

Telcom Ltd
("the Company")

AGREEMENT TERMS AND CONDITIONS

This Agreement is deemed to have been made upon signing by the Company on the commencement date set out in the Schedule hereto ("the Schedule") between Telcom Ltd having its registered office at Ely House, 1 Nutgrove Avenue, Rathfarnham, Dublin 14 ("the Company" which expression shall include its successors and assigns) of the one part and the subscriber named in the Schedule ("the Subscriber") of the other part.

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It is agreed as follows:-

1. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

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| "Anniversary Date" | Means an anniversary of the Commencement date. |
| "Commencement Date" | Means the date from which it is agreed that the Services shall be available as stated in the Schedule. |
| "Equipment" with this Agreement) | Means the equipment as specified in the Schedule. (As amended from time to time in accordance and any part thereof. |
| "Hours" | Shall mean the hours between 9.00a.m. and 5.30p.m. in hours of cover. |
| "Location" | Means the site where the Equipment is located, the address of which is given in the Schedule. |
| "Services" | Means the services as specified in Clause 4. |
| "Services Fee" | Means the aggregate sum of the annual maintenance charges for the Equipment stated in the Schedule. |
| "Working Day" | Shall mean Mondays to Fridays inclusive excluding all Public Holidays. |
| "SLA" | Means Service Level Agreement between the Company and Subscriber. |

2. Contract and Service Level Agreement

The Agreement shall be for an initial period of twelve months unless otherwise agreed commencing on the Commencement Date and thereafter will continue for another 12 months until terminated by at least three months written notice given by either party to the other prior to the end of that 12 month period. The SLA outlines the deliverables under this contract

3. ELIGIBILITY FOR SUPPORT

In order to be eligible for the Services under this Agreement, the Equipment must be unmodified properly maintained and operated according to the manufacturer's specification and must be in good operating condition, before the commencement of the Services and before recommencement following suspension in accordance with Clause 8.2.1.

4. SERVICES

- 4.1 The Company will provide the Services in relation to the Equipment on the terms of this Agreement. The Subscriber may request that additional items of equipment be subject to this Agreement and the Company will provide Services in relation to such equipment upon agreement between the parties of the additional amount payable to the Company for such support. Such additional amount will be paid in accordance with Clause 5. Such support will be subject to the equipment being in a maintainable state.
- 4.2 Upon receipt of notification from the Subscriber that the Equipment has failed or is malfunctioning the Company will subject to the remaining provisions of this clause 4 make such repairs and adjustments to and replace such parts of the Equipment as may be necessary to restore the Equipment to its proper operating condition.
- 4.3 The Services shall be available during the Hours. Charges for work done outside of the Hours will be at Excess Charge rate specified in the Schedule or as amended from time to time.
- 4.4 All defective parts permanently removed by the Company will become the property of the Company and their replacements will become the property of the Subscriber.
- 4.5 If a service call is made and there is no fault to be found with such Equipment, or if the call relates to Equipment not covered by this Agreement, the Company reserves the right to charge for any call out at the Company's current time and materials rate.
- 4.6 Target Response times in accordance with SLA between the Company and the Subscriber.

5. CHARGES AND PAYMENT

- 5.1 The Service Fee shall be payable annually in advance. Payment will become due on the first day of the period in question. No payment shall be considered made until it is received by the Company.
- 5.2 The Company shall, by giving the Subscriber written notice, be entitled to vary the Service Fee.
- 5.3 In respect of Equipment added to this Agreement after the date of its signature, in accordance with clause 4 an adjustment charge for the period from the date added to the end of the then current payment period shall become due on the date of addition.
- 5.4 Any charges for services provided by the Company under this Agreement (other than the Service Fee) will become due 30 days from the date of the Company's invoice.

6. RESPONSIBILITIES OF THE CUSTOMER

The Subscriber shall:-

- 6.1 Ensure that proper environmental conditions are maintained for the Equipment and shall maintain in good condition the accommodation of the Equipment, the cables and fittings associated therewith and the electricity supply thereto.
- 6.2 Keep and operate the Equipment in accordance with the manufacturer's operating instructions and ensure that only suitably trained and authorised employees are allowed to operate the Equipment.
- 6.3 Save as aforesaid, not attempt to adjust, repair or maintain the Equipment and shall not request, permit, or authorise anyone other than the Company to carry out any adjustments, repairs or maintenance of the Equipment.
- 6.4 Use on the Equipment only such consumable supplies which meet the manufacturer's standard technical specification or as are in accordance with good telecommunication practice.
- 6.5 In the event of relocation of equipment without agreement by the Company, this maintenance contract is voided.
- 6.6 Provide the Company with safe access to the Equipment for the purposes of this Agreement and adequate working spaces surrounding the Equipment.
- 6.7 Make available to the Company free of charge all facilities and services reasonably requested by the Company to enable the Company to perform the Services.
- 6.8 Nominate one person to be the principal contact between the parties and to whom the Company shall send all correspondence.

7. SERVICE LIMITATIONS AS PER EXCLUSIONS IN SLA

7.1 The Services do not include the following non-exhaustive list of items except where such item or action was caused through failure of the Company to fulfil its obligations under the terms of this Agreement:-

- 7.1.1 Electrical work external to the Equipment.
- 7.1.2 Refurbishment or repair of the Equipment casing.
- 7.1.3 The repair of damage resulting from accident, transportation, neglect or misuse, lightning, failure or fluctuation of electrical power, air conditioning or humidity control, telephone line failure, failure of foreign interconnecting equipment.
- 7.1.4 The provision of consumable items including but not limited to tapes and other media.
- 7.1.5 Work related to modifications made to the Equipment without notice to the Company.
- 7.1.6 Work related to use of the Equipment outside the manufacturers recommendations.

7.2 The Company will at the request and expense of the Subscriber perform any work specified in clause 7.1. The Company's charges for such work will be in accordance with its then current rates for such services.

8. TERMINATION

8.1 Notwithstanding anything else contained herein this Agreement may be terminated by either party forthwith on giving notice in writing to the other if the other party:-

- 8.1.1 being a company shall have a receiver manager administrator administrative receiver or liquidator appointed or shall pass a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction) or a Court shall make an Order to that effect or being a partnership shall be dissolved or being an individual shall have a bankruptcy order made against him or shall die or if the other party (whether a company or not) shall enter into any composition or arrangement with its creditors or shall become insolvent.
- 8.1.2 commits a breach of any term of this Agreement (and in case of a breach capable of being remedied) shall have failed within 14 days after receipt of a request in writing from the other party so as to remedy the breach.

8.2 The Company may by prior written notice to the Subscriber:-

- 8.2.1 summarily suspend work under this Agreement for the duration of such breach in the event that the Subscriber shall owe any sums to the company for more than 5 Working Days after the due date or
- 8.2.2 without prejudice to clause 8.2.1 forthwith terminate this Agreement if the Subscriber shall fail to pay any sum due under the terms of this Agreement within seven days of the due date.
- 8.2.3 terminate this Agreement by giving one months notice in writing to the Subscriber if the Company is unable to obtain an appropriate level of support from its suppliers. In the event of termination pursuant to this sub-clause 8.2.3 (but not otherwise) a pro rata refund of the Service fee shall be made to the Subscriber.

8.3 Any termination of this Agreement (however occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into force on or after such termination.

9. WARRANTY AND LIABILITY

- 9.1 The Company warrants that it will use all reasonable skill and judgement in effecting the provisions of the Services.
- 9.2 The Company shall be liable in respect of any negligence act or omission or breach of statutory duty on the part of the Company, its employees, agents or sub-contractors
- 9.2.1 For loss or damage in respect of death or personal injury (without limitation), and
- 9.2.2 For direct physical damage to the Subscriber's property or any other property in or upon the Subscriber's premises up to a maximum of €1,000,000 in respect of any one event or series of connected events.
- 9.3 The Company's liability for any loss or damage not within Clause 9.2 caused by any breach of the terms of this Agreement (including the non-performance or defective performance of the Services) shall not exceed an amount equal to the annual Service Fee.
- 9.4 The Company shall not be liable for any indirect or consequential loss or damage including (without limitation to the foregoing) economic loss, loss of profits, business, operating time or use or, save as stated in Clauses 9.2 or 9.3 any other form of loss or damage of whatsoever nature and however arising.

10. FORCE MAJEURE

Neither party shall be liable to the other for any loss or damage which may be suffered by the other as a direct result of that party being delayed, prevented or hindered in the performance of its obligations under this Agreement by reason of any circumstances beyond its reasonable control.

11. CONFIDENTIALITY

The terms of this Agreement and all information disclosed by either party its servants agents or contractors to the other party in connection herewith are supplied in confidence and shall be treated by the other party as confidential. This does not apply to confidential information which either party is required to disclose by law or by reason of any rule of any other regulatory body having jurisdiction over that party or with whose directions that party is bound or accustomed to comply.

12. STAFF

Neither party will at any time during the continuance of this Agreement or within six months thereafter solicit or entice away or employ any employee of the other party or attempt to solicit or entice away or employ any employee of the other party.

13. The subscriber is required to hold all appropriate insurances to include Employers liability, public liability, and product liability for the duration of the Agreement

14. ARBITRATION CLAUSE

At the option of the company, any disputes under this agreement shall be referred to an Arbitrator. The Arbitrator shall in the absence of agreement, be appointed by the president of the Incorporated Law Society.

15. GENERAL

- 15.1 Failure by either party to enforce any of the terms of this agreement will not be constructed as a waiver of rights.
- 15.2 This Agreement sets forth the entire Agreement between the parties and supersedes and cancels all prior communications representations warranties and agreements whether oral or written between the parties in relation to the subject matter of this Agreement.
- 15.3 If the Subscriber is more than one person all agreements and undertakings on the part of the Subscriber contained herein shall be joint and several.
- 15.4 Any notice given by either party to the other under this Agreement shall be in writing to the address given in the Schedule.
- 15.5 Any person signing on behalf of the subscriber shall be deemed to be an authorised signatory of the subscriber,, and consequently binding on the subscriber.
- 15.6 No variation to this Agreement shall be effective unless and until accepted in writing by authorised signatories of the Company and the Subscriber.
- 15.7 The headings contained in this Agreement are for ease of reference only.
- 15.8 The invalidity or un-enforceability for any reason of any Clause apart of this Agreement shall not prejudice or affect the validity or enforceability of the remainder.
- 15.9 The Company reserves the right to assign the benefit of this agreement as it sees fit.
- 15.10 This Agreement shall be deemed to be made in Ireland and shall be subject to and construed in accordance with Irish Law.