



ECDI Master Services Agreement

This Internet Access Service Agreement (the “**Agreement**”) is incorporated and made a part of the Sales Order by and between East Creek Networks, LLC (“**ECN**”) and the Customer. ECN and Customer may be referred to individually as a “**Party**” and collectively as the “**Parties.**”

1. GENERAL

A. Introduction

By using this service known as East Creek Dedicated Internet (“**ECDI**” or the “**Service**”), or by establishing an account, Customer agrees to be bound by this Agreement and to use the Service in compliance with this Agreement. Additionally, Customer agrees to allow ECN and its affiliates to bring equipment to the Customer’s premises and utilize their electrical circuits.

B. Definitions

Defined Terms. When capitalized in this Agreement, the following terms have the following meanings:

“**Affiliate**” means any person or entity that controls, is controlled by, or is under common control with, the subject party, where “control” (in its various forms herein) is the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise or the ownership of any partnership interest in any general or limited partnership.

“**Authorized Representative**” means any Affiliate, employee, agent, contractor, or other authorized representative of the subject party.

“**Broadband**” means the transmission of wide bandwidth data over a high-speed internet connection. Broadband provides high speed internet access via multiple types of technologies including fiber optics, wireless, cable, DSL and satellite.

“**Claim**” means any claim, dispute, controversy, demand, allegation, suit, action or proceeding.

“**Customer Wiring**” means all existing or Customer installed or owned telecommunications wiring (such as fiber, coaxial cable, category of performance wiring [such as Cat5, 5e, 6, etc.], Ethernet wiring, cross-connects, etc.), commencing at the Demarcation Point(s) and extending throughout the buildings and Units until it terminates at the wall-plates (outlets) within each Unit or common area, that is or may be used by ECN, in conjunction with its Facilities, to deliver Services. Even if used by ECN, Customer Wiring is not part of the Facilities.

“**Demarcation**” shall refer to the point of connection between the connector at the end of ECN’s Network and the mating connector of the Customer’s network, as defined in the Sales Order.

“**Facilities**” means all hardware (such as wireless access points, gateways, switches, routers, etc.),



software, and network and related infrastructure, including wiring (such as fiber, coaxial cable, category of performance wiring, copper, etc.), conduit, remote radio units, equipment racks, splice cases, equipment, batteries, generators, rooftop antennas, satellite dishes, building entrance facilities, vaults, above-ground enclosures, markers, concrete pads and other appurtenant equipment placed on the Property by or at the direction of ECN.

“Force Majeure Event” means an event beyond a party’s reasonable control, other than payment of monies due, including, without limitation, any act of God or government, delay and/or failure of sources of supply, war, riot, pandemic or epidemic, insurrection, fire, flood, theft, vandalism, blocked or delayed access rights, and loss of the right to use rights of way or frequencies.

“Laws” means all applicable federal, state, and local statutes, rules, regulations, and ordinances, including the rules and regulations of the Federal Communications Commission, and any necessary federal, state and local permits, licenses and approvals.

“Liabilities” means any and all losses, damages, judgments, obligations, costs, assessments, deficiencies, expenses (including court costs and reasonable attorneys’ fees), physical damage to tangible personal property, bodily injury, death and any other liabilities.

ECN’s **“Network”** shall refer to the linked communications system created by the installation of the fiber optic cables, other cables, and wired and wireless devices owned, leased or otherwise contracted for use by ECN.

“ECN Wiring” means distribution cables, amplifiers, pedestals, lockboxes, equipment and appurtenant devices, including all infrastructure to the access point or Demarcation Point of the single family home and apartment.

“Order Form for Services” or “Order Form” means any ordering document and all applicable attachments, for the purchase of Services, executed by Customer and ECN and attached to or otherwise incorporated by reference into this Agreement.

“Plans” means the construction plan, specifications, Wi-Fi coverage heat map, and schedule agreed upon by Customer and ECN for installation of the Facilities, or, where no such plans exist or are required, or do not adequately address a specific requirement, ECN’s then-current installation methods that comply with Laws and generally accepted industry standards. ECN owns all right, title and interest in and to the Plans, and the Plans are the confidential information of ECN.

“Services” means all services that ECN delivers to the Property via the Facilities as described in any Order Form signed by Customer and ECN.

“Subscriber Terms” means any subscription agreement and/or terms and conditions of use between ECN and Customer as well as acceptable use or other policies established and amended by ECN in its sole discretion from time-to-time regarding the purchase and use of Services and made available to Users.

“Unit” means a single dwelling unit or billing unit at the Property.



“User” means a tenant, resident, owner, or other authorized person, including temporary guests, at the Property.

2. SERVICES

In consideration for the payments to be made by Customer, pursuant to the terms of each Sales Order and this Agreement, ECN will provide Customer’s device or network with the Service.

- a. ECN and its contracted providers shall install and maintain all portions of its Network up to the Demarcation Point. ECN shall give Customer at least ten (10) business days’ notice prior to the date of any scheduled, non-emergency work on the Network that may affect the Service.
- b. Except as modified in the Sales Order, Customer will provide ECN with ingress and egress to Customer’s premises from the public right-of-way for the installation to each exterior and interior connection and Demarcation Point. Customer will be responsible for all costs associated with any building modifications or conduit installation from the right-of-way or on the premises. If requested by ECN, Customer must provide access to ECN or its designation to allow inspection of Customer’s connection frame and attached or wireless equipment to ensure its compatibility with the Network and to verify usage of Network resources. Whether or not the premises are owned by Customer, Customer shall obtain all necessary approvals, including easements, where applicable, from the owner which will allow ECN to locate, install, and maintain its equipment, including 24/7 access for emergencies, and to remove its equipment, cable, and wire in the event of Customer’s default of any of the provisions of this Agreement or after the termination of the Service or this Agreement. ECN retains the right to leave and use any of its equipment, cable, and wire in place beyond Service termination, until ECN decides to remove part or all of it.
- c. Service Tickets – Refer to SLA.
- d. Service unavailability shall *not* include times when the Service is unavailable because of the following: scheduled maintenance, equipment upgrades, reasonable planned or predetermined downtime, negligent actions or willful misconduct of Customer, its agents, employees or others, a failure or malfunction resulting from applications of Customer, its agents or employees, circumstances beyond reasonable control caused by wear and tear resulting from accident, theft or unexplained loss, abuse, connection of foreign power, fire, flood, wind, acts of God or public enemy, or improper wiring, installation, repair or alteration of the equipment by anyone other than ECN.

3. **SERVICE LEVEL AGREEMENT (SLA)** - The SLA for this service can be accessed here: <https://eastcreeknetworks.com/sla>

4. ECN EQUIPMENT

- a. Equipment provided by ECN (“**Equipment**”) for the Service is owned by ECN and is to be returned to ECN upon termination of the Service, unless otherwise stated in the Sales Order.
- b. ECN agrees to keep the Equipment in good repair for the duration of the Service. Except as modified



in the Sales Order, Customer grants to ECN and its agents six (6) rack units, or equivalent wall or shelf space at each Demarcation, electricity with proper grounding, and access to operate and service ECN equipment.

- c. Customer will protect the Equipment and premises cabling and be responsible for any damage to or loss of the Equipment and premises cabling, including the result of improper grounding, Customer's abuse or negligence, and acts of God, until it is returned to ECN.
- d. This warranty is in lieu of all other warranties, express or implied, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose.
- e. Customer agree to return the Equipment within seven (7) days after termination of the Service, and to immediately pay the fair market value for any part of the Equipment not returned to ECN within that seven (7)-day period. Fair market value will be reasonably determined at ECN's sole discretion.
- f. If ECN damages Customer's premises ("the Premises") during the Service installation or maintenance, ECN will compensate the owner of the Premises for reasonable, actual, and documented costs of necessary repair.

5. PAYMENT

- a. In consideration for the Service to be provided by ECN, Customer shall pay fees to ECN, including a monthly fee, in advance and in accordance with the Sales Order, or in the absence of a Sales Order, ECN's applicable fee schedule or price list. After the first 36 months of service, the monthly service rate will be adjusted every renewal period thereafter. ECN reserves the right to change pricing at any time, except that Customer's pricing is protected within the current Term of Customer's Sales Order. Customer shall also pay appropriate deposits and late payment fees in accordance with the then current security deposit, credit, and collection policies of ECN, and any sales tax, Communications Services tax, or any taxes or other fees required by applicable law. To the extent permitted by law, the parties agree to make all reasonable efforts to cooperate and to provide assistance to one another in an attempt to obtain all available exemptions from any taxes to which any party may be subject as a result of entering into this Agreement.
- b. Payment shall be due in accordance with Customer's Sales Order.

6. TERM OF AGREEMENT

- a. Customer's Service Term of Agreement is 36 months, unless otherwise stated on the Sales Order. At the end of the initial Term of Agreement, the Service and Agreement will continue on a month-to-month basis until terminated with at least thirty (30) days' notice by either party, or renewed by written agreement of both parties, unless otherwise stated on the Sales Order.
- b. ECN will automatically re-evaluate bandwidth six (6) months after the Effective Date. Thereafter, twelve (12) months after the Effective Date, Customer shall have thirty (30) days to request that ECN re-evaluate bandwidth and pricing according to the original rate table in the Service Order.



- c. ECN may suspend or terminate the Service upon no less than thirty (30) days' prior notice, and Service suspension under this section shall not release Customer from Customer's monthly payments or other obligations for the remainder of Customer's Service Term of Agreement, upon (i) Customer's failure to pay any amounts invoiced hereunder within thirty (30) days after the date of the invoice; or (ii) Customer's failure or refusal to cure any breach of this Agreement (other than as mentioned above) within thirty (30) days after notice of such breach has been given by ECN to Customer. If such failure, which caused ECN to give notice of suspension or termination, is cured by Customer within the time periods provided for in this paragraph, such notice shall not be effective and this Agreement shall continue in full force and effect.
- d. If Customer terminate the Service prior to the completion of the full Term of Agreement, Customer agree to pay ECN, within seven (7) days, all of the balance on Customer's account, the fair market value of any Equipment not returned, as described herein, and 75% of the monthly Service charges for the balance of the Term of Agreement.
- e. If Customer cancel a Service prior to Service activation, Customer agree to pay ECN for the first month's Service, the Installation/Set-up fee, and any additional costs incurred by ECN in preparation for activating the Service. These additional costs may, for example, include engineering, provider services, permitting, cabling, and other labor and materials costs committed by ECN.

7. INFORMATION SECURITY

- a. This Service DOES NOT include storage or backup services for Customer's data. ECN shall have no responsibility for Customer's failure to backup, or loss of any of Customer's data. Customer is responsible for providing any archival history services with respect to Customer's data, whether created by Customer or a third party. Service transports data through optical and electrical communications cables and network nodes, some of which may utilize signal splitters in secured locations for non-invasive test ports.
 - b. ECN may or may not use authentication-based IP resolution to provide security to end point devices.
 - c. Each Sales Order with its attachments contains sensitive Proprietary Confidential Business Information, is exempt from public records disclosure in accordance with Florida Statutes 202 and 364, and Customer agrees to exercise due care to keep it confidential, subject to current law.
8. **CONFIDENTIALITY.** Except as specifically provided in this Agreement, and except for disclosures required by Laws, ECN and Customer will (a) keep confidential and not disclose to any other person the terms of this Agreement; (b) keep confidential and not disclose to any other party any information that is provided by one party to the other in connection with the performance of this Agreement and/or that a reasonable person would presume to be confidential or that is conspicuously marked "confidential," "proprietary," or with words of similar import; (c) not disclose or use any such confidential information for any purpose other than performance of this Agreement; and (d) not make any public announcement or press release about this Agreement without the other's prior approval.



Notwithstanding the foregoing, each party shall be entitled to (i) announce publicly and in business presentations that the parties have entered into a business arrangement under which ECN is providing its services to the Property, without disclosing any further specifics of this Agreement, which publicity may include ECN using the name and address of the Property on its list of properties served and Customer including ECN's name and logo in Customer's list of service providers for the Property; and (ii) disclose the terms of this Agreement to its financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the Property or Facilities, in each case on a need-to-know basis and provided that such recipients are obligated in writing to maintain the confidentiality of the terms of this Agreement without further disclosure to any other party.

9. **DISCLAIMER OF WARRANTIES.** ECN exercises no control whatsoever over the content, accuracy, or quality of the information passing through its Network or any products ordered by Customer via its Network. The information or products obtained by Customer through the Service are provided "as is" without any warranties whatsoever, expressed or implied.
10. **LIMITATION OF LIABILITY.** In no event shall either party be liable to the other for any consequential or special damages arising out of or in relation to this Agreement or the Service, including, but not limited to, damages incurred by Customer resulting from loss of data due to delays, non-deliveries, mis-deliveries or interruptions in Service, regardless of the cause.
11. **FORCE MAJEURE.** Neither party shall be considered in default of its obligations hereunder if performance of such obligations is prevented or delayed by acts of God, government, hackers, vandals, war, civil disorder, or by riots, Denial of Service attacks, labor disputes, failure or delay of transportation or third-party providers, or such other causes as are beyond such party's reasonable control.
12. **ASSIGNMENT.** No party to this Agreement may assign its rights or delegate its duties hereunder, in whole or in part, without the prior, written consent of the other party.
13. **CONSTRUCTION.** Any word in this Agreement shall be read either as singular or plural, and as either masculine, feminine, or neuter gender, as the context may require. Captions are included for convenience only, and shall not be construed to limit, expand, or otherwise modify the text of this Agreement in any manner. Each party assumes equal responsibility for the drafting of this Agreement, and this Agreement shall not be construed more strongly against one party or the other on the basis of which party drafted or prepared it or any portion of it.
14. **NOTICES.** Please refer to the Sales Order.
15. **GOVERNING LAW.** This Agreement shall be construed under the laws of Florida, and as applicable, of the United States of America. Venue for any action or proceeding arising out of this Agreement shall be in Florida, within or closest to Indian River County.