not relocate the CPE and must contact INTELLETRACE to make arrangements for INTELLETRACE to move the CPE. Additional charges shall apply to any movement or relocation of CPE.

(B) Shipment of CPE to CUSTOMER premise. INTELLETRACE will procure, receive, stage, configure, and test the CPE prior to shipment of CPE to CUSTOMER'S premise. CUSTOMER is responsible for having a person of technical nature unpack the shipping container, mount the CPE as desired, and connect the CPE to the cabling medium provided by the Local Exchange Carrier or the Competitive Local Exchange Carrier. If CUSTOMER does not have a person of technical nature and desires INTELLETRACE to provide an on-site installation, INTELLETRACE may use a third party to perform the necessary functions which will result in an additional non-recurring cost.

8. CUSTOMER Responsibilities.

(A) Prior to installation, CUSTOMER shall assure all conditions recommended by the manufacturer of the CPE are met at the CUSTOMER'S premises where the CPE is to be installed as set forth in the Service Order Form. If such conditions are not met and installation cannot be completed, CUSTOMER shall pay for the initial and subsequent site visits at INTELLETRACE'S then prevailing hourly rates.

(B) CUSTOMER is responsible for maintaining the recommended conditions at the Customer premises for so long as CPE is located there. Operation of CPE outside of such conditions may void any manufacturer's warranty on the CPE or manufacturer's maintenance obligations and may also prevent INTELLETRACE from providing Service. CUSTOMER will be responsible to pay INTELLETRACE for replacement of CPE that is damaged as a result of CUSTOMER'S failure to comply with this Section, including without limitation installation costs of replacement CPE. Additionally, CUSTOMER shall pay the charges for the telecommunication service and any local access provided by INTELLETRACE for the remainder of the Service Term, regardless of whether or not the damaged CPE is replaced.

(C) Customer shall provide INTELLETRACE with access to the Customer premises to install, maintain, replace, repair and remove the CPE. If INTELLETRACE is prevented from installation of CPE because CUSTOMER has not provided INTELLETRACE with access, INTELLETRACE may begin billing and CUSTOMER shall be responsible for payment for the associated Service that is otherwise provisioned and ready for turn up and the Managed Service. If CUSTOMER denies INTELLETRACE access to the CPE at the CUSTOMER premises, CUSTOMER shall be responsible for payment to INTELLETRACE of INTELLETRACE'S charges and additional costs associated with such denial of access.

(D) CUSTOMER is responsible for ensuring the security of the CPE located within CUSTOMER'S premises and CUSTOMER shall reimburse INTELLETRACE for any loss or damage to CPE caused by CUSTOMER'S failure to properly secure CUSTOMER'S premises and/or restrict or monitor access to the CPE. Unless CUSTOMER purchased CPE, CUSTOMER shall not access, reconfigure, connect to, or alter the CPE except as expressly requested by INTELLETRACE.

9. CUSTOMER Order Cancellation. If CUSTOMER cancels the Service Order Form for CPE and/or Managed Services prior to Delivery, INTELLETRACE shall be entitled to retain all monies paid by CUSTOMER and recover additional monies, if necessary, to cover costs including storage costs, restocking fees and any third part costs incurred by INTELLETRACE related to the cancellation. If CUSTOMER cancels the Service Order after delivery of equipment to the installation address, CUSTOMER shall be liable to INTELLETRACE for the entire purchase price of the equipment, and CUSTOMER agrees that such charge is a liquidated damage and not a penalty.

10. Hazardous Materials.

(A) CUSTOMER represents and warrants that CUSTOMER'S premises and conditions to be encountered by INTELLETRACE at CUSTOMER'S premises and in the area where work is to be performed shall: (i) be in compliance with all applicable federal, state, and local laws, rules and regulation, (ii) be safe and non-hazardous, and (iii) not contain, present, or expose INTELLETRACE or its representatives to hazardous materials, hazardous wastes or hazardous substances or other dangerous conditions or hazards.

(B) In the event of breach of the foregoing, INTELLETRACE may discontinue the performance of the applicable CPE and/or Managed Service installation until all the applicable hazardous materials or substances have been removed or abated to INTELLETRACE'S satisfaction by CUSTOMER at CUSTOMER'S sole expense, and CUSTOMER shall defend, indemnify and hold INTELLETRACE harmless from any and all damages, claims, losses, liabilities and expenses, including, without limitation, attorneys' fees, which arise out of CUSTOMER'S failure.

(C) INTELLETRACE'S refusal to enter such a location on the basis of safety will not be deemed a breach of this Schedule or the Agreement and INTELLETRACE shall have no liability for such a decision. CUSTOMER'S representations and warranties pursuant to this Section 10 shall survive any termination of the CPE and Managed Services and/or termination of the Agreement.

11. Damage to Premises. CUSTOMER shall hold INTELLETRACE harmless from any liability for injury to wires, conduits, pipes, mains, sewers or other similar property that is not accurately detailed or accounted for in CUSTOMER supplied prints.

12. Ownership; Identification; Liens. Nothing contained in this Schedule shall be construed to convey to, or create in, CUSTOMER any right, title or interest in or to the CPE, except as expressly set forth herein. INTELLETRACE may mark the CPE to indicate its interest in, or rights to, the CPE, and CUSTOMER shall not alter or remove any such indication of ownership or interest. CUSTOMER will not directly or indirectly create, incur, assume or suffer to exist any mortgage, lien, security interest, charge, encumbrance or claim (collectively "liens") on or with respect to the CPE.

13. Intellectual Property. The CPE and the software related to the CPE and other intellectual property provided under the Agreement and this Schedule (collectively the "Intellectual Property") is commercial computer software and intellectual property developed exclusively at private expense, and is in all respects the proprietary data belonging solely to INTELLETRACE or its licensors or the vendor or manufacturer of the CPE.

14. Domestic Usage Only. Customer shall not export or re-export the CPE, any software, or any documentation associated with the CPE or software from the fifty (50) states of the United States and the District of Columbia and shall indemnify INTELLETRACE for any breach of this provision or violation of law.

15. Indemnity. INTELLETRACE will pass through any software infringement indemnity for the CPE as provided by the manufacturer to the extent allowed by the manufacturer. Notwithstanding anything to the contrary in the Agreement, INTELLETRACE has no obligation to indemnify CUSTOMER for infringement or claims of infringement by any third party relating to the CPE. Either party (the "Indemnifying Party") indemnifies and shall at all times hereafter, indemnify and hold harmless the other party hereto from and against any and all obligations, losses, damages, claims, costs, expenses (including reasonable legal fees), compensation and liabilities whatsoever that the other party hereto may incur, sustain, or become liable for, by reason of any claim or demand made against the other party hereto howsoever arising out of or in connection with the Indemnifying Party's breach of this Agreement or any gross negligence or willful misconduct of the Indemnifying Party.

16. Limitation of Liability. **INTELLETRACE SHALL HAVE NO LIABILITY FOR ANY DAMAGES OF ANY KIND RESULTING FROM UNAUTHORIZED USE OF THE CPE, REGARDLESS OF WHETHER THESE DAMAGES ARISE OUT OF AN ACTION IN CONTRACT, TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE LIABILITY OF EITHER PARTY FOR DAMAGES OR ALLEGED DAMAGES HEREUNDER, WHETHER IN CONTRACT OR TORT OR ANY OTHER LEGAL THEORY IS LIMITED TO AND SHALL NOT EXCEED THE AMOUNT PAID TO INTELLETRACE UNDER THIS AGREEMENT.**

17. Warranty.

(A) INTELLETRACE MAKES NO WARRANTIES ABOUT THE CPE OR ANY RELATED SOFTWARE PROVIDED HEREUNDER, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR ANY WARRANTY OF NON-INFRINGEMENT.

(B) CPE Service. Solely to the extent provided by INTELLETRACE, INTELLETRACE warrants that CPE Services shall be done in a good and workmanlike manner and will be of a professional quality conforming to generally accepted industry standards and practices. **INTELLETRACE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ABOUT THE CPE SERVICES. INTELLETRACE DISCLAIMS AND WARRANTY TO PREVENT UNAUTHORIZED USE OF THE CPE OR CUSTOMER'S SYSTEM.** For any breach of the above warranty or failure of Installation Service, CUSTOMER'S exclusive remedy, and INTELLETRACE'S entire liability, shall be re-performance of the deficient installation, or the recovery of installation fees paid, if INTELLETRACE is unable through re-performance to perform the Installation Service as warranted. In order to receive warranty remedies, deficiencies in the installation must be reported to INTELLETRACE in writing within thirty (30) calendar days of completion of installation.