



ENTELE-BUNDLE TERMS AND CONDITIONS

1. **General Terms and Conditions.** All prospective work, products and services requested by End User shall be subject to approval by Service Provider, and Service Provider reserves the right in its good faith discretion to decline to provide service to the End User.
2. **Relationship.** Neither Party shall have the authority to bind the other by contract or otherwise make any representations or guarantees on behalf of the other. Both Parties acknowledge and agree that the relationship arising from this Agreement is one of independent contracting parties, and does not constitute an agency, joint venture, partnership, employee relationship or franchise. All recommendations for improvements to End User's telecommunication system and services including recommendations for possible savings made by Service Provider are subject to End User's approval. No action regarding such changes shall be undertaken without the prior consent of End User.
3. **Billing Period.** Except as expressly provided in an applicable EnTele-Bundle Service Agreement (EBSA) or as otherwise agreed in writing by the parties on a Service Order, Service Provider will bill End User for the total amount of charges due to Service Provider for telecom management services in arrears.
4. **Payment.** Unless otherwise stated on the EBSA or an applicable Service Order, all amounts stated on each invoice are due and payable in U.S. dollars within twenty-five (25) calendar days of the date on which Service Provider sends the invoice to End User (the "Due Date"). End User will remit all payments as Service Provider may in writing direct End User to remit payment pursuant to the notice provisions of the Agreement. Restrictive endorsements or statements on checks accepted by Service Provider will not be binding upon Service Provider. Invoices may be electronically delivered to End User. End User shall be fully responsible for payment to Service Provider for the full amount of invoice including without limitation any federal, state, county, local or other governmental taxes, fees or duties now or hereafter imposed on the sale or use of the Services.
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6. **Late Payment.** If End User fails to remit payment of all undisputed amounts by the Due Date Service Provider, in addition to other remedies available to it under this Agreement or at law, may charge End User a late fee of the lesser of 1.5% per month or the maximum fee allowed by law of the unpaid balance which shall accrue from the Due Date of the invoice. End User understands that failure to provide timely payment to Service Provider for invoices for telecommunications services which Service Provider pays on behalf of End User will result in non-payment of such invoices to End User's service providers which may result in late fees from third parties, interruption or disconnection of service or other similar actions by third parties. In no case shall Service Provider be liable for any action or cost suffered by End User as a result of failure by End User to timely provide Service Provider requested funds.
7. **Termination.** Service Provider, at its option and in addition to any other remedy or relief allowed by law, may terminate this Agreement immediately upon written notice to End User upon the occurrence of any of the following:
 - a) End User engages in any fraudulent activities.
 - b) End User makes an assignment for the benefit of creditors, or has an Order for Relief under Title 11 of the United States Code entered against End User by the Court of the United States; or a trustee or receiver of a substantial part of End User assets is appointed by any Court.
 - c) End User violates any administrative procedures or guidelines established by Service Provider for all End User services provided under this Agreement.
 - d) End User fails to comply with any material term of this Agreement and such breach is not cured as provided for in this Agreement.
 - e) End User violates Section 7: Assignment.
 - f) End User fails to pay Service Provider in accordance with the terms of this Agreement.
8. **Assignment.** This Agreement shall be binding on End User and its respective affiliates, successors and assigns. End User shall not assign, sell or transfer this Agreement or the right to receive the Services provided hereunder, whether by operation of law or otherwise, without the prior written consent of Service Provider, such consent not to be unreasonably withheld.
9. **Notices.** Notices required under this Agreement must be submitted in writing to the parties' addresses shown below. The notice is effective on the earlier of 3 days after sending the notice by registered mail return receipt requested, or the actual date of receipt as established by proof of delivery.

Service Provider: EnTelegent Solutions, Inc.

3800 Arco Corporate Drive
Suite 310
Charlotte, NC 28273
Attn: Legal Dept.

End User:

10. **Early Termination Charge.** If End User terminates the EnTele-Bundle Agreement, an exhibit or a Service Order(s), in whole or in part, prior to the end of the then current term End User must pay a lump sum Early Termination charge as set forth in the applicable EBSA Exhibit or Service Order for the terminated Services for such services in addition to the amounts set forth below:

- One year EnTele-Bundle Agreement: 100% of the managed services fee for the remainder of the term as a lump sum
- Two year EnTele-Bundle Agreement: 75% of the managed services fee for the remainder of the term as a lump sum
- Three year EnTele-Bundel Agreement: 50% of the managed services fee for the remainder of their term as alump sum.

11. **Initial Term** At the end of the Initial Term as specified in a Service Order or EBSA, and each renewal term thereafter, the Agreement will automatically renew for successive one year terms unless either party gives notice to the other party at least ninety (90) days prior to the end of the then current term that the Agreement shall not renew. Notwithstanding the foregoing, the Term shall continue for so long as any EBSA or Service Order is in effect.

12. **Dispute Resolution.** In the event either party commences any legal action, upon final resolution of the matters in controversy, the prevailing party in such action shall be entitled to recover its out-of-pocket expenses, court costs and reasonable attorney’s fees incurred. Nothing herein shall prevent any party from applying to any state or federal court for injunctive relief.

13. **Billing Disputes.** End User shall notify Service Provider in writing of any billing dispute on or prior to the Due Date on the relevant invoice. Failure to dispute any invoice within the time set forth herein shall be deemed an acceptance of the invoice in full by End User. Upon End User disputing any Service Provider charges, End User shall: (i) pay all undisputed charges by the due date; (ii) present by the due date a written statement of amounts disputed in good faith in reasonable detail with supporting documentation; and, (iii) negotiate in good faith to resolve any bona fide dispute within sixty (60) calendar days following the date of notification of such dispute. Disputed charges resolved in favor of Service Provider, along with any applicable Late Fee, will be due and payable on the following month’s billing cycle. Disputed charges resolved in favor of End User will be credited to End User on the following month’s billing cycle and no Late Fees shall apply.

14. **Suspension and Termination of Service.** In the event invoices are not paid in full, for any reason whatsoever, excluding good faith billing disputes related to fees charged by Service Provider

for its Services, Service Provider shall have the right to suspend all or any portion of the Services to such End User until such time as such End User has paid in full all undisputed charges, including any applicable Late Fees. Following such payment, Service Provider shall reinstate Services to End User.

15. **Choice of Law/Venue.** The laws of the State of North Carolina (excluding any laws that direct the application of another jurisdiction’s law) govern all matters arising out of or relating to this Agreement and all of the transctions it contemplates, including its validity, interpretation, construction, performance and enforcement. Litigation concerning this Agreement must be commenced in North Carolina State courts or U.S. federal courts located in Charlotte, North Carolina and each party consents to jurisdiction therein. If any part of this Agreement is held by any court or administrative agency to be prohibited by any law, regulation or rule applicable to this Agreement, the rights and obligations of the parties shall be construed and enforced to the greatest extent allowed by law, or if such part is totally unenforceable, as if this Agreement did not contain that particular part. For the purposes of construing any term of this Agreement, it will be deemed to be a mutually drafted document and no term shall be construed for or against either party based upon the identity of the drafter of that provision.

16. **LIMITATION OF LIABILITY.** SERVICE PROVIDER'S LIABILITY ARISING OUT OF MISTAKES, ACCIDENTS, OMISSIONS, INTERRUPTIONS, ERRORS, DELAYS OR DEFECTS IN THE ORDERING, PROCESSING, PROVISIONING, INSTALLATION, PERFORMANCE OR TRANSMISSION OF ANY SERVICES SHALL IN NO EVENT EXCEED THE AMOUNT END USER HAS PAID TO SERVICE PROVIDER FOR THE SERVICES SPECIFICALLY AFFECTED BY THE LIABILITY DURING THE TWO (2) MONTHS IMMEDIATELY PRIOR TO THE DATE THE LIABILITY AROSE THE APPLICABLE CREDITS IN ACCORDANCE WITH ITS CREDIT POLICIES THEN IN EFFECT. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO END USER OR ANY OTHER PERSON, FIRM OR ENTITY IN ANY OTHER RESPECT, FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, ACTUAL, OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, EVEN IF FORESEEABLE, ARISING OUT OF ANY MISTAKE, ACCIDENT, ERROR, OMISSION, INTERRUPTION, DELAY OR DEFECT IN THE ORDERING, PROCESSING, PROVISIONING, INSTALLATION, PERFORMANCE OR TRANSMISSION OF ANY SERVICES OR THE OBLIGATIONS OF SERVICE PROVIDER PURSUANT TO THIS AGREEMENT AND ANY EXHIBITS HERETO.

17. **WARRANTY.** SERVICE PROVIDER MAKES NO WARRANTY WHETHER EXPRESS OR IMPLIED AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF THE SERVICES OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY SERVICE PROVIDER ARE

HEREBY EXCLUDED AND DISCLAIMED TO THE FULLEST EXTENT ALLOWED BY LAW. FOR THE PURPOSE OF THIS SECTION, THE TERM "SERVICE PROVIDER" AND "END USER" SHALL BE DEEMED TO INCLUDE SERVICE PROVIDER, END USER, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, OFFICERS, DIRECTORS AND AFFILIATES.

18. **Integration & Amendment.** This Agreement and any related exhibits, addendums or service orders shall supersede all previous agreements between the parties, whether written or oral, and shall constitute the entire agreement between the parties as to the matters contained herein. Any amendment to this Agreement shall not be valid unless such amendment is made in writing and signed by both parties.
19. **Property & Personal Injury Indemnity.** Each party (the Indemnifying Party) will indemnify and defend the other party (the Indemnified Party), its directors, officers, employees, agents and their successors from and against all third party claims for damages, losses, or liabilities, including attorneys' fees, arising directly from performance of this Agreement and relating to personal injury, death, or damage to personal property that is alleged to have resulted from the negligent or willful acts or omissions of the indemnifying party or its subcontractors, directors, officers, employees, or agents. End User will further indemnify and defend Service Provider from and against all third party claims for damages arising from or related in any way to the use or misuse of the Services by End User.
20. **Force Majeure.** Neither party will be responsible for any delay, interruption, or other failure to perform under this Agreement due to acts beyond its control including, without limitation: Acts of God (e.g., natural disasters, lightning); wars, riots, terrorist activities, and civil commotions; inability to obtain equipment from third party suppliers; cable cuts by third-parties, a LEC, ILEC, CLEC or other third party Service Provider activities, and other acts of third-parties; explosions and fires; embargoes, strikes, and labor disputes; and laws, orders, rules, regulations, directives, or actions of any government authority. The Party claiming relief under this Section shall notify the other in writing of the existence of the force majeure event relied on and shall be excused on a day-by-day basis to the extent of such delay, interruption or interference until the cessation or termination of said force majeure event.

21. **Non-Disclosure and Records Retention.** Both parties agree to maintain at their principal place of business for three (3) years from the date of their preparation or creation, complete and accurate records of their business conducted pursuant to this Agreement. Service Provider will keep all End User information confidential except to the extent necessary to perform the work authorized by the End User under this Agreement, or as otherwise required by law. All information which End User shall acquire during the term of this Agreement concerning the business affairs of Service Provider shall be held by End User in trust to Service Provider, its successors and assignees, and End User shall have an absolute duty to maintain in confidence such knowledge or information and prevent disclosure to others. End User agrees that all such information concerning the business affairs of Service Provider constitutes trade secrets of Service Provider. All such information and material shall remain the sole property of Service Provider and End User shall return such property, without keeping copies, within ten (10) days of the termination or expiration of this Agreement for whatever reason. End User further agrees that any violation or threatened violation of any provision of this paragraph shall cause immediate and irreparable harm to Service Provider and, in such event, an injunction restraining End User from violation may be entered against it without a showing of irreparable harm or the posting of a bond, in addition to any other remedy available to Service Provider.

22. **INTELLECTUAL PROPERTY.**

Both parties agree that this Agreement does not grant or confer any right, title, or interest in the other's equipment, software, documentation, or other products. This agreement is not securing a corporate software license for enterprise use, software development agreement, nor "works for hire" arrangement and all wireless management reports, displays, presentments, processes, formulas, techniques, logic, software, source code, work flows and other wireless billing and usage content delivery mechanisms arising from or brought into the contracted service to provide Services under this agreement will remain and become the sole property of Service Provider.

- a) All End User carrier billing data, internal accounting information, or other proprietary information provided by End User before, during, or after the commencement of Service Provider Services remain the sole property of End User.
- b) Service Provider grants to End User a nonexclusive, worldwide, perpetual, irrevocable, and paid-up license by Service Provider to use, have, and internally distribute to the extent End User deems necessary all reporting, derivatives, recommendations, analysis, and content paid for and construed as a result of this agreement. No distribution of reports, contents, processes, techniques, logic, formulas, to parties outside this agreement may be made by either party without the express written consent of the other party.