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Maintenance Service Agreement

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MAINTENANCE SERVICE AGREEMENT

1. DEFINITIONS AND INTERPRETATION

This Service Agreement is to be read in conjunction with the Conditions for Communications Services (the "**Conditions**") to which this Service Agreement is attached. All definitions contained within this Service Agreement shall have the same meaning as those set out in the Conditions unless specified below:

"Agreement" means this Service Agreement;

"Cancellation Charge" means a charge applied to your account (a) when we terminate the Agreement for breach of the Agreement by you; or (b) when you terminate the Agreement prior to the end of the Minimum Term in certain circumstances;

"Equipment" means the equipment specified on the Order Form;

"Order Form" means our order form to which this Agreement is attached and which contains details of your application for the Service;

"Service" means the maintenance and repair services to be undertaken in relation to the Equipment located at the Site;

"Service Fee" means the annual charge for the Service, which charge is specified on the Order Form;

"Working Hours" means between 08.00 and 18.00 on Monday to Friday inclusive, excluding any public or bank holidays;

"The Company" or "we" or "us" means ICS 1989 LTD, trading as iCS Communications

"The Customer" or "you" means the customer whose company details are set out on the Order Form.

2. THE SERVICE

- 2.1 Subject to the terms of this Agreement and in consideration for the payment by you to us of the Service Fee together with any and all other applicable Charges, we shall undertake maintenance visits to the Site in order to fix faults which may arise in relation to the Equipment. During any maintenance visit, (or otherwise thereafter, where appropriate) we will check all relevant aspects of the Equipment and replace or repair any faulty Equipment (or any faulty component of the Equipment).



- 2.2 We would normally expect to respond within 4 hours during Working Hours to any fault which is having a material effect on a Customer's business, whilst other faults will be met with a 2 day response during Working Hours. However, these timescales are estimates only and time shall not be of the essence in the provision of the Service.
- 2.3 The Service shall not include:
- a. Any maintenance or repair work with respect to any modification of, or addition to, the Equipment, if any such modification or addition has been undertaken without our prior consent;
 - b. Any maintenance or repair work undertaken outside Working Hours;
 - c. The cost of any cables and any other equipment required to connect or reconnect the Equipment to the Network;
 - d. The repair of any damage to the Equipment caused by fire, lightning, water or explosion;
 - e. The remedy of any defect resulting from any misuse of, neglect of, tampering with, or wilful or accidental damage to the Equipment, or from the utilisation of incorrect mains voltage with the Equipment or from the attachment of the Equipment to any unsuitable or inappropriate devices, or from any failure to follow any instructions contained in any operation or maintenance manual published for, or otherwise specified to be appropriate for use in conjunction with, the Equipment, or from any failure to follow any written or oral instructions issued by us; and
 - f. Any additional maintenance visit or any attendance at the Site which, in either case, is requested or required because some act or omission of yours has prevented, suspended or delayed the performance of any obligation of ours, or is requested or required because of your failure to perform, suspension or delay in the performance of any of your obligations under the Agreement.
- 2.4 Where we agree to undertake any work not included in the Service, you shall be liable to pay us the Charges for any such work at our then current time and materials rates.
- 2.5 If the performance of our obligations under the Agreement or otherwise is prevented, suspended, delayed or otherwise adversely affected by any act or omission of yours, your agents, subcontractors, consultants or employees, or from any fraud or negligence of yours, or from any failure to perform, suspension or delay in the performance of any of your obligations under the Agreement or otherwise, we shall not be liable for any costs,



charges or losses sustained or incurred by you arising directly or indirectly from such prevention, suspension, delay or adversely affected performance of our obligations.

3. YOUR OBLIGATIONS

3.1 You shall:

- a. ensure that proper environmental conditions are maintained for the Equipment and shall maintain in good condition the accommodation of the Equipment, any cables and fittings associated therewith and where applicable, the electricity supply thereto;
- b. notify us of any defect or suspected defect in the Equipment at the time that the defect becomes known, or ought reasonably to have become known, to you;
- c. not make any addition or modification to the Equipment without our prior written consent;
- d. keep and operate the Equipment in a proper and prudent manner and in accordance with our operating instructions and where applicable, ensure that only competent trained and authorised employees are allowed to operate the Equipment;
- e. carry out any minor maintenance recommended by us from time to time;
- f. save in clause 3.1 e. as aforesaid, not attempt to adjust, repair or maintain the Equipment and shall not request, permit or authorise anyone other than us to carry out any adjustments, repairs or maintenance of the Equipment;
- g. use on the Equipment only such operating supplies, materials and parts as we shall advise in writing;
- h. not move the Equipment nor remove the Equipment from the Site without our prior written consent;
- i. not use in conjunction with the Equipment any accessory, attachment or additional equipment other than that which has been supplied by or approved in writing by us;
- j. provide us with full and safe access to the Equipment for the purposes of this Agreement and adequate working space surrounding the Equipment;
- k. ensure that all backup copies of any and all software, security tools and keys are made available to us prior to our commencing performance of the Service;
- l. make available to us such operating manuals, programs and information as may be necessary to enable us to perform our obligations hereunder;



- m. make available to us, free of charge, all facilities and services reasonably required by us to enable us to perform the Service;
 - n. at all times keep a record of all Equipment used, (in a form to be approved by us) and allow us to inspect such record at all reasonable times; and
 - o. nominate one person to be your principal contact between the parties, to whom we shall address all enquiries, responses and correspondence.
- 3.2 We may (without prejudice to any right or remedy available to us under this Agreement, up to and including termination), agree to undertake any maintenance or repair work notwithstanding any breach of any obligation set forth in clause 3.1 (including any work which would not be necessary but for such breach, or which otherwise arises from or is related to such breach); in such an event, you shall be liable to pay us the Charges for our work at our then current time and materials rates.
- 3.3 You shall be liable to pay to us, on demand, all reasonable costs, charges or losses sustained or incurred by us (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from your fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to our confirming such costs, charges and losses to you in writing.
- 3.4 You shall hold us harmless and keep us indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by us as a result of or in connection with any claim made against us in respect of any liability, loss, damage, injury, cost or expense sustained by any third party to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from your fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to our confirming such costs, charges and losses to you in writing.



4. NON-SOLICITATION

You shall not, at any time from the Commencement Date to the expiry of 6 months after the last date of supply of the Service or termination of the Agreement, as applicable, solicit or entice away from us or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as our employee, consultant or subcontractor in the provision of the Service.

5. CHARGES

- 5.1 You shall pay the Service Fee, together with such other Charges (if any) as shall be notified to you by us (including but not limited to any Charges payable on a time and materials basis), which Service Fee and Charges are exclusive of VAT, which we shall add to our invoices at the appropriate rate.
- 5.2 We shall be entitled to vary the Service Fee annually and any such variation shall become effective on the anniversary of the Commencement Date in the year immediately following the variation. We shall notify you of any such variation at least 45 days prior to the anniversary of the Commencement Date. Any and all other Charges payable under this Agreement may be varied by us at any time without notice to you.
- 5.3 Without prejudice to clause 5.1, you shall pay to us any additional sums which, in our sole discretion, are required as a result of any cause attributable to you directly or indirectly, including without limitation, any act or omission of yours which falls within clause 3.3.

6. PAYMENT

- 6.1 The Service Fee shall be payable prior to the Commencement Date and shall be payable thereafter annually prior to the anniversary of the Commencement Date. All other sums payable under the Agreement must be paid within 30 days of the relevant invoice therefor.
- 6.2 Without prejudice to the provisions of clause 6.1, the provisions of Condition 8 of the Conditions shall otherwise govern your payment obligations under this Service Agreement.



7. INTELLECTUAL PROPERTY

- 7.1 Unless otherwise expressly agreed in writing, the parties will not acquire any rights or licences to each other's intellectual property rights.
- 7.2 All intellectual property rights in anything provided to you as part of the Service will remain the property of us or our licensors.

8. MINIMUM TERM

- 8.1 The Minimum Term will be as specified on the Order Form. The Minimum Term will commence on the Commencement Date.
- 8.2 Unless you terminate the Agreement in accordance with clause 8.3 then, upon the expiry date of the Minimum Term, or any anniversary of that date thereafter, the Agreement will renew automatically for further periods of 12 months.
- 8.3 You may terminate the Agreement by giving 90 days' notice in writing to us, such notice to become effective no earlier than the expiry date of the Minimum Term or upon each anniversary of such date thereafter (as applicable).

9. TERMINATING THE AGREEMENT

- 9.1 We may terminate the Agreement immediately in accordance with Condition 16 of the Conditions.
- 9.2 If this Agreement is terminated by us in accordance with sub-clauses 16.4.2.1, 16.4.2.2, 16.4.2.3 16.4.2.4 or 16.4.2.5 of the Conditions during the Minimum Term or any successive Term, you will be responsible for the payment of:
 - (a) Any and all Charges (including the Service Fee or any unpaid portion thereof) which are due as of the termination date (including but not limited to any such Charges not yet invoiced); and
 - (b) A Cancellation Charge, comprised of all Charges up to the end of the Term which are not due as of the termination date, but which would otherwise fall due for payment thereafter, less a 5% reduction to reflect early payment.
- 9.3 If this Agreement is terminated by us in accordance with sub-clauses 16.4.2.6, 16.4.2.7 or 16.4.2.8 of the Conditions during the Minimum Term or any successive Term, we will



not levy a Cancellation Charge, but you will be responsible for the payment of the Charges set forth in clause 9.2 (a) above.

- 9.4 Either party may terminate this Agreement by giving the other party not less than ninety (90) days' notice in writing to take effect at the end of the Minimum Term.
- 9.5 In the event that notice of termination pursuant to clause 9.4 is duly given by either party, we will not levy a Cancellation Charge, but you will be responsible for the payment of the Charges set forth in clause 9.2 (a) above, together with any other Charges which may be incurred during the notice period.
- 9.6 If you want to terminate this Agreement prior to the end of the Minimum Term or any successive Term (other than because we have materially altered the terms of this Agreement under Condition 17.1) you must give us at least ninety (90) days notice in writing. You must pay the Charges set forth in clause 9.2 (a) above, together with any other Charges which may be incurred during the notice period and we will also levy a Cancellation Charge in accordance with clause 9.2 (b).
- 9.7 If you want to terminate this Agreement prior to the end of the Minimum Term or any successive Term because we have materially altered the terms of this Agreement under Condition 17.1, you must either give us written notice of termination, or contact our customer services department specifying your reason for termination, in each case before the change becomes effective. We will not levy a Cancellation Charge, but you will be responsible for the payment of all Charges up to and including the date of termination.

10. LIMIT OF LIABILITY

- 10.1 Our liability to you shall be governed by the provisions of Condition 13 of the Conditions and any relevant provision of this Agreement.
- 10.2 Without limiting the generality of clause 10.1 above, Condition 13.2 of the Conditions sets out our aggregate monetary liability to you, whether arising under this Agreement or otherwise.



11. TRANSFERRING THIS AGREEMENT

This Agreement is personal to you and may not be transferred by you to any other person.

12. USE OF YOUR DETAILS

- 12.1 For the purposes of fraud prevention, debt collection, credit management and emergency services provision, you agree that we may disclose information about you and your account with us to debt collection agencies, credit reference agencies, financial institutions, emergency service organizations and other companies offering identical or similar Services. We may also pass your details to third parties in the event that we sell our business, so that you can continue to receive the Service.
- 12.2 Unless you indicate otherwise on the Order Form, we may also use you details to send you information and other services that we offer that we think you may be interested in.

13. GENERAL

The provisions of Condition 17 of the Conditions (namely 17.1, 17.2, 17.3, 17.4, 17.5, 17.6, 17.7 and 17.8, covering changes to the Conditions, Force Majeure, Notice, Waiver, Entire Agreement, Third Party Rights, Severability and Governing Law respectively), shall apply to this Agreement.

Please read this document in conjunction with the Communications for Communications Services document.