



# Terms & Conditions



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# Terms & Conditions

Between ICC Managed Services Ltd. and

WHEREBY IT IS AGREED AS FOLLOWS:

## 1. Subject Matter of the Agreement

ICC agrees to provide and the Customer agrees to accept on the terms and conditions herein contained the service described in Clause 3 below on the Equipment [defined below] at the Customer's Location[s] and commencing on the Commencement Date; and, if required, the Additional Services described in Clause 4 below.

## 2. Definitions

For the purpose of this Agreement:

[A] ICC shall mean its employees or its agents, representatives or sub-contractors.

[B] "Service" means Remedial Maintenance Service as per Clause 3 below, but does not include any Service of the nature included under Clause 4 of this Agreement.

[C] "Remedial Maintenance Service" means the adjustment or replacement of any faulty part in a piece of Equipment upon request and thereafter the testing of such Equipment to determine that it is in good working order.

[D] "Preventive Maintenance Service" means the cleaning, adjusting and testing of each piece of Equipment to ensure that such Equipment is in good working order in accordance with the manufacturer's specifications. Preventive Maintenance Service also includes replacement of maintenance parts as deemed necessary by ICC and where applicable, lubrication of moving parts ICC does not undertake such maintenance where not specified by the manufacturer or where such maintenance is unlikely to improve the performance of the Equipment, e.g. personal computers.

[E] "Equipment" means the Equipment referred to in 'Schedule of Service and Equipment' hereof or on any supplemental Service and Equipment schedule[s] executed by both parties from time to time. The Equipment listed in the 'Schedule of Service and Equipment' will be that previously identified by the Customer to ICC in writing and upon which the Maintenance Charges have been calculated.

[F] "Effective Date" means the date agreed by the Customer and ICC when a particular piece of Equipment becomes subject to this Agreement, as indicated in the 'Schedule of Service and Equipment' hereof or on any supplemental Equipment schedule[s] executed by both parties from time to time.

[G] "Commencement Date" means the date when the first piece(s) of Equipment becomes subject to this Agreement.

[H] "Operative Date" means the date of receipt by ICC of the first payment, as per Clause 6 below.

[I] "Anniversary Date" means the date one year after the Commencement Date or the date when the actual Service began on any of the Customer's Equipment, whichever is the earlier, and such annual dates thereafter that arise until the termination of the Agreement.

[J] "Response Time" means the number of hours that elapse between the receipt of a request for Service and the ICC engineer's arrival on the Customer's premises.

[K] "Specifications" in relation to any piece of Equipment means the engineering and operational data for such piece of Equipment as published by its manufacturer in the relevant technical manuals for the piece of Equipment appropriately revised from time to time in accordance with the latest engineering changes accepted by the Customer.

[L] "Customer's Location[s]" means the locations where the Equipment is installed, as indicated in the 'Schedule of Service and Equipment' hereof or on any supplemental Service and Equipment schedule[s] executed by both parties from time to time.

[M] "Maintenance Charges" means the charges for the Service indicated in Clause 6 herein and set forth in the 'Schedule of Service and Equipment' as 'Contract Cost'.

[N] "Alternative Dispute Resolution" or "ADR Procedure" shall mean a procedure such as mediation or executive tribunal or other dispute resolution technique recommended from time to time by the Centre for Dispute Resolution.

[O] "Centre for Dispute Resolution" or "CEDR" is an independent non profit-making organisation whose aim is to promote and encourage the use of ADR Procedures for the settlement of disputes. The current address of CEDR in London is 100 Fetter Lane, London, EC4A 1DD.

[P] "Initial Term" shall mean the initial period of this Agreement, as set forth in the 'Schedule of Service and Equipment.'

## 3. Description of the Service

3.1 ICC requires four working weeks from receipt of a "Purchase Order for Remedial Maintenance Service" prior to the contract becoming operational (the "Commencement Date") in order to prepare fully by initiating a full audit of the whole or part of the end user installed base. If four clear weeks' notice cannot be given then ICC will take on this contract on a "best endeavours basis" for the first four weeks of the contract.

3.2 The Service consists of Remedial Maintenance Service and the making of repairs and the supply and fitting of replacement parts made necessary by normal wear and tear. The Service does not include any Additional Services as per Clause 4 of the Agreement, although ICC may provide such Services for an additional charge.

3.3 The Service will be provided by ICC's engineers at the



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Customer's location[s] during the hours and on the days set out in the 'Schedule of Service and Equipment' hereof. ICC I.T. Response Time shall be as indicated in the 'Schedule of Service and Equipment' hereof.

3.4 The Customer acknowledges and agrees that when replacement parts are fitted as part of the Service, the parts removed are ICC property. Should the Customer, for security reasons, wish to retain such replaced parts, ICC shall charge the Customer a reasonable fee therefore.

3.5 To the extent that any replacement parts are fitted prior to the Maintenance Charge for the period in question being paid by the Customer, ICC shall retain title to such replacement parts until the relevant maintenance charge has been duly paid.

3.6 The Customer acknowledges and agrees that ICC may, at its discretion, and with the Customer's agreement which agreement shall not unreasonably be withheld and at ICC own risk, remove from the Customer's premises any complete unit of Equipment for the purpose of providing the Service.

3.7 ICC may at its own risk elect, subject to the Customer's agreement which shall not unreasonably be withheld, to store on the Customer's premises such Equipment and/or parts as are necessary in order to provide the required Service or Additional Services.

3.8 The Customer acknowledges and agrees that ICC may, at its discretion, replace any faulty Equipment with equipment of a similar type and of equivalent specification to the Customer's Equipment.

## 4. Additional Services

4.1 The Additional Services are chargeable and listed in sub-clause 4.2 below may at ICC's discretion be provided ICC at ICC's then notified hourly Service rates and minimum charges, parts and material prices, and travel and waiting expenses, unless: -

[i] Such Services are provided under another written agreement signed by the Customer and ICC

[ii] Such Services are impractical for ICC to render as a result of modifications or attachments to a piece of Equipment, or

[iii] The provision of such Services would involve a safety hazard, or

[iv] The Equipment is maintained by a sub-contractor who is unable or unwilling to provide the Additional Service.

4.2 The Services in sub-clauses 4.2[A] to 4.2[M] below are not considered part of the Service as described in Clause 3.

[A] Provision of Preventive Maintenance Service, as may be specified from time to time by the manufacturer of the Equipment or as agreed between ICC and the Customer, and provides the service described in clause 2 [D].

[B] Provision of maintenance Services outside the hours stated in the 'Schedule of Service and Equipment' hereof or on any

supplemental Equipment schedule[s] executed by both parties from time to time.

[C] Provision of a required faster Response Time than is stated in the 'Schedule of Service and Equipment' hereof or on any supplemental Equipment schedule[s] executed by both parties from time to time.

[D] Provision of maintenance Services on Equipment not yet notified to ICC. under sub-clause 8.6, that will, subject to such notification, subsequently be included on supplemental Equipment Schedules.

[E] Repair of Equipment damage, replacement of parts or increase in Service time caused by:

[i] Failure continually to provide a suitable and/or safe environment prescribed by the Manufacturer including adequate space, electrical power, air conditioning and humidity control, and the absence of any safety hazard;

[ii] Neglect or misuse, including use of a piece of Equipment for purposes other than for which designed;

[iii] Alterations, which are defined as any change to a piece of Equipment which deviates from the manufacturer's physical, mechanical or electrical design whether or not additional devices or parts are required;

[iv] Conversion from one Equipment model to another or the installation or removal of an Equipment feature whenever any of these activities has been performed by other ICC Managed Services Ltd.

[v] Accident; disaster; which shall include, but not be limited to, fire, flood, water, wind and lightning; transportation by the Customer or its appointed agents; vandalism or burglary of Equipment.

[F] Repair of Equipment and replacement of parts arising from the use of supplies, where this results in abnormal wear, damage to the Equipment, or repetitive Service calls.

[G] The provision of materials for re-arrangement, reconfiguring or relocation of Equipment, and any labour costs outside Days/Hours of Service as specified in the 'Schedule of Service and Equipment' and any additional labour required in excess of that provided for performing the Service.

[H] Repair of damage to Equipment caused by non ICC representatives performing maintenance or repair of such Equipment.

[I] Electrical work external on a piece of equipment or installation.

[J] Maintenance of accessories, attachments or other devices not identified in any Equipment, Schedule, or their removal or alteration.

[K] Providing and fitting consumable supplies, for which purpose shall be included dot matrix print heads, printer ink ribbons, cartridges and containers; laser printer toner, drums, developer, corona wires, fuser units and transfer kits; print bands; ink jet



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heads, replacement ink reservoirs; thermal print heads; removal discs; batteries; light pens external mice or any other item of a consumable nature, unless previously agreed in writing by ICC to be part of the Service.

[L] Painting a piece of Equipment, or providing material therefore.

[M] Refurbishing or replacing a piece of Equipment which, in the reasonable opinion of ICC has surpassed its designed working life or has exceeded the recommended engine life as defined by the manufacturer, which will include but is not limited to laser printer engines and the associated components.

4.3 In the event that the Customer requires the servicing of any Equipment or additional Equipment that cannot be performed without recourse to sub-contractors, ICC may, in its absolute discretion, provide the Service on terms specifically agreed in writing by the parties and reflected in Appendix IV.

## 5. Intentionally left blank

## 6. Charges

The Customer shall pay to ICC at the times and in the manner herein provided:

[A] The Maintenance Charge which shall be paid in advance of the Service to be performed in accordance with the Payment Terms set forth in the 'Schedule of Service and Equipment'. An interim invoice may be rendered to cover services provided from the Commencement Date as specified in the 'Schedule of Service and Equipment' to the next relevant payment date, and is also payable in advance of the Service.

[B] During the currency of the Agreement the Customer may elect to alter the composition of the Equipment, or request ICC, to maintain additional Equipment not detailed in the 'Schedule of Service and Equipment'. Such alterations may include, but are not limited to, alterations in the composition of the Equipment such as substantial reductions in the volume of Equipment maintained, or replacement of the Equipment by Equipment from another manufacturer, which materially affect ICC capability to supply the Service. Subject to sub-clause 4.3 herein and agreement by the parties on the changes and any alteration in the basic maintenance charge, the respective obligations of the parties will be modified accordingly. Any agreed changes should be reflected in the appropriate revised 'Schedule of Service and Equipment'. All Supplemental Equipment Schedules, Addendum Schedules and revisions to the 'Schedule of Service and Equipment' should be executed by both parties. In such cases, an interim invoice may be rendered to cover the service supplied for such Equipment from the Effective Date(s) as specified in the Agreement to the next relevant payment date when a full invoice shall be raised, and such interim invoice shall be paid by the Customer within 30 days of receipt.

[C] In respect of the Additional Services set forth in Clause 4 above, any charge as per sub-clause 3.3, the relevant

charges shall be quoted by ICC and agreed by the Customer before any such Service is rendered. Such charges shall be invoiced by ICC and paid by the Customer within thirty days of receipt of invoice.

[D] All charges payable by the Customer under this Agreement are subject to any applicable taxes and shall be paid free of any deduction whatsoever to ICC. at:

ICC  
Connection house  
Sandbeck Way  
Wetherby  
West Yorkshire  
Ls22 7TW  
Unless otherwise directed in writing by ICC

[E] Should the Customer have any queries or complaints regarding any invoices received from ICC the Customer should present such queries or complaints to ICC in writing within twenty days of receipt of invoice. Any such complaints made known to ICC thereafter shall be considered null and void.

[F] Should the Customer wish to terminate this Agreement after it has been duly signed by the parties but prior to the Operative Date, notwithstanding any other rights arising to ICC, therefrom, ICC reserves the right to invoice the Customer for any expenses reasonably incurred by ICC in preparation for contract performance up until receipt of notice of termination.

[G] If any charges payable under this Agreement are in arrears for more than thirty days, ICC reserves the right to:

[i] Charge interest at 4% over Lloyds's Plc's Base Rate as from the date of notification to the Customer until full payment is made therefore, and/or

[ii] Suspend the Service or Additional Services being performed or due to be performed until full payment is made therefore, or

[iii] Terminate this Agreement forthwith.

[H] ICC reserves the right to increase charges for the Service on the first Anniversary Date of this Agreement, and all subsequent Anniversary Dates, on the following basis: all increases in Maintenance Charges will normally be based upon the Index of Average Earnings for the Electrical Engineering Industry as published in Labour Market Trends, but may also take into account changes in the Retail Prices Index and in the prices charged to ICC for replacement parts by the Equipment or parts' manufacturer or supplier, where these changes can be shown to have had a significant impact upon the cost to ICC of providing the Service. The index figures which form the basis for calculating the escalation effective from the Anniversary Date will be those prevailing on the most recently reported dates prior to the date on which the escalation is calculated, and the latter date one year previously. ICC shall give prior written notice of such increase in charges to the Customer at least one month before the planned increase. In any event, but subject to Clause 6[B], ICC undertakes not to increase Maintenance Charges prior to the first Anniversary Date and further



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undertakes not to increase such charges at intervals of less than twelve months thereafter. ICC'S hourly Service rates and minimum charges can be changed by ICC giving the Customer one month's written notice at any time. However, ICC undertakes to ensure that such changes shall be reasonable.

## 7. Taxes

All applicable taxes that are required to be paid by the Customer [such as VAT] will be included and listed separately in the invoice.

## 8. Customer's Obligations

8.1 The Customer shall provide an appropriate environment for the Equipment, as specified by ICC or the Equipment manufacturer, and provide full free and safe access to the Equipment and make adequate working space available to ICC to ensure that ICC can furnish the required Service or Additional Services in accordance with current statutory requirements.

8.2 The Customer will follow the manufacturer's advice on operating the Equipment and on carrying out the operator's routine maintenance.

8.3 The Customer shall ensure that ICC personnel can perform the Service or Additional Services or, if appropriate, perform engineering changes to Equipment at the Customer's Location[s] without endangering their safety in any way.

8.4 If the Customer has specific rules and regulations with which it expects ICC personnel to comply in the performance of their duties hereunder, the Customer shall duly notify ICC of such rules and regulations and ensure that ICC personnel are aware of and familiar with such rules and regulations.

8.5 The Customer shall provide adequate storage space for spare parts and adequate working space to include office, office furnishings, heat, light, ventilation, electric current, telephones and outlets for use by ICC. These facilities will be within a reasonable distance from the Equipment and will be provided at no charge to ICC.

8.6 With reference to sub-clause 6[B], the Customer shall give ICC at least thirty days written notice of any proposed alteration in the composition or location of the Equipment.

8.7 To the extent that the Customer has not performed its obligations in accordance with this Clause 8, ICC shall be relieved of its responsibilities for satisfactory performance as per the terms of this Agreement.

## 9. Term, Termination and Withdrawal

9.1 This Agreement shall have effect from the date of its execution as per the title page and shall remain in force until termination by the Customer or ICC as provided for below.

9.2 This Agreement shall continue in effect for the Initial Term as from the Commencement Date and shall be automatically renewed for additional one year periods unless either party terminates the Agreement by giving at least three months prior written notice to the

other party, such termination to take effect at the expiry of the initial term or at any anniversary thereafter, subject to sub-clause 9.7 and any alternative provisions for termination in this Clause 9 below.

9.3 Either party hereto shall have the right to terminate this Agreement summarily by notice in writing, [without prejudice to any other remedy it might have against the other party for breach or infringement of any provisions of this Agreement] if such other party has committed a major breach of its obligations under this Agreement, and in the case of a breach capable of remedy has failed to remedy such breach within thirty days of being given written notice.

9.4 As per sub-clause 6[G] above, ICC reserves the right to terminate this Agreement if payment is more than thirty days overdue, subject to sub-clause 9.7 below.

9.5 This Agreement may be terminated forthwith by either party if the other shall become bankrupt or convene a meeting of its creditors, or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986, or a proposal for any other composition scheme, or arrangement with [or assignment for the benefit of] its creditors, or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party, or if a petition is presented or a meeting is convened for the purpose of considering a resolution, or other steps are taken for the winding up of the other party or for the making of an administration order [otherwise than for the purpose of an amalgamation or reconstruction], or if anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party.

9.6 In the event of termination of this Agreement, for any cause, ICC or the Customer, as appropriate, shall have the right, by prior notice to the other party, to enter the other party's premises for the purpose only of removal of any items of Equipment or materials which are clearly marked as being its property.

9.7 Any termination of this Agreement for whatever reason shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

## 10. Limitation of Liability

10.1 In the event of loss or damage to a piece of Equipment or to any part thereof caused by a negligent act, default or omission of ICC [any such piece of Equipment or part is hereunder called 'Subject Device'], ICC shall at its own expense either restore in so far as technically possible, the Subject Device to the condition it was in immediately before such damage or at its own election replace the Subject Device with a piece of Equipment or part as the case may be in a condition similar to that which the Subject Device was in immediately before such loss or damage.

10.2 ICC shall indemnify the Customer and keep the Customer fully



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and effectively indemnified against legal liability in respect of any loss of or damage to any property, or injury to or death of any person caused by any negligent act or omission or wilful misconduct of ICC

10.3 The Customer shall indemnify ICC and keep ICC fully and effectively indemnified against any legal liability in respect of any loss of or damage to any property, or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors or by any defect in the design or workmanship of the Equipment. The Customer shall also indemnify and hold ICC harmless for claims, damages, costs or expenses suffered or incurred by ICC resulting from any claim of breach of copyright or intellectual property infringement which was either directly or indirectly caused by the Customer.

10.4 Except in respect of injury to or death of any person [for which no limit applies] the respective liability of ICCI and the Customer under sub-clauses [10.2] and [10.3] in respect of each event or series of connected events shall not exceed £5,000,000.

10.5 Notwithstanding anything else contained in this Agreement, ICC shall not be liable to the Customer for loss of profits, goodwill or any type of special indirect or consequential loss [including loss or damage suffered by the Customer as a result of an action brought by a third party] even if such loss was reasonably foreseeable or ICC had been advised of the possibility of the Customer incurring the same.

10.6 Notwithstanding any of the foregoing provisions of this Clause, neither ICC nor the Customer shall be responsible or liable for any losses arising from failure to perform or observe or delay in performing or observing any obligation hereunder where such failure or delay arises from any cause beyond the control of ICC or the Customer as the case may be.

10.7 Except in respect of death or personal injury for which ICC or the Customer is responsible no action [whether in contract or tort, including negligence, and regardless of form including arbitration proceedings] arising out of this Agreement or in connection with the Equipment or any of the Services to be supplied hereunder may be brought by either party more than two years after the party concerned becomes aware or should reasonably have become aware of the facts constituting the cause of action.

## 11. Warranty

ICC warrants that it will use reasonable care and skill in the provision of the Service or Additional Services, or for making or arranging for the making of Engineering Changes. Except as set forth herein, ICC does not make any warranties, express or implied, and specifically disclaims any warranty of merchantability or fitness for a particular purpose.

## 12. Confidentiality

12.1 The parties hereto recognise that information disclosed upon execution of this Agreement will contain and incorporate confidential information in which the Customer and ICC has an interest. The parties hereby agree to maintain as confidential and agree not to use any part or the whole of such information directly or indirectly

disclosed by the other party or information gained from such disclosure except for the purposes of this Agreement until or unless such information becomes public knowledge through no fault of the other party. On termination of this Agreement each party undertakes to return all confidential information forthwith, upon the written request of the other party.

12.2 This Agreement is specific to the Customer ICC and the parties undertake and warrant not to disclose any of the terms and conditions of this Agreement to any third party, unless required by law, either during the term of this Agreement, or thereafter, without the other party's prior written consent and to procure that their directors, employees, agents and sub-contractors are aware of and comply with the terms of this undertaking. Nothing in this clause shall prevent ICC from making public the existence of this Agreement between itself and the Customer.

## 13. Disputes

In the event of any dispute or difference arising between the parties in connection with this Agreement but subject to sub-clause 6[G] herein:

13.1 Senior representatives of the parties shall, within ten days of a written request from either party to the other addressed to the Managing Director, meet in a good faith effort to resolve the dispute without recourse to proceedings.

13.2 If the dispute or difference is not resolved as a result of such a meeting, either party may [at such a meeting or within fourteen days from its conclusion] propose to the other in writing that structured negotiations be entered into with the assistance of a neutral advisor (the "Neutral Advisor") to resolve the dispute through an ADR Procedure.

13.3 If the parties are unable to agree on a Neutral Advisor or if the Neutral Advisor agreed upon is unable or unwilling to act, either party may within fourteen days from the date of the proposal to appoint a Neutral Advisor or within fourteen days of notice to either party that he or she is unable or unwilling to act, apply to the CEDR to appoint a Neutral Advisor.

13.4 The parties shall, within fourteen days of the appointment of the Neutral Advisor, meet with him or her in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

13.5 All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.

13.6 If the parties accept the Neutral Advisor's recommendations, or otherwise reach agreement on the resolution of the dispute, such agreements shall be reduced to writing and, once their duly authorised representatives sign it, shall be binding on the parties.

13.7 Failing agreement, either of the parties may invite the Neutral Advisor to provide a non-binding but informative opinion in writing. (Such opinion shall be provided on a without prejudice basis and

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shall not be used in evidence in any proceedings commenced pursuant to the terms of this Agreement without the prior written consent of both parties).

13.8 If the parties fail to reach agreement in the structured negotiations within sixty days of the Neutral Advisor being appointed then any dispute or difference between them may be referred to the English courts. In such cases, the parties hereto agree to submit to the exclusive jurisdiction of the English courts.

13.9 This Agreement shall be construed in accordance with and governed by the laws of England.

## 14. Miscellaneous.

14.1 This document, together with the Appendices, contains the entire Agreement between ICC and the Customer with respect to the maintenance of the Equipment and supersedes all oral or written communications and any prior agreement with respect thereto. Any pre-printed terms and conditions of any purchase order issued in connection with the Agreement of maintenance of the Equipment shall be superseded by the terms and conditions of the Agreement and of no force and effect. Save where otherwise stated herein, this Agreement may not be altered, modified, terminated or discharged except by a written amendment signed by both parties. Any variation from the terms and conditions of this Agreement in any Customer order or other written notification will be of no effect.

14.2 The Customer warrants that it is entitled or empowered to authorise ICC to perform the Service in respect of all Equipment for which such Service will be provided under this Agreement, and that each item of Equipment made subject to this Agreement will be in full working order at its individual Effective Date save where I AM I.T. has been notified otherwise and has agreed in writing to acceptance in other than full working order, on such terms and conditions as may be agreed in writing.

14.3 Formal Notices and requests to ICC may be by letter to:

Title: The Managing Director  
Company: ICC  
Address 1: Connection House  
Address 2: Sandbeck Lane Wetherby, West Yorkshire  
Post Code: LS22 7TW

14.4 Each party hereto warrants to the other that it has effective Employer's and Public Liability Insurance Policies and each party undertakes to maintain the aforesaid policies during the term of this Agreement and the authorised representatives of each party shall be entitled to inspect the aforesaid policy on seven days' written notice given to the other party. Each party agrees to hold the other harmless for any claim from a third party in this respect.

14.5 For the purposes of this Agreement, the Customer shall, insofar as it is legally authorised to do so, provide ICC with full and free access at all reasonable times to all technical manuals and other documentation pertaining to the Specifications of any Equipment.

14.6 Neither party may assign this Agreement without the prior written consent of the other party, except that either party may, without the consent of the other, assign the Agreement to a controlled subsidiary of that party or a purchaser of all or substantially all of that party's assets used in connection with performing this Agreement, provided the assigning party guarantees the performance of and causes the assignee to assume in writing all obligations of the assignor under this Agreement. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the parties.