

# Premise Master Service Agreement

**Morse Communications, Inc.**

## Master Purchase and Service Agreement

395 East Drive Melbourne, Florida 32904

(321) 259-8469 Fax: (321) 255-0198

**CUSTOMER**

**BILLING ADDRESS** (if different from Customer Address)

\_\_\_\_\_

Same \_\_\_\_\_

Customer Name ("Customer")

Name

Street Address

Street Address

\_\_\_\_\_

\_\_\_\_\_

City County State Zip

City County State Zip

\_\_\_\_\_

\_\_\_\_\_

Contact Person Telephone

Contact Person Telephone

**Contract Term – X year**

**Payment Terms**

Orders of \$50,000 or less (contingent upon credit approval)

- 25% upon Contract Signing ("Initial Payment")
- 75% Upon Equipment Completion

Orders of \$50,000 or more (contingent upon credit approval)

- 35% upon Contract Signing ("Initial Payment")
- 25% Upon Equipment Delivery
- 40% upon Completion

**MORSE SIGNATURE**

**CUSTOMER SIGNATURE**

\_\_\_\_\_

Signature Date

\_\_\_\_\_

Signature Date

Michael Costello \_\_\_\_\_

Name

\_\_\_\_\_

Name

CEO \_\_\_\_\_

Title

\_\_\_\_\_

Title

## TERMS AND CONDITIONS

**1. Equipment and Purchase Price.** MORSE hereby sells to Customer and Customer hereby purchases from MORSE the items or services identified in the Equipment/Services Schedule attached hereto as Schedule "A" (the "Equipment" and/or the "Services"). Any terms and conditions of the Schedule "A" will supersede any conflicting terms of this Master agreement and Title to any software included in the Equipment Schedule shall remain with the original equipment manufacturer or its licensor(s), and Customer's interest in the software is limited to that of a licensee with the non-exclusive right to use the software in conjunction with the Equipment per the terms of the software license referenced in Section 8 below. Customer shall pay the Purchase Price according to the payment terms set forth above, together with all property (personal or intangible) taxes or special assessments and all sales or use taxes which may be imposed upon Customer. The Initial Payment shall be due no later than the date of order. Payment of invoices shall be due within thirty (30) days from the invoice date. If customer chooses payment via lease through third party leasing company, MORSE requires proof of Customer approval prior to equipment order. Delinquent payments on any undisputed balance are subject to a late payment charge of the lower of one and one half percent (1.5%) per month or portion thereof, or the maximum amount allowed by law.

**2. Delivery; Risk of Loss; Title.** MORSE shall ship the Equipment to the address specified above prior to the Cutover Date. Customer shall be responsible for all shipping costs. Risk of loss shall pass to Customer upon the delivery of the Equipment to Customer's site at the address as specified above. Title to the Equipment shall pass to Customer upon Cutover.

**3. Purchase Money Security Interest.** MORSE hereby reserves and Customer, or its designated representative, hereby grants to MORSE a purchase money security interest in the Equipment to secure payment in full of the Purchase Price and any and all other payment obligations of Customer, or its designated representative, under the terms of this Agreement. Customer, or its designated representative, agrees to promptly execute and return to MORSE any and all financing statements, continuation statements and such other instruments or documents relating to such security interest as may be reasonably requested by MORSE. In the event Customer, or its designated representative, fails to comply with the foregoing, Customer, or its designated representative, hereby irrevocably appoints MORSE as Customer's, or its designated representative, attorney-in-fact to sign such statements and documents on behalf of Customer, or its designated representative.

**4. Changes and Additions.** Customer may request changes (including additions) to the Equipment at any time prior to Cutover. Upon receipt of such a request, MORSE shall submit to Customer a written change order specifying the changes requested by Customer and price adjustments, if any, to the Purchase Price, and the effect, if any, on the Cutover Date. MORSE shall not make the requested changes unless Customer has accepted the terms of the written Change Order by signing the Change Order and returning it to MORSE within ten (10) days of the date of the Change Order. Customer represents and agrees that, unless Customer notifies MORSE otherwise in writing, the only person authorized to accept Change Orders on Customer's behalf is the person executing this Agreement on its behalf. Except as otherwise set forth in a Change Order, all changes made pursuant to a Change Order shall be subject to the terms and conditions of this Agreement.

### **5. Installation and Acceptance.**

(a) MORSE shall install the Equipment in accordance with the Scope of Work prepared by MORSE which is attached to this Agreement as Schedule "A" and made a part hereof. Customer acknowledges and agrees that the Purchase Price is based in part upon the Scope of Work, and that the Purchase Price will be adjusted for any changes to the Scope of Work requested and approved by Customer and MORSE in accordance with the terms of Section 4 above.

(b) Customer shall be responsible for preparing or providing the following site conditions prior to commencement of installation of the Equipment by MORSE: cabling and jacks; sufficient power for the system and isolated ground; and a clean environment with sufficient floor, rack and/or wall space to accommodate the Equipment and adequate ventilation. Customer shall provide MORSE and its employees and agents with full, free and safe access to the Premises during Customer's normal business hours and at such other times as MORSE may reasonably request for purposes of installing the Equipment. Customer shall notify MORSE in advance of any hazardous material (e.g., asbestos) on the Premises, and shall remove any such hazardous material or correct any such hazardous condition prior to MORSE's commencement of installation of the Equipment.

(c) Cutover shall be deemed to occur when the switching equipment or software is activated and functioning substantially to provide basic service, except for minor variances in performance of the Equipment which do not materially impair basic service. Cutover activities will occur on Friday after Customer business hours. MORSE (and Customer) shall monitor the Equipment for ten (10) days after Cutover and prior to Acceptance. MORSE shall not be liable in damages or otherwise for delays in the Cutover Date except as specifically provided in Section 11(a) below. Notwithstanding the foregoing, IN NO EVENT SHALL MORSE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR LOSS OF REVENUE.

(d) MORSE's obligation to install the Equipment shall be satisfied when all of the Equipment has been installed at the premises and is performing substantially in accordance with the original equipment manufacturer's material specifications, as determined by MORSE in accordance with its standard installation procedures.

**6. Training and Documentation.** Prior to Cutover, MORSE shall provide training sufficient to enable Customer to operate the Equipment. MORSE shall also provide a reasonable number of operator's manuals for the Equipment, for use by Customer's management and operating personnel.

**7. Disclaimer of Warranties.** Customer acknowledges and agrees that the Equipment is sold with the manufacturer's warranty only, and that MORSE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY. FURTHERMORE, MORSE DOES NOT WARRANT THAT IT WILL PREVENT, OR THAT THE EQUIPMENT WILL PREVENT, UNAUTHORIZED USE (OR CHARGES FOR SUCH USE) OF COMMON CARRIER TELECOMMUNICATION SERVICES OR FACILITIES ACCESSED THROUGH OR CONNECTED TO THE EQUIPMENT ("TOLL FRAUD"). MORSE SHALL NOT BE LIABLE FOR DAMAGES OF ANY KIND ARISING OR RESULTING FROM UNAUTHORIZED USE OF THE EQUIPMENT, INCLUDING TOLL FRAUD.

**8. Software License.** If the Equipment includes operating software of the original equipment manufacturer, Customer agrees to be bound by the terms and conditions of the original equipment manufacturer's then current software license agreement with respect to such associated software.

**9. Use and Protection of Proprietary Property.** Customer acknowledges and agrees that the Equipment and all related technology, programs, ideas, operator's manuals and designs constitute confidential and proprietary information and/or trade secrets of MORSE or its vendors and licensors. In order to protect the confidential nature of such information and trade secrets, Customer hereby represents, warrants and agrees that it shall, at all times after the date of this Agreement, take all action as may be reasonably necessary to (i) preserve the confidentiality of the Equipment, its internal workings and components and all information related to its use and operation, and ensure that access thereto is restricted to authorized and trained employees of Customer; (ii) keep confidential any proprietary, confidential or trade secret information owned by, or licensed to, MORSE, except for disclosure to such employees or agents of Customer as are necessary and authorized to properly operate the Equipment; (iii) prohibit the use, copying or reproduction in any manner of any such information; and (iv) protect the display of any copyright notice or trademark on the Equipment. Customer's representations herein shall survive the termination of this Agreement.

**10. Exclusions and Force Majeure.** MORSE shall not be responsible in damages or otherwise for any attempt to perform, or its failure to perform, the terms of this Agreement if its action or performance hereunder is necessitated, delayed or prevented by earthquake, weather conditions, hurricane, tornado, fire, flood, lightning, or other act of God; acts of war, terrorism, riot or civil disturbance; injunction, court order or other governmental action; work stoppage, strike or labor dispute; transportation stoppage, suspension or unavoidable delay; electrical malfunction outside of the Equipment and related system; action or inaction by Customer or its authorized agents; delays of suppliers, subcontractors, power company, local exchange company or other common carrier; breakdown of manufacturer's machinery; or other causes beyond MORSE's reasonable control.

**11. Exclusive Remedies and Limitations of Liability.**

(a) **Customer's Exclusive Remedies.** This Agreement sets forth all of MORSE's obligations with regard to the sale and installation of the Equipment and/or Services. MORSE'S ENTIRE LIABILITY UNDER THIS AGREEMENT, AND CUSTOMER'S EXCLUSIVE REMEDIES AGAINST MORSE HEREUNDER, SHALL BE AS FOLLOWS:

(1) For delays in the Cutover Date, MORSE shall have no liability unless the Cutover Date is delayed by more than five (5) business days and such delay is caused solely and directly by MORSE's failure to perform EXCEPT when such failure to perform is due to matters beyond the reasonable control of MORSE, including force majeure conditions. In the event the Cutover Date is delayed by more than 5 business days under circumstances for which MORSE is liable, Customer's sole remedy shall be to cancel this Agreement without incurring any cancellation charges and return the Equipment to MORSE, whereupon MORSE shall refund any payments made hereunder by Customer to MORSE as of the date of such cancellation.

(2) For damages to real or tangible personal property or for bodily injury or death to any person proximately caused by MORSE's negligence, Customer shall be entitled to recover its proven direct damages to property or person.

(3) For claims other than as set forth above, MORSE's liability shall be limited to proven, direct damages in an amount not to exceed the purchase price of the Equipment.

IN NO EVENT SHALL MORSE BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER OR NOT MORSE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, SAVINGS OR REVENUES; LOST, CORRUPTED, MISDIRECTED OR MISAPPROPRIATED DATA OR MESSAGES; AND CHARGES FOR COMMON CARRIER TELECOMMUNICATION SERVICES OR FACILITIES ACCESSED THROUGH OR CONNECTED TO THE EQUIPMENT (e.g., TOLL FRAUD). IN THE EVENT THAT A COURT OF COMPETENT JURISDICTION DETERMINES THAT THE FOREGOING EXCLUSIVE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE, THIS PARAGRAPH DISCLAIMING INDIRECT, INCIDENTAL, SPECIAL AND CONSEQUENTIAL DAMAGES SHALL SURVIVE.

(b) Default by Customer

(1) Except as provided under Section 11(a) above, Customer shall have no right to cancel this Agreement. In the event Customer breaches this Agreement by canceling its order for the Equipment, Customer shall (i) pay to MORSE a restocking fee equal to 10% of the Purchase Price, and (ii) pay to MORSE upon demand all shipping costs and other charges associated with the return of the Equipment to MORSE.

(2) In the event Customer defaults in any of its payment obligations hereunder, or otherwise breaches the terms of this Agreement, and such default or breach has not been cured after ten (10) days written notice thereof to Customer, MORSE shall have the right to terminate this Agreement and to pursue any and all remedies available to it at law or in equity.

**12. Assignment: Binding Effect.** Customer may not assign its rights under this Agreement without the prior written approval of MORSE. MORSE may not assign or pledge any of its rights or delegate any of its obligations under this Agreement without the prior approval of Customer. This Agreement shall be binding upon, and shall inure to the benefit of, the successors or permitted assigns of the parties hereto.

**13. Notices.** Until MORSE or Customer notifies each other of any new address, all notices, requests and other communications hereunder shall be in writing and delivered personally or sent by prepaid registered or certified mail, return receipt requested, to the address identified herein.

**14. Law, Jurisdiction and Venue.** Customer consents, agrees and stipulates that this Agreement shall be deemed fully executed and performed in the State of Florida, shall be governed by and construed in accordance with the laws thereof, and in any action, proceeding or appeal on any matter related to or arising out of this Agreement, Customer and MORSE SHALL BE SUBJECT TO THE PERSONAL JURISDICTION OF ALL FEDERAL AND STATE COURTS SITTING IN THE STATE OF FLORIDA, AND SHALL ACCEPT VENUE IN ANY SUCH COURT. IN ANY DISPUTE RELATED TO OR ARISING UNDER THIS AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS ATTORNEY FEES AND COSTS.

**15. Severability.** Any terms or provisions of this Agreement which shall prove to be invalid, void or illegal shall in no way impair or invalidate any other term or provision hereof, and such remaining terms and provisions shall remain in full force and effect.

**16. Term.** This Agreement shall become effective upon its execution by both parties and shall continue in force for successive terms of one (1) year each unless terminated by either party by thirty (30) days' prior written notice to the other.

**17. Space and Environment Requirements.** To accommodate the System, Customer shall at all times maintain the following conditions in the room(s) in which the System is installed: (a) a clean environment with sufficient floor and/or wall space to accommodate the System and to provide adequate ventilation; (b) ambient temperature within a range from fifty degrees to eighty degrees Fahrenheit (50° – 80° F); (c) relative humidity within a range from twenty percent to sixty-five percent (20% - 65%) (non-condensing); (d) sufficient power outlet(s) providing one hundred fifteen (115) volts AC (each outlet must be on a dedicated circuit breaker with isolated ground and each circuit must be isolated from all other electrical devices).

**18. Service Obligations.**

**The following section 18 is applicable to requests for maintenance or other service requests and agreement.**

(a) MORSE shall address any technical or operational defects or malfunctions in the System either by remote diagnostics or by the onsite presence of MORSE's service representative, who shall respond to the defect or malfunction after being notified of the same by Customer or its authorized employee, and restore the System to a normal state of operational efficiency. In carrying out its service and maintenance obligations hereunder, MORSE may install or replace any components or parts that MORSE deems either necessary or desirable for the effective operation of the System, at no additional charge to the Customer while the "System" is under warranty or subsequent maintenance agreements. Any part or component installed by MORSE shall be new or like new and shall be covered by this Agreement in the same manner, and subject to the same limitations herein, as apply to the System.

In the event that the subject equipment is deemed "Manufacturer Discontinued", "Manufacturer End of Life" or "Manufacturer non-supported", Morse will provide a best effort service level with no guarantee of parts or software availability. In the event that the failure is due to a non-supported, discontinued or end of life component, the customer will be responsible to purchase the replacement component.

In the event that the defect or malfunction is deemed by Morse to be caused by neglect, abuse, Acts of God including lightning and/or power surge, the Customer will be responsible for the cost of parts and Morse's then current labor rates to repair the condition.

(i) Emergency Remote service shall be available twenty-four (24) hours a day, seven (7) days a week if this option is chosen.

(ii) Non-emergency maintenance service shall be provided during MORSE's normal working hours, which shall be that period of each day from 8:00 a.m. to 5:00 p.m. local time Monday through Friday, exclusive of holidays. It is agreed that MORSE shall respond to Customer's request for non-emergency service by dispatching MORSE's service representative not later than the end of MORSE's next business day. Should Customer request non-emergency service be performed outside of MORSE's normal working hours, Customer shall pay MORSE on a per-call basis, at MORSE's then effective overtime rates.

(iii) Emergency maintenance service shall be provided twenty-four (24) hours a day, seven (7) days a week if this option has been chosen. IN THE EVENT THAT A MAJOR FAILURE IN THE SYSTEM OCCURS, necessitating emergency maintenance assistance from MORSE either during or outside MORSE's normal working hours, it is agreed that MORSE shall respond to the emergency remotely within one (1) hour or if necessary by dispatching MORSE's service representative within four (4) hours from the time it is notified of the same and MORSE shall thereafter exercise its best efforts to cure the same. IN NOTIFYING MORSE, CUSTOMER MUST CLEARLY COMMUNICATE TO MORSE THE EMERGENCY NATURE OF THE PROBLEM AS A CONDITION PRECEDENT TO MORSE'S OBJECTIVE TO RESPOND WITHIN THE TIME FRAMES INDICATED ABOVE. As used herein, a "Major Failure" is defined as a System failure resulting in the Customer's inability to receive fifteen percent (15%) of all incoming calls or affecting 15% of the "System" functionality, to make fifteen percent (15%) of all outgoing calls, to make fifteen percent (15%) of every station-to-station call, or to use the attendant consoles.

(b) MORSE may from time to time, upon Customer request, furnish moves, additions, changes, software upgrades and/or System modifications separately contracted for at MORSE's then generally effective rate. IT SHALL BE THE RESPONSIBILITY OF CUSTOMER TO VERIFY THE ACCURACY AND THE OPERATION OF ANY SOFTWARE UPGRADE, SYSTEM MODIFICATION, ENHANCEMENT OR CHANGE WITHIN FIVE (5) DAYS OF ANY SUCH UPDATE, UPGRADE, ENHANCEMENT OR CHANGE, AND TO NOTIFY MORSE WITHIN A REASONABLE TIME OF ANY ERROR, OMISSION, INACCURACY OR INCONSISTENCY THEREIN. MORSE shall, within twenty-four (24) hours of such notification, commence corrective action to remedy any such error, omission, inaccuracy or inconsistency.

**19. No Hire Clause.** Buyer and Seller agree that during the period that this agreement is in force, including extensions or modifications thereto, and for an additional 12 months following this period, neither Buyer nor the Seller will actively recruit, or solicit permanent employees of either company, or the employees of any of the other Subcontractors; who are on active payroll status and are currently participating in this Program, without the prior written approval of the party whose employee is being considered for employment. This does not prohibit any employee from responding to or pursuing employment opportunities through normal media channels, i.e. newspapers, professional journals, etc. so long as it is not an attempt to avoid the intent of the above restriction

**Entire Agreement.** This Agreement constitutes the entire agreement between MORSE and Customer, and supersedes all other agreements or understandings, oral or written, with respect to the subject matter hereof. If Customer issues a purchase order for any service to be provided hereunder, Customer agrees that only the terms and conditions of this Agreement apply and agrees to refer to this Agreement as the governing document on the face of such purchase order. Conflicting terms on a Customer's purchase order or similar customer document used to order a System or portions thereof are null and void. This Agreement shall not be amended, altered or changed except by a written agreement signed by both of the parties.