



## NetCentra General Terms and Conditions (Exhibit 1)

**Limited Warranty.** Except as otherwise provided in the Manufacturer's written warranties, all labor, services and materials provided by NetCentra as described in the Statement of Work and Deliverables is warranted to be performed in a workmanlike manner, and to be free of defects under normal use for **one (1) year** from the date of the final invoice. This limited warranty excludes any damage from misuse, unauthorized modifications or external causes. The full extent of NetCentra's liability for any defects in materials, equipment and/or labor, installed or supplied, is limited to the repair and or the replacement of such Materials or Equipment with a similar item, free from the defects in question. NetCentra disclaims any other warranties, express or implied, including, without limitation, the implied warranties of merchantability, satisfactory quality, and fitness for a particular purpose.

**Limitation of Liability and No Consequential Damages.** For all purposes of this Agreement, NetCentra's total liability shall not exceed the amount actually paid by Customer. In no event shall NetCentra be liable for any incidental, indirect, special or consequential damages, including without limitation lost data or loss of revenue, arising from or related to any alleged defect in the Materials, Equipment and/or Labor provided pursuant to this Agreement. NetCentra shall have no responsibility for, nor any other liability for, defects, damages or delays caused by the actions or inactions of persons or entities not affiliated with NetCentra, or caused by, or attributable to any reason beyond NetCentra's reasonable control.

**Exclusions and Force Majeure.** NetCentra's work or service obligations under this Agreement shall not apply when malfunctions of or damage to the materials or equipment are the results of, abuse, misuse, accidents or negligence by Customer or its employees or agents, including non-authorized agents or maintenance, relocation, removal of, alterations or additions to, or interference with the materials or equipment by persons other than employees or authorized agents of NetCentra. NetCentra shall not be responsible for any damages or otherwise for its failure to comply with the terms of this Agreement if its performance is necessitated, delayed or prevented by acts of God, acts of war, or terrorism, government action, fire, flood, water damage, earthquake, riots, work stoppage, strikes, supply or material shortages, lightning, actions or inactions by Customer or its authorized agents, or local exchange company or other carrier, Internet or telecommunications failures/outages/delays, third party hosting facility failures, denial of service attacks, or other similar occurrences, or other causes beyond NetCentra's reasonable control.

**Payment Terms and Deviations.** Payment terms are 50% in advance, progress payments upon delivery of materials, equipment and completion of each stage, and net cash upon completion of the Statement of Work. Payments are due when each invoice is rendered. NetCentra reserves the right to suspend all work if Customer's then existing account becomes past due. Deviations from the Statement of Work will be

submitted for written approval and the Agreement price increased or decreased accordingly before work on deviations is commenced.

**Work Commencement Date.** Work shall commence no later than 10 days after contract signing and receipt of the advance payment.

**Customer Responsibilities.** Unless otherwise stated in the Statement of Work, it is the responsibility of the Customer to provide the following:

- 1) A safe and secure location for storing all materials and equipment related to the Statement of Work.
- 2) An adequate environment at the worksite (appropriate ventilation, lighting and access).
- 3) A single point of contact for the duration of the Statement of Work.

**Indemnification.**

- A. NetCentra shall indemnify, defend, and hold harmless Customer from and against any third-party claims, demands, liabilities, or damages arising out of or related to:
  - 1) bodily injury or property damage caused by NetCentra's gross negligence or willful misconduct in performing installation services; or
  - 2) violations of applicable laws or regulations by NetCentra in connection with this Agreement.
  - 3) However, NetCentra's indemnification obligations shall not apply to the extent that any claim or liability arises from:
    - a) Customer's negligence or willful misconduct;
    - b) Customer's failure to comply with applicable laws, codes or safety standards;
    - c) Customer's misuse, unauthorized modification, or improper maintenance of the materials or equipment; or
    - d) Customer's design specifications, instructions or materials provided by Customer.
  - 4) NetCentra's total liability for indemnification, including any duty to defend, shall not exceed the lesser of \$100,000 or the total amount paid by Customer to NetCentra under this Agreement. This amount applies regardless of the number of claims, the nature of the alleged damages or the legal theory asserted.
- B. Customer shall indemnify, defend, and hold harmless NetCentra from and against any third-party claims, demands, liabilities or damages arising out of or related to:
  - 1) Bodily injury or property damage caused by Customer's negligence or willful misconduct; or
  - 2) Customer's violations of applicable laws or regulations by Customer in connection with this Agreement.

**Claims and Dispute Resolution.**

- A. Notice of Claims. Any claims, disputes, or controversies arising out of or related to this Agreement (each herein called "Claims") must be submitted in writing within 10 days of the event giving rise to the Claims.

- B. **Informal Resolution.** The Customer and NetCentra shall attempt, in good faith, to resolve any Claim through informal negotiations within 10 days of the notice regarding the Claim.
- C. **Binding Arbitration.** If not resolved informally, all Claims shall be resolved exclusively by binding arbitration, which shall be administered by the American Arbitration Association under its commercial arbitration rules and procedures. The arbitration shall take place in Los Angeles County, California before a single arbitrator experienced in commercial and construction matters. California law shall govern any Claims, and the arbitrator's decision shall be final and enforceable in any court of competent jurisdiction.
- D. **WAIVER OF COURT PROCEEDINGS.** THE CUSTOMER AND NETCENTRA EXPRESSLY WAIVE THEIR RIGHT TO BRING ANY CLAIM BEFORE A COURT OF LAW, INCLUDING TRYAL BY JURY, EXCEPT TO ENFORCE AN ARBITRATION AWARD OR SEEK INJUNCTIVE RELIEF, PRENDING ARBITRATION.
- E. **Costs.** Customer and NetCentra shall bear their own arbitration costs. The Prevailing Party in the arbitration shall be entitled to an award of reasonable attorney's fees and costs. The term Prevailing Party shall include a party who substantially obtains or defeats the relief sought, as the case may be.

**Termination.** Customer or NetCentra may terminate this Agreement at any time upon written notice if the other party materially breaches any provision of the Agreement and fails to cure such breach within 15 calendar days of receipt of such written notice. If Customer terminates the Statement of Work, Customer shall pay for work completed, materials and equipment ordered, and reasonable demobilization costs, (e.g. restocking fees for material or equipment or cancellation fees from third party providers).

**Early Termination Fee.** If Customer terminates any services provided under this Agreement before the end of the initial term or any renewal term for any reason other than NetCentra's material breach, Customer shall pay to NetCentra an early termination fee equal to 100% of the monthly recurring charge for the terminated services, multiplied by the number of months remaining in the then current term. The early termination fee shall be due and payable in full immediately upon the effective date of termination. Customer agrees that such early termination fee is a reasonable amount to compensate NetCentra for the lost monthly recurring charges that would otherwise have been paid under the terminated Agreement.

**Governing Law.** The Agreement shall be governed by the laws of the State of California.