

## **Acceptable Use Policy/ Service Terms and Conditions**

### **Customer Premise Software and Equipment**

NetFortris and its affiliates (collectively, “NetFortris”) will provide Customer with Hosted IP Telephony services on a monthly subscription basis. NetFortris delivers IP telephony services through data connections that carry IP voice packets directly to a phone or other IP devices on a user’s desk with the same level of reliability that businesses expect from a traditional phone system.

These Terms and Conditions govern NetFortris installation, maintenance, and other labor provided to its Customers. These Terms and Conditions will not be effective unless and until Customer and NetFortris have executed a NetFortris Master Service Agreement (“MSA”) and NetFortris Supplement (“Supplement”).

#### **Customer Premises Equipment (“CPE”)**

Certain equipment must be installed on-site at the Customer’s place or places of business, referred to as “Customer Premises Equipment”, or “CPE”. Some CPE shall be supplied by NetFortris (the “NetFortris-Provided CPE”) during the Term of the MSA and/or Supplement, and shall remain the property of NetFortris; and some CPE must be provided by Customer (the “Customer-Provided CPE”), as more fully described below:

**NetFortris-Provided CPE.** All NetFortris-Provided CPE, including but not limited to the IP telephone equipment, shall be located on the Customer’s premises only during the Term of MSA and/or Supplement, and shall remain the sole property of NetFortris at all times. Customer agrees not to allow NetFortris’s title to such NetFortris-Provided CPE be encumbered in any way, and will take any measures necessary to ensure that no lien or security interest of any third party attaches or is perfected in the NetFortris-Provided CPE at any time. Customer agrees to notify any financial institution that may have a security interest in and to after-acquired inventory, furnishings, equipment or fixtures that the NetFortris-Provided CPE shall remain the sole property of NetFortris, and is only temporarily located on Customer’s premises. Upon termination of the MSA and/or for any reason, including but not limited to the bankruptcy and insolvency of Customer, Customer shall promptly return the NetFortris-Provided CPE to NetFortris or fully cooperate with NetFortris to allow NetFortris to remove all NetFortris-Provided CPE, at NetFortris’s option, and shall promptly pay NetFortris for any damage to the NetFortris-Provided CPE while in Customer’s possession, excepting damage caused solely by normal wear and tear.

**Customer-Provided CPE.** Customer shall provide appropriate environmental conditions, necessary commercial power and facilities for the NetFortris-Provided CPE, and if required by local law, conduit and/or special fire retarding cabling. Customer shall provide government inspectors, NetFortris and/or its applicable affiliates, subcontractors and vendors performing such work, reasonable access to the premises. All station cable, riser cable, distribution and feeder cable will be tested and identified by Customer at the main and any intermediate distribution frame(s) when Customer provides inside wiring. All telephone and data jacks will be labeled properly and a corresponding floor plan will be provided to NetFortris by Customer. Any additional work required by NetFortris due to improper or inadequate cabling or labeling will be charged at NetFortris’s standard Time & Material. Upon request by NetFortris, Customer will provide a detailed floor plan showing the location of each piece of existing equipment and the desired mounting location for any new equipment and/or power supply with the understanding that changes to the floor plan after submission to NetFortris may result in additional charges. Customer shall pay all charges including, but not limited to, charges for telephone trunk lines, system modem access line, RJ-21 block installation in the room the CPE is to be installed, if applicable, as well as, PBX extensions and/or PBX equipment required for the installation of the CPE. NetFortris assumes no responsibility for the operation of data, radio control, paging, alarm or other circuits, which are not modified or installed pursuant to a Purchase Order.

**Activation Date.** The term “Activation Date” means the first business day on which installation of the equipment is complete. Minor omissions or variances in performance of the Equipment or the Services that do not materially or adversely affect the operation of the Services shall not be deemed to have postponed the Activation Date. NetFortris shall use its best efforts to make timely delivery and installation. HOWEVER, ALL STATED DELIVERY AND INSTALLATION DATES ARE APPROXIMATE AND NETFORTRIS SHALL, UNDER NO CIRCUMSTANCES, BE DEEMED TO BE IN DEFAULT HEREUNDER OR BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR COMMERCIAL LOSS RESULTING FROM DELAYS IN DELIVERY OR INSTALLATION.

**Effect of Termination.** Upon expiration or termination of the MSA and/or Supplement for any reason, Customer will promptly return all NetFortris-Provided CPE, or fully cooperate with NetFortris to allow NetFortris to remove all NetFortris-Provided CPE, at NetFortris’s option. NetFortris will provide Customer with a final invoice (the “Termination Invoice”) setting forth all fees owed to NetFortris as of the date of such invoice, including cancellation fees, if applicable, and fees owing for any work performed on behalf of Customer up to the Termination Date, which shall be calculated on a time-and-materials basis in accordance with NetFortris’s then applicable pricing schedule. If Customer fails or refuses to return the NetFortris-Provided CPE or fails or refuses to cooperate with NetFortris by allowing NetFortris to remove the NetFortris-Provided CPE, or has damaged the NetFortris-Provided CPE (excepting damage caused solely by normal wear and tear), the Termination Invoice may also include a charge for NetFortris’s purchase price or cost of repair for the NetFortris-Provided CPE. Customer shall pay such Termination Invoice in full within five (5) days of the date of the Termination Invoice.

#### **Maintenance Service and Response Times.**

The response time begins when the NetFortris NOC and Customer determine that a field technician should be dispatched to provide remedial service. The Customer will receive a callback from the NetFortris NOC within one (1) hour from the customer's original call, with diagnosis of network outage or service affecting problem. All other non-service affecting problems will be diagnosed during normal business hours. A technician will make reasonable efforts to arrive on-site within the response interval specified herein.

The technician will install spare parts as suggested by remote diagnostics and discussions with Customer. For non-emergency situations as described below, provided a technician is not required to work the problem on-site, the equipment will be shipped to Customer. If additional spare parts are required, they will be shipped in accordance with the provisions of the applicable manufacturer. It is Customer's responsibility to replace defective components at its locations and return defective components to the NetFortris-designated location.

**Procedure Upon Failure or Malfunction of Equipment.** Customer agrees to notify the NetFortris NOC at 888-469-5100, option 2 upon the failure or malfunction of NetFortris-Provided CPE. The NetFortris Standard Service Hours are defined as during hours of 8:00 a.m. to 5:00 p.m. PST, Monday through Friday, except NetFortris observed holidays.

**Voice Emergency Procedure.** An "Emergency" means a major malfunction of Voice Services, which will consist of one or more of the following conditions: (a) complete failure of the system that results in (i) no incoming or outgoing communication to or from Customer's premise or (ii) no internal communications within the system, and (b) failure of a critical subsystem that results in: (i) an inoperative attendant console; (ii) an inoperative voice mail system; or (iii) forty percent (40%) of all telephones out-of-service.

When notice of an Emergency is received by the NetFortris NOC during NetFortris Standard Service Hours, NetFortris will make reasonable efforts to have maintenance personnel respond within two (2) hours of such notice. All other times than NetFortris Standard Service Hours, NetFortris agrees to make reasonable efforts to have maintenance personnel respond within four (4) hours of said notice, twenty-four (24) hours per day, seven (7) days a week.

**Non-Emergency Procedure.** NetFortris agrees to make reasonable efforts to have maintenance personnel respond within twenty-four (24) hours of notice of a Non-Emergency malfunction or by the next business day when notice immediately precedes a weekend or holiday. "Non-Emergency" means a minor malfunction consisting of any failure other than a major malfunction as defined above.

#### **Limited Warranty.**

**NetFortris Equipment Warranty.** NetFortris warrants the NetFortris-Provided CPE against defective parts and workmanship. NetFortris's sole obligation under this warranty and the sole and exclusive remedy of the Customer under this warranty is limited to replacement or repair, at NetFortris's option, of the defective part(s) or workmanship. NetFortris's obligation to repair or replace defective part(s) or workmanship is conditioned upon the NetFortris-Provided CPE being serviced and repaired solely by NetFortris, its employees or agents. NetFortris shall not be responsible for any defect or damage resulting from the mishandling, abuse, misuse, improper storage, accident, negligence, theft, vandalism, fire, water or other peril beyond the control of NetFortris, or because of conditions outside of environmental specifications, including but not limited to wiring, electrical power, temperature, humidity or dust, or from causes other than normal use; or due to improper installation by someone other than NetFortris, its employees or agents.

**Additional Limitations on NetFortris's Warranty.** NetFortris's limited warranty in the above section shall not apply to any non-conformities which are the result of (i) Customer customizations, enhancements or modifications of the Services or the NetFortris-Provided CPE; (ii) use of the Services or NetFortris-Provided CPE with third party software, hardware or firmware not provided by or authorized by NetFortris or approved by NetFortris in writing; or (iii) incorrect data entry, or output, as applicable, by Customer, Users, Respondents, other third parties or third party software, hardware or firmware not provided by NetFortris.

**Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES CONTAINED IN SECTIONS ABOVE, NETFORTRIS DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. CUSTOMER ACKNOWLEDGES AND AGREES THAT NETFORTRIS EXERCISES NO CONTROL OVER, AND ACCEPTS NO RESPONSIBILITY FOR, THE CONTENT OF THE INFORMATION PASSING THROUGH NETFORTRIS'S COMPUTERS, NETWORK HUBS AND POINTS OF PRESENCE, OR THE INTERNET. NETFORTRIS DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. ALL SERVICES PERFORMED UNDER THIS AGREEMENT ARE PERFORMED "AS IS" AND WITHOUT WARRANTY AGAINST FAILURE OF PERFORMANCE INCLUDING, WITHOUT LIMITATION, ANY FAILURE DUE TO COMPUTER HARDWARE OR COMMUNICATION SYSTEMS. NETFORTRIS EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CUSTOMER WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER.

**Toll Fraud Disclaimer.** The Services provided have been designed to be reasonably secure from unauthorized usage and intrusions. However, the Services are not invulnerable to fraud or hacking. NetFortris disclaims any express or implied warranty that the Services are technically immune from or prevent fraudulent intrusions into and/or unauthorized use for the Services (including its interconnection to long distance networks). Customer is hereby warned that fraudulent use of the Services, including but not limited to DISA, auto-attendant, voice mail, 800 and 900 service and 10xxx, is possible. NetFortris makes no express or implied warranty against such fraud or hacking, and will not be responsible for consequential, incidental or special costs, including without limiting the generally of same, telephone line charges resulting from such activity.