

See attached.

This document contains the “Terms and Conditions of Sale” applicable to the purchase of products and/or services from NET (net.com). If you are purchasing only products then only the “Products” terms and conditions apply, and if you are purchasing only services then only the “Services” terms apply.

When viewing this form on screen, you may use the following links to jump directly to the applicable terms and conditions:

Products: [NET \(net.com\) Terms and Conditions of Sale – Products](#)

Services: [NET \(net.com\) Terms and Conditions of Sale – Services](#)



PRODUCTS

NOTE! ALL PRODUCT TRANSACTIONS WITH NET ARE SUBJECT TO THESE TERMS. IF YOU DO NOT AGREE WITH THESE TERMS, PLEASE CONTACT YOUR NET REPRESENTATIVE IMMEDIATELY AND DO NOT PROCEED WITH THE TRANSACTION. These terms and conditions (“Agreement”) constitute the entire agreement between Network Equipment Technologies, Inc., dba net.com (“NET”) or its subsidiaries and affiliates, including but not limited to, N.E.T. Federal, Inc. and NET Europe Ltd., and you (“Customer”). By extending a quotation, NET invites Customer to make a legally binding offer in a Purchase Order (defined below). Customer’s Purchase Order should reference NET’s quotation and this Agreement and not contain any additional or different terms, which are hereby expressly rejected. If Customer submits a Purchase Order with additional or different terms and, despite the rejection of such terms, accepts Products, then Customer shall be deemed to agree that solely this Agreement shall be binding on the parties. In the event Customer is a systems integrator, valued-added reseller or prime contractor, this Agreement permits Customer to resell Products to a third party.

1. CERTAIN DEFINITIONS

“Products” means any hardware or software products identified on: (a) NET’s then current applicable price list; (b) any NET proposal or quotation; or (c) any NET invoice.

“Purchase Order” means a written order referencing NET’s quotation number and specifying, e.g.: (1) a purchase order number; (2) item prices; (3) part numbers; (4) quantities; (5) requested delivery dates; (6) delivery location, including name and contact information; and (7) bill-to address.

2. PAYMENT; DELIVERY

2.1 Fees. All fees exclude sales or service tax, insurance, and shipping charges, which shall be paid by Customer. NET will have completed performance of its obligations hereunder upon delivery without the additional requirement of any formal or express acceptance by Customer. All shipments from NET are FOB or FCA NET’s premises or designated facility, and “delivery” shall have occurred when NET has placed the Products into the hands of a carrier for shipment. Customer shall pay all fees in advance of shipment or, subject to NET credit approval, within thirty (30) days of the invoice date. Any late payments shall bear interest in the amount of one and one half percent (1.5%) per month or, if less, the maximum rate allowable by law, and NET may suspend further Product delivery until payments are current.

2.2 Title. NET may make partial shipments under an order. All scheduled delivery dates are estimates only and shall not be binding upon NET unless expressly agreed by NET in writing. Risk of loss and title to equipment pass to Customer on the date of Product delivery. NET does not transfer title to Software.

3. SOFTWARE LICENSE

3.1 End User License Grant. NET grants Customer a non-sublicensable, non-exclusive, worldwide, perpetual (unless terminated in accordance herewith), limited license to use copies of the NET software purchased hereunder (“Software”) in object code form, and supporting documentation (“Documentation”) delivered by NET for Customer’s internal business purposes subject to these terms and conditions. The foregoing license shall be non-transferable except that if Customer is a systems integrator, prime contractor or other entity acquiring the Products on behalf of a third-party end user, then Customer may make a one-time transfer of such license to its end user.

3.2 Copies. Customer may upload each duly acquired and paid-for copy of Software for permitted uses, and create one (1) backup copy, which must be stored separately from actively used computer programs, with the number and location of backup copies to be provided to NET upon request. Customer may create a reasonable number of unmodified copies of the Documentation, for its internal business purposes solely in connection with the Software.

3.3 Third-Party Products. If Customer acquires from NET third party Products that are accompanied by their own license terms (in shrink-wrap,

click-through or other format), Customer agrees to such terms vis-à-vis the licensor thereof and such terms shall be in lieu of these terms.

3.4 Audit. NET has the right, upon reasonable notice of not less than fifteen (15) days, during normal business hours, to audit Customer’s possession and use of the Software. Customer agrees to cooperate with NET’s audit and to provide reasonable access to information. If the audit discovers underpayment, overuse, or any other infringements of NET’s rights, NET shall be entitled, in addition to all other rights and remedies, to receive from Customer within thirty (30) days of written demand any unpaid fees at the rates in effect when the infringement first occurred, plus interest as provided in the payment terms above, and the reasonable costs of the audit.

3.5 License Restrictions. To the extent permissible under applicable law, Customer agrees not to: (i) decompile, disassemble, or reverse engineer the Software; (ii) modify (excluding open programmable interfaces) or create any derivative works (including translations, adaptations or other recast or altered versions) based on the Software or Documentation; (iii) merge the Software with any other software other than as expressly set forth in the Documentation; (iv) use, copy, sell, sublicense, lease, rent, loan, assign or otherwise transfer the Software or Documentation except as authorized by these terms; (v) distribute, disclose, or allow use of the Software or Documentation in any format, through a network, to or by third parties, or by other means; (vi) enable software features or capacity (e.g., additional nodes or IP flows) not purchased from NET; or (vii) permit or encourage any third party to do any of the foregoing. If Customer sells or otherwise transfers to a third party any Product or media containing pre-installed Software, Customer shall remove or delete all software prior to the transfer, unless NET confirms in writing that transferee has obtained all necessary licenses directly from NET against payment of applicable license fees.

3.6 License Termination. NET may terminate, at its sole discretion, licenses to Software and Documentation granted hereunder, by giving written notice, effective immediately, if within ten (10) days of Customer’s receipt of a reasonably detailed written request to cure, Customer has not cured all breaches of payment obligations, license limitations, or any other substantial obligations under this Agreement. Upon such termination, Customer shall immediately pay all fees outstanding, cease use of all Software and Documentation, return or delete (at NET’s request and sole discretion) all copies of the Software and Documentation in Customer’s possession, and certify compliance with all foregoing obligations to NET in writing. These termination rights are in addition to any other rights and remedies that NET may have under these Terms, at law or in equity. Sections 3.4 and 3.5 shall survive any such termination.

4. LIMITED WARRANTY

4.1 Warranty Standard. Subject to all limitations contained herein, NET warrants that the Product substantially conforms to the specifications in the documentation for the Product. The warranty period for hardware is one (1) year, beginning on the date of delivery. For hardware repairs, the warranty period is the remainder of the original warranty period, but at least ninety (90) days. The warranty period for software is one (1) year, beginning on the date of delivery. The warranty for Software shall not apply if Customer has updated any third party operating system software without prior written authorization from NET.

4.2 Warranty Exclusions. Customer has no warranty rights with respect to (i) defects or non-conformities caused by improper use, such as failure to follow NET’s operating instructions, use with incompatible equipment, or failure to implement updates and new releases of Software provided to Customer; (ii) non-conformance due to actions of persons other than NET and its personnel; (iii) modifications made at Customer’s request, or (iv) Products shipped, at Customer request, after the formal “end-of-life last shipment date” for the Products. Third-party products are covered by the warranties of their manufacturer and not the warranties set forth herein.

4.3 Warranty Remedies. If the Product materially fails to comply with the above warranty standard during the warranty period, NET shall provide the following:

4.3.1 For hardware warranty service, Customer shall obtain an RMA number (available from <http://www.net.com/esc/rma/>) and then ship the

Product or defective parts to NET, freight pre-paid with appropriate insurance, and NET shall, at its sole discretion, (i) repair or replace the Product or parts to achieve compliance with the warranty, and ship the repaired or replacement hardware back to Customer within 30 days (subject to customs requirements for shipments outside of the US), or (ii) refund to Customer the applicable fees. Provided there is found to be a warranty failure, NET shall reimburse the freight and insurance charges, based on the original delivery location.

4.3.2 For Software warranty service, Customer shall notify NET of the Software defect and NET shall, at its sole discretion, (i) use reasonable efforts to achieve compliance with the warranty, either by correcting the identified defect or providing a workaround or (ii) refund to Customer the applicable fees. Correction of Software defects during the warranty period may be achieved by issuance of a later release of the Software not containing the defect, and in such event NET will provide the new release to Customer at no charge, but use of the new release could require Customer to upgrade other components, which shall be at Customer's expense.

4.4 No Other Warranties. NET DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCTS AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

4.5 Sole Remedies. THE FOREGOING REMEDIES ARE NET'S SOLE AND EXCLUSIVE WARRANTY OBLIGATIONS. No other entity, including any authorized NET distributor or reseller, is authorized to make any warranty commitment, whether oral or written, binding upon NET, and any such statements are void.

5. INDEMNITY

5.1 Indemnification. NET will defend and indemnify Customer from and against all infringement claims brought against Customer to the extent that Products delivered hereunder infringe a third party's trade secret, United States copyright or United States patent, on the condition that Customer notifies NET in writing within ten (10) days of such claim, gives NET sole authority and control of the defense or settlement of such claim, and provides all reasonable information and assistance requested by NET to handle the defense or settlement.

5.2 Remediation. If any Product is held to infringe any third party's trade secret, United States copyright or United States patent and its use is enjoined, or NET reasonably believes such use may become enjoined, NET may, at NET's own expense and sole discretion, (i) procure for Customer the right to continue its use; (ii) replace or modify it so that it becomes non-infringing; or (iii) refund a pro-rated portion of the fees paid for it, based on a linear depreciation over a five (5) year useful life, in which case Customer shall cease all use thereof and return it to NET.

5.3 Indemnity Exclusions. NET shall have no indemnity obligation for any infringement claim attributable to: (i) modifications made in accordance with Customer's instructions or made by someone other than NET unless directed or approved by NET; (ii) use with hardware or software not certified by NET as suited for use with the Product; (iii) failure to use the latest versions of the Product made available to Customer; or (iv) third parties or third party Products.

5.4 Exclusive Remedy for Infringement. THIS SECTION 5 STATES NET'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT OF A THIRD PARTY'S PROPRIETARY RIGHT.

6. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR INCIDENTAL, SPECIAL, STATUTORY, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR FOR ANY LOSS OF PROFITS, REVENUE, DATA, OR COST OF COVER. EXCEPT FOR CLAIMS OF PERSONAL INJURY OR DEATH, ALL LIABILITY OF NET UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO MONEY PAID TO NET UNDER THIS AGREEMENT AND IN THE CASE OF DAMAGES RELATING TO ANY ALLEGEDLY DEFECTIVE OR INFRINGING PRODUCT, SHALL, UNDER ANY LEGAL OR EQUITABLE THEORY, BE FURTHER LIMITED TO THE PURCHASE PRICE PAID BY THE CUSTOMER FOR SUCH PRODUCT.

7. GENERAL TERMS

7.1 Choice of Law. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding conflict of laws principles and the U.N. Convention on Contracts for the International Sale of Goods (CISG), and shall be subject to the exclusive jurisdiction of California courts.

7.2 Compliance with Laws. Both parties shall comply with all applicable laws, including the export control laws of the United States, and shall not export or re-export any products without the appropriate United States and foreign government licenses. Customer shall defend, indemnify, and hold NET and its suppliers harmless from any claims arising out of Customer's violation of export control laws.

7.3 Entire Agreement. This Agreement, NET's written quotation or order acknowledgement, and Customer's Purchase Order (excluding any additional or conflicting terms) constitute the entire agreement of the parties and supersede all prior or contemporaneous agreements, oral or written, between the parties relating to the subject matter hereof. This Agreement may be modified only in a writing signed by the parties.

7.4 Severability. If any terms herein are held invalid by a court of competent jurisdiction, such terms shall, to the extent invalid, be null and void and deleted from this Agreement. All remaining terms shall remain in full force and effect.

7.5 Assignment. Customer may not assign this Agreement or any rights thereunder, by operation of law or otherwise, without the prior written consent of NET.

7.6 Confidential Information. Customer shall hold confidential and not use or permit others to use any information (i) identified in writing or orally by NET as confidential or (ii) that Customer knows or has reason to know is confidential information of NET.

7.7 No Waiver. No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of such rights or of any other rights under this Agreement.

7.8 Insolvency. If either party (i) makes an assignment for the benefit of creditors; (ii) becomes insolvent; (iii) suspends business; or (iv) files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, which petition is not dismissed within thirty (30) days, then the other party may immediately cancel any outstanding part of any order without penalty.

7.9 Force Majeure. NET shall not be liable for any delay or failure in performance due to strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of NET.

7.10 Security Interest in Products. Customer grants NET a security interest in all Products acquired from NET at any time to secure the payment and performance of Customer's obligations under this Agreement and authorizes NET to file a financing agreement thereon.

7.11 Notices. Any notices hereunder shall be invalid unless in writing and sent by fax, certified mail, or courier with delivery confirmation, effective upon receipt, to NET, Attn: Legal Dept., 21660 Ridgetop Circle, Suite 100, Dulles, VA USA 20166, (Fax: 703-948-1850).



SERVICES

NOTE! ALL SERVICES TRANSACTIONS WITH NET ARE SUBJECT TO THESE TERMS. IF YOU DO NOT AGREE WITH THESE TERMS, PLEASE CONTACT YOUR NET REPRESENTATIVE IMMEDIATELY AND DO NOT PROCEED WITH THE TRANSACTION. These terms and conditions (“Agreement”) constitute the entire agreement between Network Equipment Technologies, Inc., d.b.a. net.com (“NET”) or its subsidiaries and affiliates, including but not limited to, N.E.T. Federal, Inc. and NET Europe Ltd., and you (“Customer”). By extending a quotation, NET invites Customer to make a legally binding offer in a Purchase Order (defined below). Customer’s Purchase Order should reference NET’s quotation and this Agreement and not contain any additional or different terms, which are hereby expressly rejected. If Customer submits a Purchase Order with additional or different terms and, despite the rejection of such terms, accepts Services, then Customer shall be deemed to agree that solely this Agreement shall be binding on the parties.

1. CERTAIN DEFINITIONS

“Personnel” means employees, independent contractors, and subcontractors, who NET deploys and replaces at its sole discretion.

“Purchase Order” means a written order referencing NET’s quotation number and specifying, e.g.: (1) a purchase order number; (2) item prices; (3) part numbers; (4) quantities; (5) requested delivery dates; (6) delivery location, including name and contact information; and (7) bill-to address.

“Service Program” means an NET document specifying the scope and conditions of Services.

“Services” means Maintenance Services, Fixed-Price Services or T&M Services, where:

“Fixed-Price Services” means the services that NET labels as such or expressly agrees to provide for a fixed price, including standard product training provided by NET.

“Maintenance Services” means support or maintenance services performed by NET pursuant to Service Programs.

“T&M Services” means Services that NET labels as such or agrees to provide for a price based on the time and materials required.

2. PAYMENT

All fees exclude sales or service tax, insurance, and shipping charges, which shall be paid by Customer. Fees for Maintenance Services will be invoiced quarterly in advance, and fees for other Services will be invoiced either in advance or, if agreed by NET in a statement of work or other writing, upon completion or per milestones. NET will have completed performance of its obligations hereunder once Services have been rendered, without the additional requirement of any formal or express acceptance by Customer. Customer shall pay all fees in advance or, subject to NET credit approval, within thirty (30) days of the invoice date. Any late payments shall bear interest in the amount of one and one half percent (1.5%) per month or, if less, the maximum rate allowable by law, and NET may suspend Services until payments are current.

3. SERVICES TERMS

3.1 Fixed-Price Services. NET will provide Fixed-Price Services either (i) pursuant to a Service Program for Fixed-Price Services, such as for standard installations or training, or (ii) pursuant to a statement of work specifying deliverables or defined objectives.

3.2 T&M Services. NET will provide T&M Services in exchange for hourly or daily fees and expense reimbursements at NET’s standard rates, which NET revises from time to time and which are available on request, or at other rates as may be agreed in writing (“T&M Fees”). If, at Customer’s request, NET performs T&M Services on weekends or outside NET’s regular business hours of 8 AM to 5 PM (local time where Services are performed), which NET is not obligated to do, separate rates apply. To the extent the parties agree in a statement of work or other document on a specific project description, such as installation of products or implementation of a systems solution, NET will use commercially reasonable efforts to pursue the realization thereof. However, NET’s obligations under any order for T&M Services shall always be the

provision of the agreed service activities, and not a certain technical, economic, or other result.

3.3 Maintenance Services. NET will provide Maintenance Services in accordance with the applicable Service Program. If the Service Program includes the supply of software updates, NET shall make available to Customer all updates that NET makes generally available under the same Service Program. NET reserves the right not to create any updates, or to market new versions of software as a new product for additional consideration. Updates are to be used instead of, not in addition to, the updated software, and their use is governed by all license restrictions governing the updated software. Use of updates may require the acquisition by Customer of new or additional hardware, operating systems, or other software. Additional products ordered or delivered during an existing term of Maintenance Services will be automatically added to the existing coverage, unless the parties agree otherwise, and the applicable fees will be applied pro-rata at NET’s rates in effect on the date the products are added. Customer shall notify NET immediately upon adding or relocating products within Customer’s network.

3.4 Modification of Service Programs. Upon sixty (60) days’ written notice, NET may modify a Service Program, including reducing the level of service or excluding on-site maintenance. In such event, an equitable adjustment will be made by mutual agreement in the fees charged for the Services. If the parties cannot agree on the fee adjustment, NET may, at its sole discretion, (i) perform under the previous conditions or (ii) grant Customer a one-time thirty (30) day right to terminate the respective Services, after which, if Customer has not exercised this termination right, the new terms proposed by NET shall become effective and NET shall refund any overpaid fees.

3.5 Customer Cooperation. Customer shall cooperate with NET as specified in the Service Programs, a statement of work, or as reasonably requested by NET. If Customer fails to meet any of its obligations under this Agreement, NET may delay or suspend its performance and charge Customer for any resulting expenses including storage costs and other out-of-pocket expenses, and, after thirty (30) days following NET’s request of Customer’s cooperation, cancel some or all Services and invoice Customer immediately for all related fees, in addition to any other rights or remedies available at law or in equity.

3.6 Conditions. NET shall provide Services subject to the condition that the maintained equipment and its network environment are not (i) installed, altered or repaired by someone other than NET or its authorized representative; (ii) improperly used, handled, or stored, or located in an unsafe place; (iii) used with incompatible equipment; or (iv) damaged by fire, explosion, power failure or other act or cause not attributable to NET or its authorized representative.

3.7 License Rights. Upon completion and subject to full payment, NET grants Customer a non-exclusive, non-sublicensable, non-transferable, worldwide, perpetual (unless terminated in accordance herewith), limited license to use the deliverables or other work product of Services for Customer’s internal business purposes if and to the extent that (i) NET makes such deliverables intentionally available to Customer as part of the Services; (ii) the respective items are not covered by any other agreement between the parties (otherwise such other agreement, e.g., the NET Terms and Conditions of Sale for Products, shall govern); and (iii) Customer complies with all other provisions of this Agreement.

4. LIMITED WARRANTY

4.1 Warranty Standard. Subject to all limitations contained herein, NET warrants that (i) Maintenance Services will be carried out in a professional and workmanlike manner by qualified Personnel, (ii) the results of an installation by NET will substantially conform to the specifications contained in the documentation for the products, and (iii) at time of completion, any deliverables substantially conform to the specifications in the applicable statement of work. The warranty period for Service deliverables is thirty (30) days beginning upon completion.

4.2 Warranty Remedies. If Maintenance Services or T&M Services materially fail to comply with the warranty standard set forth above, Customer may terminate such Services in accordance with the termination

provisions set forth below, with effect for the future; provided that such termination shall not affect any other obligations of Customer under these terms. If the results or deliverables of Fixed-Price Services fail to comply with the above warranty standard, NET shall, at its sole discretion, (i) reperform the affected installation services or repair or replace the non-conforming deliverables, or (ii) refund to Customer the applicable fees (e.g., a milestone installment) against return of the non-conforming deliverables and any other work product.

4.3 No Other Warranties. NET DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

4.4 Sole Remedies. THE FOREGOING REMEDIES ARE NET'S SOLE AND EXCLUSIVE WARRANTY OBLIGATIONS.

5. INDEMNITY

5.1 Indemnification. NET will defend and indemnify Customer from and against all infringement claims brought against Customer to the extent that any deliverable of Services hereunder infringes a third party's trade secret, United States copyright or United States patent, on the condition that Customer notifies NET in writing within ten (10) days of such claim, gives NET sole authority and control of the defense or settlement of such claim, and provides all reasonable information and assistance requested by NET to handle the defense or settlement.

5.2 Remediation. If any Services deliverable is held to infringe any third party's trade secret, United States copyright or United States patent and its use is enjoined, or NET reasonably believes such use may become enjoined, NET may, at NET's own expense and sole discretion, (i) procure for Customer the right to continue its use; (ii) replace or modify it so that it becomes non-infringing; or (iii) refund a pro-rated portion of the fees paid for it, based on a linear depreciation over a five (5) year useful life, in which case Customer shall cease all use thereof and return it to NET.

5.3 Indemnity Exclusions. NET shall have no indemnity obligation for any infringement claim attributable to deliverables or modifications thereto made in accordance with Customer's instructions or made by someone other than NET unless directed or approved by NET; or (ii) use with other hardware or software except as may be specifically identified in a statement of work.

5.4 Exclusive Remedy for Infringement. THIS SECTION 5 STATES NET'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT OF A THIRD PARTY'S PROPRIETARY RIGHT.

6. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR INCIDENTAL, SPECIAL, STATUTORY, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR FOR ANY LOSS OF PROFITS, REVENUE, DATA, OR COST OF COVER. EXCEPT FOR CLAIMS OF PERSONAL INJURY OR DEATH, ALL LIABILITY OF NET UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO THE GREATER OF (i) THE FEES PAID TO NET UNDER THE ORDER CLOSEST RELATED TO THE DAMAGES OR (ii) THE FEES PAID TO NET DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE CAUSATION OF THE DAMAGES.

7. GENERAL TERMS

7.1 Choice of Law. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding conflict of laws principles and the U. N. Convention on Contracts for the International Sale of Goods (CISG), and shall be subject to the exclusive jurisdiction of California courts.

7.2 Compliance with Laws. Both parties shall comply with all applicable laws, including the export control laws of the United States, and shall not export or re-export any products without the appropriate United States and foreign government licenses. Customer shall defend, indemnify, and hold NET and its suppliers harmless from any claims arising out of Customer's violation of export control laws.

7.3 Entire Agreement. This Agreement, NET's written quotation or order acknowledgement, and Customer's Purchase Order (excluding any additional or conflicting terms) constitute the entire agreement of the parties and supersede all prior or contemporaneous agreements, oral or written, between the parties relating to the subject matter hereof. This Agreement may be modified only in a writing signed by the parties.

7.4 Severability. If any terms herein are held invalid by a court of competent jurisdiction, such terms shall, to the extent invalid, be null and void and deleted from this Agreement. All remaining terms shall remain in full force and effect.

7.5 Assignment. Customer may not assign this Agreement or any rights thereunder, by operation of law or otherwise, without the prior written consent of NET.

7.6 Confidential Information. Customer shall hold confidential and not use or permit others to use any information (i) identified in writing or orally by NET as confidential or (ii) that Customer knows or has reason to know is confidential information of NET.

7.7 No Waiver. No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of such rights or of any other rights under this Agreement.

7.8 Insolvency. If either party (i) makes an assignment for the benefit of creditors; (ii) becomes insolvent; (iii) suspends business; or (iv) files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, which petition is not dismissed within thirty (30) days, then the other party may immediately cancel any outstanding part of any order without penalty.

7.9 Force Majeure. NET shall not be liable for any delay or failure in performance due to strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of NET.

7.10 Notices. Any notices hereunder shall be invalid unless in writing and sent by fax, certified mail, or courier with delivery confirmation, effective upon receipt, to NET, Attn: Legal Dept., 21660 Ridgetop Circle, Suite 100, Dulles, VA USA 20166, (Fax: 703-948-1850).

8. TERM AND TERMINATION

8.1 Term. The term of any Fixed-Price Services project will continue until (i) completion or (ii) termination in accordance with this Section 8. For Maintenance Services, Customer agrees to provide NET with an authorized Purchase Order prior to the start of each new billing cycle, and failure to do so may result in suspension of Services.

8.2 Termination for Cause. Either party may terminate a statement of work by written notice, effective immediately, if the other party fails to cure any material breach of this Agreement within thirty (30) days after receiving written notice from the non-breaching party detailing the alleged breach. These termination rights are in addition to any other rights and remedies that a party may have. If NET terminates Services because of Customer's material breach, Customer shall return to NET all work product, materials, and other tangibles and intangibles received in connection with T&M Services, without retaining any copies thereof.

8.3 Termination of Maintenance Services for Convenience. With ninety (90) days' written notice, either party may terminate Maintenance Services or exclude individual Products from the scope of Maintenance Services. If Customer has prepaid any fees for a time period beyond the notice period, NET will refund such overpaid fees.

8.4 Termination of T&M or Fixed-Price Services for Convenience. Customer may terminate T&M or Fixed-Price Services for convenience at any time by giving NET sixty (60) days prior written notice, provided that Customer shall pay to NET (i) in the case of Fixed-Price Services, all fees specified in the statement of work less out-of-pocket expenses saved by NET as a result of the early termination, or one hundred twenty percent (120%) of NET's fully loaded costs of performing the Services before termination, whichever is greater, or (ii) in the case of T&M Services, an amount equaling either the ramp-down or cancellation fees or, where no such fees are specified, the estimated total T&M Fees and costs less out-of-pocket expenses saved by NET as a result of the early termination. In addition, Customer shall return to NET all deliverables and other tangibles and intangibles received in connection with the terminated Services, and not retain any copies thereof.

8.5 Survival. Sections 4 through 7 of this Agreement shall survive any termination of this Agreement or an individual statement of work, provided that unless Customer makes complete payments, Section 3.7 (License Rights) shall not survive termination.