



Hosted Telephony Services and Equipment Terms and Conditions

RECITALS

WHEREAS, Morse is a national provider of IP telephony, IP networking, infrastructure, wireless and other advanced application solutions and support to large enterprise, state and local government and education customers;

WHEREAS, Customer desires to purchase and Morse desires to supply Hosted Telephony Services and Equipment;

WHEREAS, This Agreement shall set forth the terms and conditions that apply to any Service Order (as defined below) for Hosted Telephony Services and Equipment that Morse may execute with Customer;

NOW, THEREFORE, in consideration of the mutual promises contained herein and for good and valuable other consideration, the sufficiency of which is mutually acknowledged, the parties hereby agree as follows:

AGREEMENT

1. DEFINITIONS

- (a) Acceptance: Acceptance or "Accepted" shall refer to that point in time when the Acceptance Period is complete.
- (b) Acceptance Period: Acceptance Period shall refer to the thirty (30) calendar day period after Cutover where Customer shall observe the performance and operation of the System. In the event Customer does not provide Morse with a Punchlist during the Acceptance Period, the System shall be deemed automatically Accepted at the completion of the Acceptance Period. If a Punchlist is created during the Acceptance Period, as further detailed herein, the Acceptance Period shall recommence upon Morse's resolution of the Punchlist.
- (c) Agreement: Agreement shall refer to the Master Purchase Agreement including all Service Orders, Changer Orders, appendices and amendments thereto.
- (d) Change Order: Change Order shall refer to the written order which sets forth any additions or reductions to the quantities of products and services purchased pursuant to a Service Order. A Change Order shall only become effective upon execution by both Morse and Customer.
- (e) Cutover: Cutover shall refer to the date when Morse determines that the System is installed performing substantially in accordance with the applicable Documentation and is ready for service. Omissions or variances that do not, in Morse's reasonable determination, materially and adversely affect the operation of the System shall not form a basis for delay in Cutover.
- (f) Documentation: Documentation shall refer to user manuals, training materials, product descriptions and specifications, technical manuals, license agreements, supporting materials and other information relating to Equipment, Hosted Telephony Services, Implementation Services or Maintenance, whether distributed in print, electronic, CD-ROM or video format. All Documentation provided pursuant to a Service Order is licensed and any reference to Documentation being purchased shall strictly be construed as a reference to it being licensed.
- (g) Equipment: Equipment shall refer to the hardware and Software products purchased by Customer pursuant to a Service Order. Equipment may refer to hardware manufactured and/or assembled by one or



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more third parties. Equipment includes, but is not limited to telephones, telephone accessories, network infrastructure, virtualized cloud servers, and cloud desktop computers.

- (h) Fair Use Policy. Fair Use Policy shall refer to the terms and conditions set forth in Section 17.
- (i) Hosted Telephony Service: Hosted Telephony Service shall include the following services as specified in a Service Order: hosted IP-based business phone system with Software; unlimited local and long distance minutes for business use subject to the Fair Use Policy; direct inward dial phone number for every licensed user in the System; local number portability; single number per customer directory; and number registration for e-911. Hosted Telephony Service may optionally include, if specified and priced in a Service Order the following: toll-free number(s); Morse-hosted call center agents and supervisors; Morse-hosted mobile telephony services; Morse-hosted fax telephony; Morse-hosted business internet service; Morse-hosted audio and web conferencing.
- (j) Implementation Services: Implementation Services shall include the following services as specified in a Service Order: survey Customer's site and advise Customer of any additional site preparations that Customer shall be required to undertake, at Customer's expense including, without limitation, floor plan modifications, network configuration requirements, required environmental conditions, power requirements, cabling requirements, bandwidth requirements, and all other conditions which Customer may need to meet prior to the installation of Hosted Telephony Services; specify and dimension the System including required amounts of Equipment; install and set-up the System at the Customer's site; test the System prior to Cutover; and prepare a Punchlist during the Acceptance Test Period and make any necessary changes to the System to resolve items placed on the Punchlist; and train Customer to operate the System in accordance with the Documentation.
- (k) Punchlist: Punchlist shall mean that written list prepared by Morse with assistance from Customer prior to Acceptance which sets forth those material non-conformities with the System, if any, which must be resolved by Morse. Any non-conformities noted on the Punchlist must be verifiable and reproducible by Morse. Upon correction, the Acceptance Period shall re-commence. In the event Morse and Customer determine a Punchlist is not required, the Acceptance Period shall be deemed completed and the System shall be deemed Accepted.
- (l) Service Order: Service Order shall refer to the written order which sets forth the pricing, quantities, anticipated delivery date and related terms for Systems which a Customer has purchased. Service Orders shall be signed by both Morse and Customer. In addition, Service Orders shall include any Change Orders after they have been signed between Morse and Customer. Notwithstanding anything to the contrary, any and all Service Orders executed between Morse and Customer shall be implemented pursuant to the terms and conditions of this Agreement.
- (m) Software: Software shall refer to the machine readable (object code) version of the computer programs provided with and embedded in the Equipment made available by Morse and licensed to Customer pursuant to the Software License. Software may include firmware, and any copies made, bug fixes for, updates to, or upgrades thereof. Software may include computer programs provided by third parties. All Software provided pursuant to a Service Order is licensed and any reference to Software being purchased shall strictly be construed as a reference to it being licensed.
- (n) Software License. Software License shall refer to the terms and conditions which Software is licensed to Customer hereunder as set forth in Section 8.
- (o) System: System shall refer to the collective Hosted Telephony Services, Implementation Services, Equipment and Documentation purchased by Customer pursuant to a Service Order.



2. PURCHASE AND SCOPE

- (a) Purchase and Supply. From time to time during the term of this Agreement, Customer shall have the right to purchase one or more Systems from Morse. Upon request of Customer, Morse may provide quotations for additions to existing Systems or for new Systems.
- (b) Purchase Orders. Purchase orders (P.O.) shall not be required by either party to give effect to this Agreement or any Service Order. If Customer so desires, the Customer may issue a P.O. Notwithstanding the issuance of such P.O., no contingency, term or condition contained on any P.O. shall be binding upon Morse. The terms of this Agreement and Service Order(s) shall apply, regardless of any additional or conflicting terms on any P.O. or other correspondence or documentation submitted by Customer to Morse. Any such additional or conflicting terms are deemed rejected by Morse.
- (c) End-User. Customer agrees that any System purchased shall be for its own use as an end-user and not for resale.
- (d) Scope. The scope of this Agreement shall include Customer's purchase, operation, maintenance, and expansion of one or more Systems.

3. TERM AND TERMINATION

- (a) Term. Unless earlier terminated in accordance with the provisions of this Section, this Agreement is effective as of the date it is signed by both Morse and Customer ("Effective Date") and will continue for a period of thirty-six (36) months from Cutover (the "Initial Term"). Thereafter, this Agreement shall automatically renew on an annual basis unless and until terminated in accordance with the provisions of this Section (each year being a "Renewal Term").
- (b) Early Termination for Convenience by Customer during Initial Term. Customer may elect to terminate this Agreement or any Service Order prior to the expiration of the Initial Term by providing Morse with thirty (30) calendar day advance, written notice. In such event, and at Morse's election and in addition to remitting payment for any outstanding unpaid invoice or accrued fees, Customer shall i) return all Equipment supplied pursuant to the applicable Service Orders affected by termination within thirty (30) calendar days of the date of termination at Customer's expense pursuant to Morse's return material authorization process; and ii) pay Morse, as liquidated damages and not as penalty, an amount equal to six (6) times the amount of "monthly recurring fees" set forth in the applicable Service Orders affected by such termination. In the event Customer does not return the Equipment as directed by Morse or if the Equipment has excess wear and tear, Morse may invoice and Customer agrees to pay Morse for such unreturned Equipment at the then current retail price for such Equipment or comparable products.

Carrier Services: Following expiration of any applicable Minimum Period, either Party to this Agreement may terminate any service provided under a month-to-month service option with sixty (60) days prior written notice. In the event Customer terminates or discontinues any service provided under a term plan with MorseCom prior to the expiration of the then-current term, Customer agrees to pay MorseCom within 90 days of termination or discontinuance: (1) the monthly recurring charges and minimum monthly usage amount (if applicable) multiplied by the number of months remaining in the service term period and (2) any previously waived installation, monthly access charges and special promotional credits given, in one lump sum. Customer acknowledges that MorseCom's damages for early termination would be difficult to determine and the termination charge(s) constitutes liquidated damages and are not intended as a penalty but as a mutually-agreed upon amount representing, but not limited to, lost revenue, proportionate or actual third-party costs and capital expenditures, and internal costs. All such amounts will become due and payable by Customer to MorseCom within 30 days of receipt of upstream carrier's invoice for the Early Termination Fee.



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- (c) Early Termination for Convenience during Renewal Term. Customer or Morse may elect to terminate this Agreement or any Service Order prior to the expiration of any Renewal Term by providing the other with thirty (30) calendar days advance, written notice. In such event, Customer shall immediately pay Morse for any outstanding invoices and accrued unpaid charges invoiced to Customer.
- (d) Termination for Cause by Customer. Customer may terminate this Agreement without liability by written or telegraphic notice if Morse shall commit a substantial breach of its obligations hereunder, or if Morse makes a general assignment for the benefit of creditors, or if a petition in bankruptcy under any insolvency law is filed by or against Morse and such petition is not dismissed within thirty (30) calendar days after it has been filed, provided, however, that in the case of any such breach which is capable of being cured, Customer shall not terminate this Agreement unless and until Morse shall have failed to make good such breach within thirty (30) calendar days after Morse shall have been served with a notice requiring that such default be made good and stating its intention to terminate this Agreement if the notice is not complied with.
- (e) Termination for Convenience by Morse. Morse may elect to terminate this Agreement or any Service Order prior to the expiration of the Initial Term by providing Customer with thirty (30) day advance, written notice.
- (f) Termination for Cause by Morse. Morse may terminate this Agreement without liability by written or telegraphic notice if Customer shall commit any substantial breach of its obligations hereunder, or if Customer makes a general assignment for the benefit of creditors, or if a petition in bankruptcy under any insolvency law is filed by or against Customer and such petition is not dismissed within thirty (30) calendar days after it has been filed, provided, however, that in the case of any such breach which is capable of being cured, except for the payment of money hereunder or breach of the Fair Use Policy, Morse shall not terminate this Agreement unless and until Customer shall have failed to make good such breach within thirty (30) calendar days after it shall have been served with a notice requiring that such default be made good and stating its intention to terminate this Agreement if the notice is not complied with.
- (g) Remedy for Subsections 3(d) – 3(f). In the event this Agreement is terminated pursuant to Subsection 3(d), 3(e) or 3(f) during the Initial Term, Customer shall remit payment for any outstanding unpaid invoice or accrued fees and return all Equipment supplied pursuant to the applicable Service Orders affected by termination within thirty (30) calendar days of the date of termination at Morse’s expense pursuant to Morse’s return material authorization process. In the event Customer does not return the Equipment within such thirty (30) calendar day period or if the Equipment is returned with excess wear and tear, Morse may invoice and Customer agrees to pay Morse for such unreturned Equipment at the then current retail price for such Equipment or comparable products.
- (h) Early Termination for Convenience during First Thirty (30) Days after Acceptance. Customer may elect to terminate this Agreement or any Service Order within the thirty (30) calendar day period following Acceptance if Customer shall be unsatisfied with the Performance of the System by providing Morse written notice prior thereto. In such event, Customer shall return the Equipment supplied pursuant to the applicable Service Orders affected by termination within thirty (30) calendar days of the date of termination at Customer’s expense pursuant to Morse’s return material authorization process. Provided the System is returned in “like new” condition, Morse shall refund any security deposit or recurring fees paid by Customer to Morse pursuant to Section 4.
- (i) Suspension of Service. In the event Customer violates or violates the Fair Use Policy or Morse has reasonable concerns over network integrity, Morse may immediately suspend the Hosted Telephony Service. Morse shall use reasonable efforts to notify Customer in advance of any such suspension. Morse shall and Customer shall cooperate as promptly as possible to restore any such suspended Hosted Telephony Services.



4. PRICING, INVOICING AND PAYMENT TERMS

(a) Pricing. Pricing for the System shall be set forth in the Service Order. Notwithstanding the foregoing, pricing for the Hosted Telephony Service set forth in the Service Order is subject to change upon thirty (30) calendar days advance, written notice to Customer. Pricing quoted for Hosted Telephony Service is subject to the Fair Use Policy.

(b) Payment Terms. Customer shall pay Morse for each Service Order as follows:

- i) For any “one-time” fees set forth in the Service Order, Morse shall invoice Customer in full concurrent with the execution of the Service Order.
- ii) For any “recurring” fees set forth in the Service Order, Morse shall invoice Customer monthly, in arrears.
- iii) A “security deposit” equal to two (2) months of recurring fees shall be due and payable upon execution of the Service Order. The security deposit is non-refundable and shall be applied to the final two (2) months (i.e., months 35 and 36) of the initial term or taken as a credit for any early termination charges that may accrue pursuant to Section 3.
- iv) All invoices issued by Morse hereunder shall be due and payable ***(upon receipt) (on a net thirty (30) calendar day basis)***.

(c) Title to Equipment. Title to Equipment supplied hereunder (regardless of whether it is shipped directly Morse or any of Morse’s suppliers) shall pass to Customer upon delivery to a carrier at the point of shipment. In the event Morse delivers Equipment without utilizing a carrier, title shall pass to Customer at the time such Equipment leaves Morris premises.

(d) Risk of Loss. Risk of loss for Equipment supplied hereunder shall remain with Morse until Cutover, provided such Equipment is within the exclusive custody and control of Morse. Otherwise, risk of loss shall pass to Customer in accordance with title passage described in Subsection (c) above. Equipment shall not be considered outside of Morse’s exclusive custody and control while entrusted to any carrier, warehouse or agent selected by Morse.

(e) Taxes. The Prices for the System set forth in any Service Order or Change Order do not include applicable sales, use, excise or similar taxes. To the extent Morse is required by law to collect such taxes, one hundred percent (100%) thereof shall be added to invoices and be paid in full by Customer.

(f) Shipping and Freight Charges. The pricing for Equipment associated with the System set forth in a Service Order is quoted on a Free Carrier (FCA), point of origin basis (IncoTerms 1990). All insurance and freight charges shall be prepaid by Morse and invoiced separately to Customer upon incurring such charges.

(g) Late Payments. For any invoice that is not paid within ten (10) days of its due date, all amounts set forth in such invoices shall bear interest at the lower of (i) 1.5% per month or (ii) the highest rate permitted by applicable law (“Late Payment Fees”). Customer agrees to pay such Late Payment Fees upon the written demand of Morse.

(h) Fee Adjustment. MORSECOM reserves the right to adjust fees under this Agreement in response to cost increases imposed by manufacturers or suppliers of software or services integral to the delivery of services provided. The following terms apply:

(i) Adjustment of Fees:

If a manufacturer or supplier increases the costs of software or services utilized or resold by MORSECOM, fees charged to the Client may be proportionally adjusted to reflect the increased costs. An administrative fee may also be included to cover associated processing or implementation costs.



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- (ii) **Binding Adjustment:**
The Client agrees that such fee adjustments are binding and payable as part of their obligations under this Agreement.
- (iii) **Supporting Documentation Upon Request:**
Upon written request by the Client, MORSECOM will provide commercially reasonable documentation substantiating the cost increase from the manufacturer or supplier.

5. CREDIT AND SECURITY INTEREST

- (a) **Credit Approval.** The fulfillment and execution of any deliverable obligations by Morse pursuant any and all Service Orders or Change Orders accepted hereunder is expressly subject to credit approval by Morse.
- (b) **PMSI.** Until the full purchase price has been paid for a System, Morse reserves a Purchase Money Security Interest under the Uniform Commercial Code in the Equipment purchased hereunder and in any proceeds received for such Equipment. Customer shall execute such documents as Morse may require to perfect such security interest, including, but not limited to, one or more financing statements. Customer agrees and hereby appoints Morse as attorney-in-fact to do, at the option of Morse, all acts and things Morse may deem desirable to perfect and continue to perfect the Purchase Money Security Interest granted hereby, including Morse's authority to file financing statements naming Customer as debtor and Morse as secured party without Customer's signature in those states where such filings are permitted, and to sign Customer's name thereto where required. All costs and expenses of Morse, including attorneys' fees for the preparation and recordation of documents deemed necessary and appropriate to establish and perfect the purchase money security interest, shall be the responsibility of Customer and shall be immediately payable by Customer upon receipt of Morse's invoice for same.

6. OBLIGATIONS, REPRESENTATIONS AND COVENANTS OF CUSTOMER

- (a) **Internet.** Unless optionally purchased from Morse, Customer shall provide appropriate internet connectivity and bandwidth as may be specified by Morse and/or as otherwise specified in any Service Order.
- (b) **Minimum.** Unless optionally purchased from Morse, Customer shall provide all minimum site requirements specified by Morse in a Service Order or other written communication to Customer.
- (c) **Fair Use Policy.** Customer shall comply with the terms and conditions of the Fair Use Policy.
- (d) **Software.** Customer shall use Software only in accordance with the Software License.
- (e) **Punchlist.** Assist Morse in the preparation of a Punchlist, if required.
- (f) **Payment.** Customer shall make all required payments pursuant to Section 4 herein.
- (f) **Miscellaneous.** Customer shall perform all of its other obligations in connection with the deployment, operation and use of the System as set forth in this Agreement or as may otherwise be agreed upon by the parties.

7. OBLIGATIONS, REPRESENTATIONS AND COVENANTS OF MORSE

- (a) **System.** Provision, supply, install and Acceptance Test the System or any portion thereof at the times and in the manner set out in this Agreement or in any Service Order or Change Order.
- (b) **Points of Contact.** Morse agrees to appoint a program manager who shall coordinate with the Customer the implementation of the System purchased hereunder. Thereafter, during the term of the Agreement, Morse shall designate an Operations Manager who shall be Customer's point of contact for all operational issues that may arise hereunder.



- (c) Punchlist. Prepare the Punchlist in good faith, if required, with the assistance of Customer.
- (d) Training. Provide Customer with Documentation sufficient to train Customer's personnel in the use, operation and troubleshooting of the System.
- (e) Miscellaneous. Morse shall perform all other of its reasonable obligations in connection with the deployment and support of the System as set forth in this Agreement or as may otherwise be agreed upon by the parties.

8. SOFTWARE – RIGHT TO USE

- (a) License Grant. Subject to the terms and conditions of the Agreement, Morse grants Customer a limited, non-transferable, non-sublicensable, non-exclusive license to install, download and/or use the Software (in object code form only) with authorized Equipment obtained by Customer from Morse. No rights or licenses in the Software are granted to Customer other than those rights expressly granted in this license.
- (b) Permitted Use. Customer may only install and use the Software in accordance with the Documentation provided for the Software with Equipment purchased from Morse in the configuration installed by Morse.
- (c) Ownership. The Software contains or embodies intellectual property of Morse and/or its licensors. Notwithstanding anything to the contrary, Morse and/or its licensors retain all title to and, except as expressly and unambiguously licensed herein, all rights and interest in (i) the Software, all copies and derivative works thereof (by whomever produced), and (ii) all copyright rights, patent rights, trade secret rights, moral rights and all other intellectual property and proprietary rights anywhere in the world in the Software.
- (d) Restrictions and Cooperation. Customer shall not (and shall not allow any third party to) (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code, or underlying ideas or algorithms of the Software (except to the extent expressly permitted under applicable law); (ii) provide, lease, lend, use for timesharing or otherwise use or allow others to use the Software to or for the benefit of third parties; (iii) except as specified in the Documentation, modify, incorporate into or with other hardware or software, or create a derivative work of any part of the Software; (iv) disseminate performance information or analysis from any source relating to the Software; (v) make any copies of the Software except as required to use the Software as licensed hereunder, except for one (1) copy solely for archival and back-up purposes, or (vi) remove any product identification, copyright notice or other proprietary legend from the Software. Customer agrees to cooperate with Morse and/or its licensors in connection with their efforts to protect their copyright/patent rights and other legal rights in the Software. Morse may, from time to time, implement additional security measures for the Software, and Licensee shall cooperate with such measures and be responsible for installing upgrades that include such measures.

9. LIMITED WARRANTY

- (a) Performance Warranty, Support and Monitoring.
 - (i) Performance. Morse represents and warrants that the System delivered pursuant to a Service Order shall substantially conform to the Documentation. Acceptance shall be considered fulfillment of and full compliance with the obligations contained in this warranty.
 - (ii) Satisfaction. For a period of thirty (30) calendar days after Acceptance, if Customer, for any reason, shall be unsatisfied with the performance of the System, Customer may terminate this Agreement or any Service Order pursuant to Subsection 3(h) above.
 - (iii) Support Hours. During the Initial Term, Morse shall provide "24-by-7-by-365" (24 hours per day, 7 days per week, 365 days per year) remote and/or on-site support for any Service-Affecting Malfunction. A "Service-



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Affecting Malfunction shall mean that an outage occurs that impacts 20% or more of the users at that site as a result of a malfunction occurring in the System. In the event Customer purchases an Extended Warranty for any Renewal Term, this level of support shall be included.

(iv) Monitoring. During the Initial Term, Morse shall provide “24-by-7-by-365” remote System monitoring of alarms and shall provide proactive recommendations and advice to Customer to assist in maintaining integrity of the System. In the event Customer purchases an Extended Warranty for any Renewal Term, this level of monitoring shall be included.

(b) Equipment Warranty.

(i) General. Equipment shall be warranted by Morse to be free from defects in material and workmanship from the date of Cutover through the completion of the Initial Term of the Agreement, unless the Agreement is terminated earlier pursuant to Section 3 above (the “Warranty Period”).

(ii) First Echelon Diagnosis. Customer shall be responsible for first echelon diagnosis and isolation of Equipment problems to the module level. At Morse’s direction, Customer shall either return the malfunctioning module to the designated Morse repair depot, permit Morse onto the Customer’s premises to perform repair or replace such module.

(iii) Labor. Labor at the designated Morse repair depot to replace defective parts within the module will be provided free of charge for defects discovered during the Warranty Period. After said term, Customer shall pay for the labor involved in repairing or replacing the module at the prevailing rates.

(iv) Travel. Unless otherwise agreed to by Morse in writing, travel and associated expenses for on-site visits by Morse are not covered under this warranty.

(v) Shipping Charges. Unless otherwise agreed to by Morse in writing, postage, freight or other such transportation charges for shipping defective modules to the designated Morse repair depot shall be borne by Customer; when such parts or their replacements are being returned to Customer, Morse shall bear the transportation charges.

(vi) Repair or Replacement. In the event of a defect, malfunction or failure to conform to the Documentation during the warranty period, Morse, at its option, will either repair or replace the module free of charge, and such action on the part of Morse shall be the full extent of Morse's liability and Customer's exclusive remedy hereunder. Any item replaced will be deemed to be on an exchange basis, and any item retained by Morse on such basis will become the property of Morse.

(vii) Repair Warranty/Maintenance. Any Equipment repaired or replaced hereunder shall be warranted only for the balance of the Warranty Period then in effect.

(c) Equipment Warranty Exclusions. The Equipment warranty set forth in Subsection 9(b) above does not cover:

(i) Unauthorized Changes. Changes made by Customer to Equipment configuration, interconnection of the router and/or gateway after Acceptance.

(ii) LAN Environment. Malfunctions occurring that are attributable to Customer’s local area network.

(iii) Abnormal Use. Defects or damage resulting from use of the Equipment in other than its normal and customary manner.



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(iv) Misuse, Accident or Neglect. Defects or damage to Equipment resulting from misuse, accident, neglect, damage or environmental conditions not conforming to the Documentation.

(v) Unauthorized Repairs. Defects or damage resulting from unauthorized alterations or repairs or the use of non-approved parts in the Equipment, or the combination or interfacing of the Equipment in a manner not approved by Morse, or from cabling not installed by Morse.

(vi) Force Majeure. Defects or damage resulting from an event of Force Majeure as defined in Section 17 herein.

(d) Software Warranty.

(i) General. Software provided for the System is expressly warranted by Morse to be free from reproducible malfunctions during the Warranty Period. During the Warranty Period, Morse agrees to provide all labor necessary to correct any Service-Affecting Malfunctions at no charge to Customer.

(ii) First Echelon Diagnosis. Customer shall be responsible for first echelon diagnosis and isolation of reproducible Software malfunctions and shall notify Morse immediately, in writing, of the failure. Morse will acknowledge receipt of verified reproducible Software malfunctions in writing and will provide such service as is necessary to correct said malfunction in accordance with the Documentation.

(iii) Unauthorized Modifications. THIS WARRANTY APPLIES ONLY TO THE SOFTWARE AS SUPPLIED BY MORSE OR AS MODIFIED BY MORSE. Modifications, attempted modifications or additions to the Software by anyone not authorized by Morse shall void the obligations of Morse under this warranty, unless Customer has obtained prior written authorization from Morse. Customer shall not be entitled to any source code hereunder.

(e) Disclaimer. THE WARRANTIES SET FORTH IN THIS SECTION ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL MORSE OR ITS LICENSORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY ARISING FROM USE OF EQUIPMENT SUPPLIED HEREUNDER FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.

(f) Extended Warranty. At the expiration of the Warranty Period, Customer has the option of purchasing an extended limited warranty pursuant to a Change Order for each Renewal Term.

10. PATENT AND COPY RIGHT INDEMNIFICATION

(a) Indemnification. Morse shall defend Customer against a claim that Equipment or latest unmodified release of Software, supplied hereunder, infringes a patent or copyright legally recognized and enforceable in the United States. Subject to the conditions and limitations of liability stated in this Agreement, Morse shall pay resulting costs and damages finally awarded against Customer, provided that Customer promptly notifies Morse in writing of the claim, that Customer retains no counsel without the prior written consent of Morse, that Morse has sole control of the instructing of such counsel and sole control of the defense and all related settlement negotiations, and Customer gives Morse reasonable information and assistance for the defense.

(b) Remedy. Morse's obligation under the preceding Subsection is conditioned on Customer's agreement that if Hardware or Software become, or in Morse's opinion are likely to become, the subject of such a claim, Customer will permit Morse, at their option and expense, either to procure the right for Customer to continue using such Equipment or Software, or to replace or modify the same so that they become non-infringing; and, if neither of the foregoing alternatives is available on terms which are reasonable in Morse's judgment, Customer may return the Equipment for full credit on the entire unusable portion of the System.



(c) Exceptions. Morse shall have no liability for any claim of patent or copyright infringement based upon adherence to specifications, designs or instructions furnished by Customer, nor for any claim based upon the combination, operation or use of any Equipment supplied hereunder with products, software or data not supplied by Morse, nor for computer programs or data not supplied by Morse, nor for any claim based upon alteration of the Equipment or modifications of any Software supplied hereunder by entities other than Morse or Morse's designated suppliers.

11. GENERAL INDEMNIFICATION

During the term of this Agreement the parties shall indemnify and hold harmless each other together with their officers, directors, agents and employees from any and all loss, damage, expense, judgment, lien, suit, cause of action, demand or liability for personal injury, including death and tangible property damage, which may be imposed on or incurred by one party arising directly out of the negligent acts or omissions of the other, its agents, subcontractors, or employees related to the installation, operation, use or maintenance of the System or arising from any performance hereunder. The indemnifying party shall, at its sole expense, defend any suit based upon a claim or cause of action within the foregoing indemnity provision and satisfy any judgment that may be rendered against the other resulting therefrom provided the indemnifying party shall be given (i) prompt notice of any such claim or suit; and (ii) full opportunity to defend such suit. The indemnified party may, at its election, participate in the defense of any suit, and shall cooperate fully in defending any claim or suits. The indemnifying party shall pay all costs, expenses, and reasonable attorney's fees incurred by the offended party in connection with any such suit or in enforcing this indemnity provision, provided a final judgment is entered against the indemnified party or the indemnifying party approves of, in writing, of any final settlement agreement.

12. DISCLAIMER OF PATENT LICENSE

Nothing contained in this Agreement shall be deemed to grant, either directly or by implication, estoppel, or otherwise, any license under any patents or patent applications of Morse or Morse's suppliers, except that Customer shall have the normal non-exclusive, royalty-free license to use that which is implied, or otherwise arises by operation of law, in the sale of Equipment and licensing of Software supplied hereunder.

13. PRODUCT CHANGES, MODIFICATIONS AND SUBSTITUTIONS

At any time during its performance of this Agreement, Morse may implement changes in the Equipment, modify the Documentation relating thereto, or substitute therefore Equipment of more recent design; provided, however, that any such changes, modifications or substitutions, under normal and proper use shall not materially and adversely affect physical or functional interchangeability or performance (except where there is written agreement between the parties that specific characteristics will be so affected).

14. EXPORT CONTROLS

Customer agrees to comply with all applicable export laws and regulations of the United States. Specifically, but without limitation, Customer agrees that it will not resell or re-export the System (or any portion thereof) or Documentation (or any portions thereof) in any form without obtaining appropriate export or re-export licenses from the United States Government.

15. LIMITATION OF LIABILITY

(a) Limitation. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, ALL LIABILITY OF MORSE, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS COLLECTIVELY FOR CLAIMS UNDER THIS AGREEMENT OR OTHERWISE HOWSOEVER ARISING SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE MONEY PAID TO MORSE FOR THE SYSTEM SUPPLIED PURSUANT TO THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY. THIS LIMIT OF LIABILITY



FOR PRODUCTS AND SERVICES IS CUMULATIVE AND NOT PER-INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

(b) Waiver of Indirect Damages. UNLESS SPECIFICALLY PROVIDED HEREIN, NO PARTY, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PATENT INFRINGEMENT, COPYRIGHT INFRINGEMENT OR OTHERWISE, SHALL HAVE ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE SYSTEM OR ANY ASSOCIATED EQUIPMENT OR SOFTWARE, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICE, OR DOWNTIME COSTS.

16. CONFIDENTIALITY

(a) Definition. “Confidential Information” to be disclosed by Customer under this Agreement is information regarding Customer's network operations and technical plans and marketing and financial data, and “Confidential Information” to be disclosed by Morse under this Agreement is information regarding Morse’s System (including Equipment, Software and Documentation), technical, financial, and marketing data, information relating to future product offerings, and pricing.

(b) Use. The receiving party ("Receiving Party") may use the Confidential Information solely for the purpose of furtherance of the business relationship between the parties, as provided in this Agreement and shall not disclose the Confidential Information to any third party, other than to employees and contractors of the Receiving Party who have a need to have access to and knowledge of the Confidential Information, solely for the purpose authorized above. Each party shall take appropriate measures by instruction and agreement prior to disclosure to such employees or contractors to assure against unauthorized use or disclosure. Information disclosed by the disclosing party (“Disclosing Party”) in written or other tangible form will be considered Confidential Information only if such information is conspicuously designated as “Confidential,” “Proprietary” or bears a similar legend. Information disclosed orally shall be considered Confidential Information only if: (i) identified as confidential, proprietary or the like at the time of disclosure, and (ii) confirmed as confidential, proprietary or the like in writing within thirty (30) calendar days of disclosure. Confidential Information disclosed to the Receiving Party by any Affiliate or agent of the Disclosing Party is subject to this Agreement.

(c) Exclusions. The Receiving Party shall have no obligation with respect to information that (i) was rightfully in possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party; (ii) is, or subsequently becomes, legally and publicly available without breach of this Agreement; (iii) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality; (iv) is developed by or for the Receiving Party without use of the Confidential Information and such independent development can be shown by documentary evidence; or (v) is disclosed by the Receiving Party pursuant to and in accordance with a valid order issued by a court or government agency, provided that the Receiving Party provides (a) prior written notice to the Disclosing Party of such order and (b) the Disclosing Party prior opportunity to oppose or restrict such disclosure. Upon written demand by the Disclosing Party, the Receiving Party shall: (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, notes or extracts thereof to the Disclosing Party within seven (7) days of receipt of demand, and (iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.

(d) Ownership. Each party shall retain all right, title and interest to such party’s Confidential Information. No license to any intellectual property (or application for intellectual property protection) is either granted or implied by the conveying of Confidential Information. The Receiving Party shall not remove, overprint or deface any notice of copyright or confidentiality, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party or from any copies the Disclosing Party is authorized to make.



(e) Publicity or Advertising. Neither party shall disclose, advertise, or publish either the existence, the subject matter, any discussions relating to, or any of the terms and conditions, of this Agreement (or any summary of any of the forgoing) to any third party without the prior written consent of the other party. Any press release, publication, advertisement or public disclosure regarding this Agreement is subject to both the prior review and the written approval of both parties.

17. FAIR USE POLICY – SCOPE AND COVENANTS

(a) Scope. Customer hereby acknowledges that (i) Hosted Telephony Service is designed for general business use only by Customer; (ii) the Fair Use Policy is necessary to help maintain the integrity of Morse’s network and high performance standards; and (iii) the Fair Use Policy is necessary to protect Morse’s customers from certain types of traffic that can disrupt network performance..

(b) Covenant – Included Minutes. Customer shall limit use of Hosted Telephony Services to 1000 minutes per user per month inclusive of both local and long distance calls. In the event Customer exceeds the foregoing number of minutes per user, Morse shall have the option to (i) surcharge Customer at a rate of \$0.02 per minute for each minute over the 1000 threshold per user; and/or (ii) amend Customers service plan set forth in the applicable Service Order.

(c) Covenant -- Calling Mix. Customer shall maintain a 70/30 Regional Bell Operating Company (“RBOC”) to IT Operating Company (“ITOC”) calling mix ratio or Morse shall have the right to apply a \$0.02 per minute surcharge to the per-minute rate for all minutes. All usage is billed based on a “Completed Calls” basis. A “Completed Call” shall mean any call received by Morse originating from a Customer user or terminated by Morse on behalf of the Customer that receives answer supervision. The call completion rate must be a minimum of 90% of all calls made by Customer with the average call duration over 30 seconds or Morse shall have the right to apply a \$0.02 per minute surcharge to all minutes. If Customer uses automatic dialing equipment, Customer agrees such equipment must dial a minimum of 5NPS’ (“numbers per second”).

(d) Covenant – Network Use. Customer shall refrain from utilizing the Hosted Telephony Service for anything other than making such Service available to its users via Morse’s network, in accordance with all applicable federal and state regulations. Customer acknowledges and understands that it is specifically restricted from reselling Hosted Telephony Service to other telecommunications carriers or customers who may least cost route their traffic to Morse’s network via Customer.

(e) Covenant – Alaska and Hawaii. Hosted Telephony Service includes usage to Alaska and Hawaii. In the event calls to those destinations exceed 1% of the total outbound long distance traffic, Morse shall have the right to apply a surcharge at the rate of \$0.03 per minute for each call in excess thereof.

(f) Service Address. All outbound service shall be billed by Morse based on the service address of the Customer set forth in the Service Order.

(g) Invoicing. All surcharges noted in this Section may be either (i) billed to Customer as separate line items on Customer’s monthly invoice; or (ii) billed to Customer on a separate special invoice due and payable upon receipt.

(h) Acknowledgement. Customer understands and agrees that the covenants and other terms and conditions in this Section are material and an essential part of the agreement between Morse and Customer. In the event Customer is in violation of this Fair Use Policy, in addition to the surcharges noted above and any other remedies available at law or equity, Morse reserves the right to (i) immediately suspend Hosted Telephony Services pursuant to Subsection 3(i) until such time as Morse determines that Customer is in compliance, and/or (ii) terminate the Agreement or any associated Service Order pursuant to Subsection 3(f).

18. EMERGENCY/911 SERVICES



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- (a) Customer acknowledges that Hosted Telephony Service is an IP based phone service and not a traditional phone service. The service provided has the capability of providing 911 and/or E911 services (as further defined in the Service Order).
- (b) Customer acknowledges that Customer may, from time to time, experience service interruption or reduced service quality at any time and without notice, due to Force Majeure and/or acts and omissions of Morse and/or third parties. While Morse shall make commercially reasonable efforts to minimize and repair the disruptive effects of any interruptions, degraded service quality, or outages (collectively referred to as "Interruptions"); Morse cannot guarantee or assure Customer that these Interruptions will not occur. Such commercially reasonable efforts to minimize and repair are Morse's sole obligation regarding such Interruptions.
- (c) Customer acknowledges that any Interruptions may include loss of emergency 911 or E911 service dialing capabilities for extended periods of time.
- (d) MORSE RECOMMENDS THAT CUSTOMER HAVE AN ALTERNATIVE TELEPHONE SERVICE, EITHER WIRELESS OR WIRELINE, THAT IS CAPABLE OF SUPPORTING 911 OR E911 CALLING AND IS AVAILABLE AS AN ALTERNATIVE AT ALL TIMES IN CASE OF ONE OR MORE INTERRUPTIONS.
- (e) BY ENTERING INTO THIS AGREEMENT, CUSTOMER AGREES TO ASSUME THE RISK OF ALL INTERRUPTIONS AND LOSING EMERGENCY 911 DIALING CAPABILITIES AT ANY TIME, AND CONSENTS TO THE DISCLOSURE OF CUSTOMER'S TELEPHONE NUMBER(S) AND OTHER IDENTIFYING INFORMATION TO EMERGENCY 911 AUTHORITIES AS MORSE DEEMS NECESSARY IN ITS SOLE OPINION AND DISCRETION.

19. CALL ABUSE POLICY

- (a) Any call originated on the Morse Communications, Inc. network is subject to inspection and investigation if the call is suspected of being fraudulent, abusive, or illegal. Calls meeting any of these criteria will be blocked. If these conditions are repeated, becoming excessive, the subscriber may be disconnected from Morse Communications, Inc. network, may be subject to further investigation by the FCC for enforcement of the TRACED Act and the subscriber may be subject to fines and penalties imposed by the FCC or the jurisdictional court.

20. GENERAL

- (a) Choice of Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Florida, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law, and the state and federal courts of Florida shall have exclusive jurisdiction over any claim arising under this Agreement.
- (b) Force Majeure. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquakes, labor disputes, shortages of supplies, actions of governmental entities, riots, war, acts or threatened acts of terrorism, fire, epidemics, delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.
- (c) No Waiver. The waiver by either party of any right provided under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.
- (d) Assignment. Neither party may assign or delegate its rights or obligations under this Agreement (other than (i) the right to receive any amount due, which shall be freely assignable, or (ii) to Customer's parent or majority-owned subsidiary company of sufficient net worth to meet any potential liability under this Agreement) without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that any such



assignment shall not relieve the assigning entity of any obligation to pay monies that were owed prior to the date of the assignment.

(e) Severability. In the event that part of or one or more terms of this Agreement becomes or is declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such part or term shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect.

(f) Attorneys' Fees. In any suit or proceeding relating to this Agreement the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive expiration or termination and shall not be merged into any such judgment.

(g) No Agency. This Agreement does not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of this Agreement. Each party hereto is an independent contractor. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

(h) Notices. All notices sent between the parties shall be in the English language. Such notices shall be deemed properly given if reduced to writing and personally delivered or transmitted by registered or certified post to the address set forth on the first page of the Agreement, postage prepaid, by air courier, or by facsimile with confirmation receipt, and shall be effective upon receipt.

(i) Survival. The parties agree that where the context of any provision indicates an intent that it shall survive expiration or termination of this Agreement, then it shall survive. By way of example, and not limitation, the following Sections shall survive: 3, 5, 8, 10, 11, 12,14, 15, 16, 18, and 19.

(j) Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument. A validly executed counterpart that is delivered by one party to the other via electronic transmission (a "Counterpart Image") shall be valid and binding to the same extent as one delivered physically, provided that the valid signature is clearly visible in the Counterpart Image. In the event that a party delivers a Counterpart Image in place of an originally-executed counterpart, such party shall retain the originally-executed counterpart in its files for at least the duration of the Initial Term hereof.

(k) Non-Solicitation of Employees. During the term of this Agreement and for a period of two (2) years after termination or expiration thereof, Customer shall not, directly or indirectly, solicit for employment, cause to be solicited for employment, employ or hire any person who is or was employed by Morse at any time during the prior six (6) months without the prior written consent of Morse.

(l) Headings. Headings of sections have been added solely for convenience of reference and shall not be deemed part of this Agreement.

(m) Entire Agreement. This Agreement together with any Service Order or Change Order, and any amendments or appendices thereto, constitutes the entire agreement between the parties concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This Agreement may be modified only by a written document executed by the parties hereto.



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