



This agreement is made the \_\_\_ day of \_\_\_, \_\_\_ between DS1 Communications, Inc., a Florida Corporation, 135 Weston Road Suite 204, Weston Florida 33, ("DS1") and \_\_\_\_\_ a Florida corporation/partnership/not for profit organization/sole proprietorship, ("Customer"):

1) SERVICE PLAN. Customer owns or leases a Norstar Telephone System telecommunications system (the "System"). Customer orders from DS1 maintenance for the System (hereinafter "Maintenance") pursuant to the Service Plan described in this Agreement and the Service Plan Attachment Basic Service Agreement. DS1 agrees to furnish such requested service for the System. The System's location (the "Premises") is described below. Customer warrants that it is the owner of the System or that it has the authorization of the System's owner to enter into this Agreement.

Service Address

\_\_\_\_\_

Contact **Name - 000-000-0000**

2) TERM. The term of this Agreement (the "Initial Term") shall be for a period of 1 year(s) commencing on \_\_\_\_\_ (the "Commencement Date"). At the end of the Initial Term, this agreement shall be automatically renewed in successive annual renewal periods at DS1's then-current charge for Maintenance, unless either Customer or DS1 notifies the other party in writing at least forty-five (45) days before the end of the renewal term that it declines such renewal for the following year. The annual charge for Maintenance plus applicable taxes, shall be paid in accordance with the terms of this agreement.

3) SERVICE FEE.

Customer agrees to pay an monthly service fee of \$60 to be paid monthly for maintenance of the System (the "Service Fee") plus all applicable taxes when due.

CUSTOMER SHALL PROVIDE EVIDENCE OF ITS TAX EXEMPT STATUS IF IT CLAIMS SUCH STATUS. Service Fees received more than thirty days (30) after billing are subject to a late payment charge of one and one half percent (1½%) for each 30-day period that they remain unpaid.

4) LIMITATION OF LIABILITY

a) IN NO EVENT SHALL DS1 AND ITS SUPPLIERS OR SUBCONTRACTORS, BE LIABLE FOR (i) ANY SPECIAL INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES. (ii) COMMERCIAL LOSS OF ANY KIND (INCLUDING LOSS OF BUSINESS OR PROFITS), OR (iii) ANY DAMAGES OF ANY KIND RESULTING FROM UNAUTHORIZED USE OF THE SYSTEM, INCLUDING, WITHOUT LIMITATION, TOLL FRAUD. THIS PROVISION APPLIES TO ALL CLAIMS WHETHER BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY, AND WHETHER DS1 OR ITS SUPPLIERS OR ITS SUBCONTRACTORS HAVE BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

- b) DS1 shall be liable for any physical damage it causes to the System. This liability is limited to repair of the System or component thereof, or if the System or component cannot be repaired, replacement with a comparable System or component, and is otherwise limited as set forth in the preceding section.
- c) THIS AGREEMENT EXCLUDES ALL EXPRESS WARRANTIES LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DS1 DISCLAIMS ANY WARRANTY TO PREVENT UNAUTHORIZED USE OF THE SYSTEM INCLUDING TOLL FRAUD.
- d) Each party shall indemnify the other only with respect to any third party claim alleging bodily injury, including death, or damage to tangible property to the extent such injury or damage is caused by the negligence of the indemnifying party, provided that such claim is reported promptly in writing to the indemnifying party.

5) TERMS AND EXECUTION. THIS AGREEMENT INCLUDES THE ADDITIONAL PROVISIONS STATED ON ANY ATTACHMENT. This Agreement binds DS1 when it is signed by DS1 and delivered to Customer. This Agreement allocates the risks of the System's operation between DS1 and the Customer. This allocation is recognized by both parties and is reflected in the Service Fees charged. The Customer acknowledges that it has read this Agreement, has received and reviewed any and all documents referenced in it, understands it, and is bound by its terms.

6) SERVICE OBLIGATIONS.

- a) DS1 shall respond to System failures, either on-site or remotely, as necessary, during the hours specified under the Service Plan chosen by the Customer and described more fully on the Service Plan Attachment.
- b) Maintenance service for hardware shall consist of furnishing all parts and labor necessary to maintain the System in good operating condition as a result of Customer's normal use. Repair and replacement parts may be new or like new. Maintenance service for software will include provision of all maintenance releases and patches, which are issued at no cost by the manufacturer to correct problems which Customer has encountered in the performance of the software.
- c) For the purpose of this Agreement, an "emergency outage" is defined as a System failure resulting from the failure of twenty percent (20%) or more of all stations and/or trunks or the failure of the attendant console. All other outages are classified as non-emergency.

7) SERVICE FEE ADJUSTMENTS. Moves, additions, or changes that adjust the station or port count as well as upgrades and new peripheral devices ("Modifications") will modify the Service Fee. After any applicable warranty expires for such Modifications, Customer may include such Modifications under the Service Plan for an additional charge at DS1's then prevailing rates, except that DS1

will include Modifications performed by a party other than DS1 only if Customer's modified System is certified at Customer's expense to be in accordance with manufacturer's standards for service and maintenance. Customer hereby acknowledges that Modifications, including software upgrades, performed or supplied by unauthorized distributors may result in a denial or software support services from the manufacturer of the System. Any modifications performed by DS1 require a separate agreement such as the DS1 Customer Service Order ("CSO").

8. ACCESS.

- a) Customer agrees to permit and arrange full access to the Premises necessary for DS1's employees to perform the services set forth in the Agreement and will make available a reasonable amount of secure space for storage by DS1 of repair parts as necessary.
- b) Customer represents and warrants that Customer's Premises and conditions to be encountered by DS1 at Customer's Premises and in areas where work is to be performed shall; (i) be in compliance with all applicable federal, state and local laws, rules and regulations, (ii) be safe and non-hazardous and (iii) not contain, present, or expose DS1 representatives to hazardous materials or hazardous substances. In the event breach of the foregoing, in addition to all other remedies, DS1 may immediately suspend work until Customer has promptly corrected such condition(s) at Customer's expense. In the event Customer cannot or does not correct such condition, it will be at DS1's option as to whether to recommence performance this Agreement. Any termination by DS1 because of its option that an unsafe environmental condition exists will not be deemed a breach of this Agreement or a default under it and no liability for such decision will attach.

9) EXCLUSIONS. Maintenance service provided under this Agreement excludes repairs or replacements caused by: (i) damage to the System due to fire, explosion, power irregularities, power surges, acts of God (including, without limitation, earthquakes, rains, floods or lightning), or any other cause not attributable to DS1; (ii) Customer's failure to follow applicable operation, maintenance, or environmental requirements described in any of the manufacturer's manuals, DS1's manuals, or other materials provided to Customer, including without limitation manufacturer's bulletins; (iii) Customer's additions, alterations, modifications, enhancements or repairs to or disassembly of the System (itself or using a third party) without DS1's written consent; (iv) mishandling, abuse, misuses or damage to the System by Customer or a third party; (v) relocation of the System without DS1's written consent (other than telephone instruments relocated in accordance with the manufacturer's specifications); (vi) failures or changes required resulting from the local exchange company, inter-exchange carrier, the power company or other transmission providers; or (vii) failures or damage arising from date dependent operations, calendar-related data and the processing of such data, or in connection with providing calendar-related data to and accepting calendar-related data from other systems. DS1 may, at its option, terminate its maintenance obligations or perform repairs necessitated by any excluded cause at Customer's request at DS1's then prevailing rates.

describing the breach, the aggrieved party shall be entitled to declare a default under this Agreement and pursue any and all remedies available at law or equity except as specifically limited elsewhere in this Agreement. In addition, if Customer is the aggrieved party, Customer may suspend its payments obligation relating to the breach until DS1's breach is corrected, and if DS1 is the aggrieved party, DS1 may suspend performance of its obligations until Customer's breach is corrected.

11) FORCE MAJEURE. DS1's performance shall be adjusted or suspended by DS1 to the extent performance is beyond DS1's reasonable control for reasons including, without limitation, the following: strikes, work stoppages, fire, water, flood, lightning, governmental action, acts of God (including, without limitation, earthquakes, rains, floods or lightning) or public enemy, delays or suppliers, subcontractors, power company, local exchange company or other carrier.

12) MISCELLANEOUS. (a) If Customer issues a purchase order for its own internal purposes. Customer agrees that only the terms and conditions of this Agreement apply and that any item contained in any purchase order submitted to DS1 by Customer, which is in conflict with or in addition to this Agreement, shall be void. (b) DS1 reserves the right to subcontract any and all of the work to be performed by it under this Agreement. (c) This Agreement is not assignable by Customer without the prior written consent of DS1. Any attempt to assign any of the rights, duties or obligations under this Agreement without such consent will, at DS1's option, be deemed void or a material default or accepted in DS1's sole discretion. (d) The waiver by either party of any default will not operate as a waiver of any subsequent default. (e) Customer will pay all of DS1's costs or expenses, including reasonable attorney's and collection fees, incurred in enforcing this Agreement. (f) DS1's obligation is contingent upon a credit report satisfactory to DS1. (g) This Agreement supersedes all prior or contemporaneous proposals, communications and negotiations, both oral and written, and constitutes the entire agreement between DS1 and Customer with respect to the service of the System. Any representations, warranties or statements made by an employee, salesperson or agent of DS1 and not expressed in this Agreement are not binding upon DS1. (h) If any court holds any portion of this Agreement unenforceable, the remaining language shall not be affected. (i) Any modification must be in writing and executed by an authorized representative of the party against whom enforcement is sought. (j) No action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has occurred. (k) This Agreement is deemed made and GOVERNED BY THE LAWS OF THE STATE OF FLORIDA except for its rules regarding the conflict of laws. (l) Customer agrees that neither it nor any of its affiliates will solicit any of the DS1 employees providing services pursuant to this Agreement with offers of employment during the term of this Agreement.

DS1 Communications		Customer	
Signature	Date	Signature	Date

10) DEFAULT. If any material breach of this Agreement, or any other agreement between the parties, continues uncorrected for more than twenty (20) days after written notice from the aggrieved party