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# Mobile Service Agreement

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## MOBILE SERVICE AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

1.1 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.

**"Airtime"** means the wireless airtime and network capacity procured from the Network Operator.

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

**"Content"** means all information whether textual, visual, audio or otherwise, appearing on or available through the Service whether supplied by us or by third party content providers.

**"End-User Licensed Software" (EUL)** means any software, the use of which is governed by a separate agreement with the licensor of such software, typically by means of a "click-wrap" or "shrink-wrap" licence agreement.

**"Equipment"** means the items supplied by us under this Agreement and includes any Software (but not End-User Licensed Software) and documentation supplied under this Agreement.

**"GSM Gateway"** means a device that transfers a fixed line call onto a radio network via a SIM card and radio channel, thus gaining a mobile-mobile call rate rather than fixed-mobile.

**"GPRS Bearer"** means the General Packet Radio Service provided by the Network Operator that forms part of the Airtime.

**"Mobile Device"** means the mobile equipment incorporating a SIM card.

**"Mobile Web"** means full colour Internet access and email on the move.

**"Network"** means the Mobile Device system over which the Service is provided. This is a digital network, which works in many countries and may allow you to use your Mobile Device in those countries.



**"Network Operator"** means the network operator who operates the wireless network of networks to which the SIM Cards are connected.

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

**"Service"** means the provision of Airtime, Equipment, GPRS Bearer, Mobile Web, SMS, SMS Land to Mobile Text Messaging Service, location based services and/or any other wireless services.

**"Software"** means any software (excluding End-User Licensed Software) supplied to the Customer by us, the Network Operator or any other supplier under the terms of or in respect of this Agreement.

**"SIM Card"** means the subscriber identity module supplied by the Network Operator (and which shall at all times remain the property of the Network Operator), which is allocated to you by us and which contains your telephone number.

**"SMS"** means the short message service, which enables text messages to be sent to and received from a Mobile Device.

**"SMS Land to Mobile Text Messaging Service"** means the short message service for text message sent to SIM Cards via a software application in conjunction with a private or virtual private circuit linking the Customer's wireless private or virtual private data network with the wireless services.

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

**"Tariff"** means the Company's tariff that sets out the rates, which we will charge you for your calls and other services you have chosen. Please contact us if you have not received a copy of our Tariff with the Order Form.

**"Term"** means the length of time you commit to taking the Service for each Mobile Device or Upgrade ordered as more particularly described in clause 3. The Minimum Term is specified on the Order Form under the heading "Length of Agreement".

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

**"Upgrade"** means moving from one Service plan to another Service plan which has a greater number of included minutes or higher recurring Charges.



## 2. SCOPE OF THE AGREEMENT

We agree to provide you with the Service and/or the Mobile Devices and you agree to use the Service and the Mobile Devices on the terms set out in this Agreement.

## 3. LENGTH OF AGREEMENT

3.1 This Agreement begins when we either accept your application for the Service and/or the Mobile Devices in writing or when we send you the Mobile Devices and/or SIM Card for the Service you have ordered, whichever is the earlier. Our acceptance of your application is subject to your passing a UK credit check and you hereby consent to our submitting your details to a credit reference agency for this purpose.

3.2 You agree that each Mobile Device ordered by you is subject to its own agreement. The Minimum Term commences on the date of initial connection of your Mobile Device and/or SIM Card to the Service. The Minimum Term is specified on the Order Form under Length of Agreement. 3.3 Any Upgrade will be subject to a new Minimum Term from the date that the new Service plan becomes effective in accordance with the provisions of clause 3.1.

## 4. SUPPLY OF MOBILE DEVICES

4.1 We will endeavour to deliver the Mobile Devices within any agreed timescales, but under no circumstances shall we be liable to you for any loss or damage of any kind whatsoever, caused by any delay in the delivery of the Mobile Devices.

4.2 We are not the manufacturer of any Mobile Devices supplied to you under this Agreement. We warrant that each item of Equipment will conform in all material respects to the manufacturer's specification for a period of 12 months from the date on which each item of Equipment is dispatched (the "Warranty Period") unless special conditions associated with certain Equipment apply. Please note that Software shall have a Warranty Period of 90 days.

4.3 All risk of loss or damage to the Mobile Devices shall pass to you on delivery. Property in the Mobile Devices shall not pass to you until the purchase price has been paid in full. The SIM Cards shall remain the property of the Network Operator at all times.

4.4 Any Mobile Device delivered damaged must be notified to us within 3 working days and returned to us within 6 working days of the order being delivered. We may, entirely at our discretion, repair or replace such damaged Mobile Devices, substitute substantially similar goods or reimburse the price paid for the damaged Mobile Devices.



4.5 The warranty set out in this clause shall not apply where any Equipment has been altered in any way or has been subjected to misuse, (including without limitation being dropped in water or any other liquid), or has been subjected to unauthorised repair.

## **5. CHARGES AND PAYMENT**

5.1 You shall pay for all Charges for your Mobile Device and for using the Service in the manner and at the time set out or referred to on the Order Form or in the Tariff you have chosen on the Order Form, including without limitation the call charges, connection charges, monthly line rental charges and Mobile Device prices. Subject to the provisions of clause 11.1, you acknowledge that you are responsible for paying all call charges made using your Mobile Device and/or SIM Card whether or not such calls have been made by you personally.

5.2 Without limiting any of your obligations under clause 5.1, the provisions of Conditions 7 and 8 of the Conditions prescribe and shall govern the Charges payable by you under this Service Agreement and your payment obligations under this Service Agreement.

## **6. INTELLECTUAL PROPERTY**

In the event that we or our sub-contractors supply Software to you for use in conjunction with the Service, your use of such Software shall be governed by the provisions of Condition 10 of the Conditions.

## **7. YOUR USE OF THE SERVICE**

7.1 Your use of the Service, the SIM Card, any Mobile Devices and the Network shall be governed by the provisions of Condition 3 of the Conditions. In addition and without limitation:

(a) You must not use your SIM Card or Mobile Device with any equipment which has not been approved for use on the Network. If you are not certain whether a particular item of equipment has been so approved for use, this should be verified with the person selling the equipment or by your calling the helpline number 0800 9 88 77 99;

(b) You must tell us immediately if your name, company name, address, bank account or debit card details change;



(c) You agree not to use SMS or the SMS Land to Mobile Text Messaging Service for the purpose of marketing or advertising anything to users for wireless services without the consent of those users;

(d) You agree that in respect of SMS, we are acting as a service provider and as such have no knowledge of, involvement with, or liability for the specific content of any text messages sent to any users' SIM Cards, which do not originate from the service provider; and

(e) You may establish, install or use a GSM Gateway for your own private purposes only, provided that you adhere at all times to the Network Operator's policies with respect to the use of private GSM Gateways.

## **8. MINIMUM TERM AND MINIMUM SPEND**

8.1 The Minimum Term and Minimum Spend will be as specified on the Order Form or Tariff for the Service.

8.2 If you fail to reach the annualised Minimum Spend commitment in respect of any Service over the Minimum Term for such Service then we reserve the right to bill you in the month following expiry of the Minimum Term (or immediately on early termination) the difference between the actual amount you spent and the amount you committed to spend pursuant to the Minimum Spend over the Minimum Term.

8.3 If this Agreement or any Service is terminated during the Minimum Term or any agreed term for the relevant Service and you received any contribution towards the costs of any Service or Equipment, as part of the Tariff or otherwise, then we reserve the right to impose a termination charge equal to the original cost divided by the number of the months in the relevant term, multiplied by the number of months remaining in the relevant term.

8.4 Unless you terminate the Agreement in accordance with clause 8.5 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. Unless otherwise agreed in writing, the same Minimum Spend will apply during any such further period of 12 months as applied during the Minimum Term.

8.5 You may terminate the Agreement by giving 30 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).



8.6 All mobile tariffs are automatically opted into to a €50.00 data cap whilst roaming abroad anywhere in the world. This cap is designed to protect customers from large bills and is calculated before any inclusive allowance can be taken into consideration. Many mobile contracts now include an EU data allowance, giving you a set amount of data to use anywhere in the EU, these contracts are not compatible with the €50.00 data cap and may result in data being barred before the full allowance can be used.

## 9. TERMINATING THE AGREEMENT

9.1 We may terminate the Agreement or any Service immediately in accordance with Condition 16 of the Conditions.

9.2 If this Agreement or any Service 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 agreed term applicable to any Service, we will levy a Cancellation Charge in relation to each relevant Service calculated in accordance with the following:-

- (a) Each Service for which Periodic Charges are payable – the number of months remaining of the Minimum Term for that Service multiplied by the monthly Periodic Charges; and/or
- (b) All Charges other than Periodic Charges – the number of months remaining of the Minimum Term multiplied by the monthly Minimum Spend; and/or
- (c) Repayment to us of any subsidised charges or any other contribution made by us towards any other costs.

9.3 If this Agreement or any Service 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 agreed term applicable to any Service, we will not levy a Cancellation Charge, but you will be responsible for the payment of any and all outstanding Charges.

9.4 Either party may terminate this Agreement in respect of a Service by giving the other party not less than thirty (30) days notice in writing to take effect at the end of the Minimum Term for the relevant Service.

9.5 In the event that notice of termination pursuant to clause 9.4 is duly given by either party, you must pay:

- (a) The Periodic Charges up to the end of the notice period;





(b) All Charges other than the Periodic Charges up to the end of the notice period, including but not limited to any such Charges which may be incurred during the notice period; and

(c) Any cease charges which are detailed in the Tariff as being chargeable on termination.

9.6 If you want to terminate this Agreement in respect of a Service prior to the end of the Minimum Term for the relevant Service (other than because we have materially altered the terms of this Agreement under Condition 17.1) you must give us at least thirty (30) days notice in writing and we will levy a Cancellation Charge calculated in accordance with the following:-

(a) Each Service for which Periodic Charges are payable – the number of months remaining of the Minimum Term for that Service multiplied by the monthly Periodic Charges; and/or

(b) All Charges other than Periodic Charges – the number of months remaining of the Minimum Term multiplied by the monthly Minimum Spend; and/or

(c) Pro-rata repayment to us of any contribution to upfront or ongoing costs paid by us, and/or

(d) The appropriate notice period charge for each Service, and/or

(e) Any applicable cease charges as may be detailed in the Tariff.

9.7 If you want to terminate this Agreement in respect of a Service prior to the end of the Minimum Term for the relevant Service 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 must pay the Periodic Charges and all Charges other than the Periodic Charges up to and including the date of termination.

9.8 The prices of Mobile Devices supplied under this Agreement are calculated using a subsidy we are paid by the Network. This subsidy applies only when you are connected to the Network. Therefore, if you terminate this Agreement in respect of a Service prior to the end of the Minimum Term, you must either return any Mobile Devices to us in good working order and condition, or if you wish to keep them you must pay us the difference between what you had paid us for the Mobile Devices and their full wholesale price. This may be up to £500.00 per Mobile Device.

9.9 If you terminate this Agreement in respect of a Service for any reason, you must pay us £25.00 per SIM Card for the cost of disconnecting your Mobile Devices from the Network.





## **10. ADDITIONAL TERMINATION PROVISIONS**

10.1 The provisions of clause 9 shall be without prejudice to the other provisions of this Agreement.

10.2 Upon termination of this Agreement, you shall be responsible for arranging for the Service to be provided by another supplier.

## **11. WHAT TO DO IF YOUR SIM CARD OR MOBILE DEVICE IS LOST, STOLEN OR DAMAGED**

11.1 You must inform us immediately if a SIM Card supplied to you by us is lost, stolen or damaged. You will remain liable for all Charges incurred until you do so. We will send you a replacement SIM Card as soon as reasonably practicable, but we reserve the right to charge you for doing so.

11.2 If you need us to replace a Mobile Device because it has been lost, stolen or damaged, we reserve the right to charge you the full price of any replacement.

## **12. CONTENT**

12.1 We will not be liable to you or any other party for any action you take in reliance upon the accuracy, completeness, reliability or availability of the Content.

12.2 It is your responsibility to evaluate the value and integrity of goods and services offered by third parties by means of the Service. We will not be a party to, nor in any way be responsible for, any transaction concerning third party goods and/or services.

12.3 To the extent that the Service enables access to Content, we may vary the availability of such Content.

12.4 By using the Service, you consent to us copying and/or modifying /images or information you have created where such copying and/or modification is carried out for the purposes of transmission.

## **13. INTERNET ACCESS**



13.1 If we provide you with Equipment which enables access to the Internet, the following provisions shall also apply to you:

- (a) Either ourselves or third parties may provide links to other websites or resources. We do not endorse, nor do we make any warranty as to the accuracy, completeness, reliability or availability of the Content contained on any third party sites or resources accessed via the Service;
- (b) All Content made available on the Internet (directly or indirectly) through using the Services, whether publicly posted or privately transmitted, is the sole responsibility of the party from whom such Content originated. You are entirely responsible for all information uploaded, e-mailed or otherwise transmitted via Internet access;
- (c) We will not be responsible for any loss or damage you may suffer from any dealings with third parties. Any dealings with products or services provided by third parties which are located by using the Service, are solely between you and that third party, unless we specifically state otherwise;
- (d) Your ability to access a secure Internet environment will be dependent on your Equipment and the third party supplier of Content;
- (e) We will not be responsible for any harm you suffer from a virus which affects your Equipment, whether it was transmitted via the Service or otherwise. You will remain responsible for all Charges applied to your accounts for the use of any Service activated by such a virus;
- (f) While we try to ensure that the Service is made available to you, we cannot guarantee the availability of and coverage of interconnect connectivity via the Equipment at all times;
- (g) You shall be responsible for configuration of the Equipment for Internet usage according to the instructions provided. We may charge you at our then current rates for any technical assistance provided; and
- (h) Access to certain adult content may be prevented by us. To allow access, please follow instructions provided to you by our customer services department.

## 14. LIMIT OF LIABILITY



14.1 Our liability to you shall be governed by the provisions of Condition 13 of the Conditions and any relevant provision of this Agreement.

14.2 Without limiting the generality of clause 14.1 above, Condition 13.2 of the Conditions sets out our aggregate monetary liability to you, whether arising under this Agreement or otherwise.

## **15. REFUND POLICY**

15.1 A refund will be granted within 30 days of payment by you for:

15.1.1 Software supplied which is defective at the time of purchase, provided that such Software has not been tampered with or altered in any way by you; and

15.1.2 Software which is not delivered on the agreed delivery date due solely to our error.

15.2 We cannot, without limitation, offer any refund in either of the following instances:

15.2.1 Where the Software was purchased after the expiry of any trial period; or

15.2.2 Where the Software was purchased for use on a Network which is not supported by us or our business partners.

15.3 Where a refund is granted pursuant to this clause 15, a £5.00 administration fee will be charged if the matter occasioning the refund arose through or as a result of circumstances beyond our control.

## **16. SERVICE AVAILABILITY AND SUSPENSION**

16.1 We shall use all reasonable endeavors to provide and maintain the availability of the Service. However, we do not warrant that the Service shall be available without interruption or that it will be free from error. We may suspend the Service immediately if:

16.1.1 The Network fails or if it is being modified, maintained or repaired, or if the Network is unavailable for any other reason; or

16.1.2 You notify us of the loss or theft of your SIM Card or Device; or

16.1.3 We do not receive full and timely payment of any invoices sent by us to you; or

16.1.4 We reasonably suspect or know that your Mobile Device or SIM Card is being used fraudulently or illegally.



## **17. WHAT YOU MUST PAY IF THE SERVICE IS SUSPENDED**

17.1 If the Service is suspended for the reasons set out in clause 16.1.1 for more than 3 days in any single month, you will not be required to pay line rental for the period of such suspension.

17.2 If the Service is suspended for any of the reasons set out in clauses 16.1.2, 16.1.3 and 16.1.4, you will still be required to pay the monthly line rental without any deductions.

17.3 If we bar your access to the Service for non-payment of invoices, we shall charge you a fee of £35.00 per Mobile Device for reconnection.

## **18. TRANSFERRING THIS AGREEMENT**

This Agreement is personal to you and may not be transferred by you to any other person, but please contact us if you want to transfer your SIM Card or Mobile Device. We can transfer this Agreement to someone else if we give you written notice beforehand.

## **19. OWNERSHIP OF THE SIM CARD AND MOBILE DEVICE NUMBER**

19.1 We control the SIM Card and Mobile Device number, although they each belong to the Network Operator. We reserve the right to charge you an administration fee of up to £25.00 for porting or migrating to other service providers and for disconnection from the Network.

19.2 We may change or reallocate your Mobile Device number where required to do so by any UK statutory or regulatory authority.

## **20. COVERAGE**

20.1 Your Mobile Device will only work in the areas covered by the Network you have chosen.



20.2 We cannot guarantee coverage in any particular area as we have no control over this, but you can obtain coverage information from us. The Service may be affected by interference caused by the weather, high buildings, geographical features and tunnels.

## **21. USE OF YOUR DETAILS**

21.1 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 Mobile Device companies. We may also pass your details to third parties in the event that we sell our business, so that you can continue to receive a Mobile Device Service.

21.2 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.

## **22. 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 in conjunction with the Conditions for Communications Services document.