

## Master Service Agreement

### NETFORTRIS BUNDLES TERMS AND CONDITIONS

- Scope.** NetFortris Acquisition Co., Inc. and its affiliated companies (collectively "NetFortris") agree to provide Customer the Tariffed and non-Tariffed Services (collectively "Services") found in the Quote, hereby incorporated by reference to this Master Service Agreement ("Agreement"). Tariffed Services, pursuant to Tariffs filed with state regulatory agencies having jurisdiction over the Services, and the Federal Communication (FCC) will be provided in accordance with provisions of NetFortris' effective state and federal tariffs, which are hereby made a part of this Agreement. Customer agrees to pay for these Services and abide by all terms contained in this Agreement and NetFortris tariffs. If tariffs for any Services are cancelled as a result of regulatory action during the term of this Agreement, NetFortris will publish a Service Publication and Price Guide ("Publication"), which will be accessible at NetFortris' Internet web-site ([www.NetFortris.com](http://www.NetFortris.com)), setting forth the rates, terms and conditions which are applicable (previously contained in such tariffs). This Publication shall be deemed to be incorporated herein by reference and may be modified by NetFortris from time to time and thereby affect the service furnished to Customer. This Agreement is subject to credit approval by NetFortris in its sole discretion.
- Payment Terms.** Invoices for Services are due and payable in U.S. dollars upon receipt ("Due Date"). If any invoice is not paid by the Due Date, NetFortris may (i) apply a late charge; (ii) require an additional Security Deposit or other form of security; and/or (iii) take any action in connection with any other right or remedy NetFortris may have under this Agreement and its tariffs, whether at law, or in equity, including the disconnection of service.
- Billing Disputes.** If Customer in good faith submits a qualified dispute for any portion of any NetFortris invoice, Customer shall submit to NetFortris, full payment of the undisputed portion of the invoice and written documentation identifying and substantiating the disputed amount. Disputes must be received by NetFortris within sixty (60) days of Due Date or Customer's right to any billing adjustment shall be waived. A qualified dispute shall be determined by NetFortris in its sole discretion.
- Effective Date.** The "Effective Date" of each Supplement shall be the first day of the calendar month following completion of Service installation and billing commencement.
- Notices.** All notices and other communications hereunder, including notices of breach of this Agreement, shall be in writing and shall be deemed to have been duly given as the date of delivery or confirmed facsimile transmission. If mailed, notice shall be sent first class postage prepaid, certified or registered mail, return receipt requested and becomes effective upon confirmed delivery. Notices will be delivered or sent to the parties' respective addresses set forth on the signature page of this Agreement to the attention of the following persons:  
  
If to NetFortris: Attention: Contract Administration  
If to Customer: Attention: Customer's Billing Address
- Events of Default.** A "Default" shall occur if (a) Customer fails to make payment as required under this Agreement and such failure remains uncorrected for seven (7) calendar days after written notice from NetFortris; or (b) either party fails to perform or observe any material term or obligation (other than making payment) contained in this Agreement, and any such failure remains uncorrected for thirty (30) calendar days after written notice from the non-defaulting party informing the defaulting party of such failure. If Customer uses the Services for any unlawful purpose or in any unlawful manner, NetFortris shall have the right to immediately suspend and/or terminate any or all Services hereunder without notice to Customer ("Termination for Cause").



In the event of a Customer Default for any reason or Termination for Cause, NetFortris may: (i) suspend Service to Customer; (ii) cease accepting or processing orders for Services and/or; (iii) terminate this Agreement. If this Agreement is terminated due to a Customer Default or Terminated for Cause, such termination shall not affect or reduce Customer's minimum monthly commitments required under this Agreement, if applicable, and all Early Termination Charges shall apply. Customer agrees to pay NetFortris' reasonable expenses (including attorneys' and collection agency fees) incurred in enforcing NetFortris' rights in the event of a Customer Default or Termination for Cause.

In the event of a NetFortris Default, Customer may terminate this Agreement without incurring Early Termination Charges. Customer will, however, remain liable for all charges incurred for Services provided prior to Customer's termination of this Agreement.

7. **Term.** The Quote defines the Term of each Supplement, which shall commence on the Effective Date ("Initial Term"). Each Term will be automatically renewed for an equivalent Term ("Renewal Term") upon expiration of the Initial Term or the immediately preceding Renewal Term, unless (i) earlier terminated; or (ii) written notice has been given by either party at least sixty (60) days prior to the end of the then current Term that such party does not consent to renewal. Customer shall provide notice of termination sixty (60) days prior to the expiration of any Term. "Term" shall mean the "Initial Term" and all "Renewal Terms" collectively.
8. **Supplements.** Customer shall provide NetFortris with a signed Quote for Service in order to initiate Service to a designated Customer location. A Quote shall be binding i) upon signature by Customer; or ii) NetFortris initiates the Service installation, whichever is first in time.
9. **Certifications.** Customer hereby represents and warrants that it is certified to do business in all jurisdictions in which it will be utilizing NetFortris' services.
10. **Additional Assurances.** If at any time during the term of this Agreement there is a material and adverse change in a Customer's financial condition, which shall be determined by NetFortris in its sole discretion, then NetFortris may require a deposit or increase the amount of an existing Customer deposit. If Customer refuses to provide such deposits, NetFortris may terminate this Agreement. In such an event, all unpaid invoice amounts will be due immediately as will early termination and cancellation charges.
11. **Assignment.** Customer may not assign this Agreement without the express written consent of NetFortris, which consent shall not be unreasonably withheld.
12. **Regulatory.** Customer shall be responsible for all sales, gross receipts, use, excise and other federal, state and local taxes, charges and assessments, which will be separately listed on each invoice along with any fees or surcharges applicable to the Services.
13. **Business Relationship.** This Agreement shall not create any agency, employment, joint venture, partnership, representation, or fiduciary relationship between the parties. Neither party shall have the authority to, nor shall any party attempt to, create any obligation on behalf of the other party.
14. **System Maintenance.** In the event NetFortris determines that it is necessary to interrupt Service or that there is a potential for Services to be interrupted for the performance of system maintenance, NetFortris will use good faith efforts to notify Customer prior to the performance of such maintenance. In no event shall interruption for system maintenance constitute a failure of performance by NetFortris. In the event of Service failure, Customer is entitled to Service credits as defined in the Service Level Agreement as posted on the NetFortris website and is hereby incorporated by reference.



15. **NetFortris Property.** Any equipment including all associated software (collectively "Equipment") installed by NetFortris at the Customer's premises remains the personal property of NetFortris, and nothing contained in this Agreement shall give or convey to Customer any right, title or interest whatsoever in such Equipment. Customer agrees not to interfere with or damage the Equipment, and further agrees to reimburse NetFortris for any loss or damage thereto that is caused by the intentional or negligent acts of Customer, its agents, employees, authorized users or representatives. In the event Customer fails to return Equipment, Customer will allow NetFortris to promptly remove the Equipment from Customer's premises upon termination of the Services for which the Equipment was installed and to remit payment for associated technician charges.
16. **Warranty, Disclaimer, Limitation of Liability and Indemnity.** For purposes of this Section, the term "NetFortris" shall be deemed to include NetFortris, its affiliates, shareholders, directors, officers and employees, and any person or entity assisting NetFortris in its performance pursuant to this Agreement.
  - i) **WARRANTY DISCLAIMER.** WITHOUT LIMITING ANY EXPRESS FINANCIAL OR LIABILITY PROVISIONS PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES HEREUNDER (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS/FAILURES), UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. NETFORTRIS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVISIONED HEREUNDER. NETFORTRIS SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR INFRINGEMENT OF THIRD PARTY RIGHTS.
  - ii) NetFortris shall not be liable for any act, omission of any other entity furnishing Customer with facilities or equipment used with the Services, nor shall NetFortris be liable for any damages or losses due in whole or in part to the fault or negligence of Customer or due in whole or in part to the failure of Customer-provided equipment or facilities.
  - iii) **LIMITATION OF LIABILITY.** NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (a), NETFORTRIS'S TOTAL LIABILITY IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE LESSER OF (1) DIRECT DAMAGES PROVEN BY CUSTOMER, OR (2) THE AGGREGATE AMOUNTS PAID BY CUSTOMER TO NETFORTRIS FOR THE THREE MONTH PERIOD PRIOR TO ACCRUAL OF SUCH CAUSE OF ACTION FOR THE SPECIFIC PRODUCT OR SERVICE WHICH FORMS THE BASIS FOR SUCH CAUSE OF ACTION, (3) IN THE CASE OF TARIFFED SERVICES, THE CREDITS AVAILABLE TO CUSTOMER UNDER NETFORTRIS'S THEN STANDARD TARIFFED LIMITATION OF LIABILITY. THE FOREGOING LIMITATION APPLIES TO ALL CAUSES OF ACTION AND CLAIMS, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. FURTHER NETFORTRIS'S LIABILITY WITH RESPECT TO INDIVIDUAL NETFORTRIS SERVICES MAY ALSO BE LIMITED PURSUANT TO THE TERMS AND CONDITIONS OF THE APPLICABLE SUPPLEMENTS. CUSTOMER ACKNOWLEDGES AND ACCEPTS THE REASONABLENESS OF THE FOREGOING DISCLAIMERS AND LIMITATIONS OF LIABILITY.
  - iv) **Indemnification.** Customer will defend, at its own expense, and indemnify and hold harmless NetFortris (including its officers, directors, employees, agents, and contactors) from any claims, suits, liabilities, losses, damages and expenses (including reasonable attorneys' fees and costs), asserted against or incurred by NetFortris arising out of or relating to: (a) Customer's acts, omissions and/or breach of its obligations hereunder; (b) use of any Services or related products and documentation provided to Customer hereunder; and (c) Customer's connection of any NetFortris product or service to



any third party service or network, including without limitation, damages resulting from unauthorized use of, or access to, NetFortris' network. Notwithstanding any other provision of this Agreement, Customer shall pay all damages, settlements, expenses and costs, including costs of investigation, court costs and reasonable attorneys' fees and costs incurred by NetFortris as set forth in this Section, including, without limitation, reasonable attorneys' fees and costs) incurred in enforcing this Agreement or Customer's use of the Services.

17. **Force Majeure.** NetFortris shall not be liable for any failure of performance hereunder due to causes beyond its reasonable control including, but not limited to: acts of God, fire, explosion, vandalism, cable cut, problems within RBOC or ILEC networks, flood, storm, or other similar catastrophe; any law, order, regulation, direction, action or request of the United States government, including state and local governments having jurisdiction over either of the parties, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of said governments, or of any civil or military authority; national emergencies; insurrections; riots; terrorist actions; wars; or strikes, lock outs, or work stoppages.
18. **Underutilization and Early Termination Charges.** Underutilization Charges: Monthly Volume Commitments ("MVC") apply. MVC is defined as the Quote(s) Monthly Recurring Revenue ("MRR") charges from the Effective Date of each Quote. If at the end of any month, Customer's Service charges fail to meet or exceed the MVCs, Customer shall pay, in addition to all other charges under this Agreement, the difference between the MVC and Customer's invoice during such month.

**Early Termination Charges Prior to Service Installation:** If Customer terminates this Agreement or Service prior to the firm order commitment (FOC) date for Tariffed and non-Tariffed Services, 100% of Installation Charges will apply, even if those charges had been initially waived. Standard Installation charge is \$1,500.00 per location.

**Early Termination Charges After Service Installation:** Early Termination Charges ("ETF") apply if, 1) Customer terminates this Agreement or Service prior to the expiration of any Term, for reason other than for a NetFortris Default; or 2) NetFortris terminates this Agreement or a Service as a result of a Customer Default or Termination for Cause. Customer will be required to pay, as liquidated damages, and not as a penalty, in addition to all accrued but unpaid charges through the date of such termination, the ETF amount obtained by multiplying the individual MVCs of each Service Supplement by the remaining number of months left in each respective Term.

19. **Legal Construction.** In the event one or more of the provisions contained in this Agreement shall, for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Each party hereto has reviewed this Agreement and any presumptions against the drafter are hereby waived.
20. **Survival.** The covenants and agreements of Customer contained in this Agreement with respect to payment of amounts due, confidentiality, liability, and indemnification shall survive any termination of this Agreement. The rights and obligations under this Agreement shall survive any merger or sale of either party and shall be binding upon the successors and permitted assigns.
21. **Waiver.** Under no circumstance shall the failure of NetFortris to enforce any provision of this Agreement in any particular instance be construed as a waiver of that provision. The various rights and remedies given to or reserved by either party herein, or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any default or acquiescence, nor will any waiver of any breach or any provision be considered a condonement or any continuing or subsequent breach of the same provision.



22. **Entire Agreement/ Amendments/ Riders.** This Agreement (and all other documents specifically referred to herein) constitute the entire and final agreement and understanding between the parties with respect to its subject matter and supersedes all other and prior representations, understandings or agreements relating to such subject matter, which are of no further force of effect. The Quote referred to herein, and any future Quote by and between the parties hereto are integral parts of this Agreement and are hereby incorporated by reference. This Agreement may only be modified or supplemented by an instrument in writing executed by each party. This Agreement may be executed in two or more identical copies, each of which shall be considered an original. Customer represents that it has the authority to execute this Agreement.
23. **Governing Law.** This Agreement is deemed to be entered into in the State of California and shall not become a binding obligation of NetFortris until it has been executed by an officer of NetFortris. The parties agree that any dispute arising under this Agreement shall be governed by and construed in accordance with the laws of the State of California. Customer consents to personal jurisdiction and agrees the exclusive forum for any disputes arising out of or relation to this Agreement will be the state or federal courts in the state of California, county of San Francisco. This Agreement is also subject to, and Customer agrees to comply with, all local laws, and regulations, rulings, and orders of local, state and federal governmental agencies, including but not limited to the Communications Act of 1934, the Telecommunications Act of 1996, and rules and regulations of the Federal Communications Commission and California Public Utilities Commission. Customer Acknowledges that some of the services which are the subject of the Agreement are not subject to regulation or NetFortris' Tariffs, and that Customer and NetFortris may alter the terms of the Tariffs by this Agreement.
24. **MODIFICATIONS.** NETFORTRIS RESERVES THE RIGHT, AT THE SOLE DISCRETION OF NETFORTRIS, TO CHANGE, MODIFY OR OTHERWISE ALTER THESE TERMS AND CONDITIONS AT ANY TIME. YOU CAN FIND THE MOST RECENT VERSION OF THESE TERMS AND CONDITIONS AT THE NETFORTRIS WEBSITE (THE "WEBSITE"). SUCH MODIFICATIONS SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING SUCH TO THE WEBSITE. IF CUSTOMER DOES NOT AGREE TO THE POSTED, REVISED TERMS AND CONDITIONS, CUSTOMER'S SOLE RECOURSE IS TO TERMINATE THIS AGREEMENT AND SERVICE. CONTINUED USE OF THE SERVICE FOLLOWING THE POSTING OF MODIFICATIONS SHALL CONSTITUTE CUSTOMER'S ACCEPTANCE OF THE REVISED TERMS AND CONDITIONS.

## NETFORTRIS LETTER OF AGENCY

The Customer (company/individual) hereby appoints NetFortris as its telecommunications agent; to act in company's/individual's name and stead, in obtaining any and all information requested from our local exchange telephone company and our long distance carrier for the purpose of ordering changes to specific telecommunications services provided to the undersigned, including without limitation, removing, adding to, or rearranging such telecommunications service including changing the responsible organization on our/my 800/888 service as reflected on this service agreement or any related service agreements signed by NetFortris which are necessary for the fulfillment of services requested on this application. My Local Exchange Carrier (LEC) is authorized to make pertinent information available to NetFortris as its/my agent for this purpose and to follow Agent's instructions with reference to any order or change to instate or out of state long distance services which the LEC provides to the undersigned, and hereby releases LEC from any liability for doing so unless said information is negligently or recklessly supplied and harm results to the undersigned. I/We have been made aware that our local exchange carrier may charge a small fee in association with this change to our long-distance carrier which will be reflected on our/my local telephone bill when these changes take place. This LOA shall remain in effect until such time as the undersigned notifies NetFortris in writing 30 days prior to termination.

