**ICT FACILITIES MANAGEMENT AGREEMENT ( – toimittajan versio)**

* Sopimuspohja tehty myyjän/toimittajan näkökulmas­ta erityisesti tilanteeseen, jossa yhtiö ulkoistaa pääosan ICT-toimintojaan ulkopuoliselle ICT-firmalle ainakin kolmeksi vuodeksi. Järjestelyn pääkohdat ja toimintatavat ovat tässä pääsopimuksessa ja tarkka tekninen sisältö, palvelutaso, hinnoittelu, IPR-yksilöinnit ja ynnä muu sellainen tehdään liitteissä, joista sopimuspohjan viimeisellä sivulla on vain otsikot.
* Sopimuspohjan kaikki kohdat tulee tarkistaa ja muuttaa vastaamaan käytännön tilannetta; on myös huomioitava, että yhden sopimuskoh­dan muuttaminen yleensä vaikuttaa myös sopimuksen muihin lausek­keisiin ja lisämuutokset ovat tällöin tarpeen.
* **HUOM.! Tämä sopimuspohja ei sovellu käytettäväksi käytännön tilan­teisiin ilman sopimusjuridisen asiantunti­jan tarkistusta ja kor­jauksia.**

 ***Draft 0.1 – June \_\_, 20\_\_***

**ICT FACILITIES MANAGEMENT AGREEMENT**

This AGREEMENT is made the 1st day of June 20\_\_ between

1. **Isoyritys Oyj** a Company incorporated in Finland and having ICTs principal place of business at Pääkatu 1, 00100 Helsinki (the ``Client'') and
2. **ICT-talo Oy** a company incorporated in Finland and having its principal place of business at Sivukatu 1, 00100 Helsinki (the ``Manager'').

**WHEREAS:**

A. The Manager is in the business of providing information management services, including data processing, voice and data communications, distributed systems, workstation support, computer and communications procurement and management, and related services;

B. The Client, is in the business of XXX industry;

C. The Client and the Manager desire to enter into this Agreement pursuant to which the Manager will plan, provide, manage, maintain and operate, the Client's data processing, voice and data communications, distributed systems, workstations, computer and communications procurement and management, and related services;

**IT IS HEREBY AGREED AS FOLLOWS:**

**Article 1 - Definitions**

(a)``Effective Date'' shall be the date set forth on page 1 of this Agreement.

(b)``Equipment'' shall mean all present and later acquired computer-related and communications

 equipment, including personal computers, modems, printers, mainframes, routers, cabling and related

 equipment, required by the Manager for the performance of this Agreement.

(c)``Party'' shall mean the Client and the Manager, and ``Parties'' the Client and the Manager

 collectively (as such term may be expressed in upper or lower case).

(d) ``Manager Software System'' shall mean any software system, or part thereof, which is owned or

legally used (other than pursuant to a license from the Client) in providing Services under this

 Agreement by the Manager as of, or after, the Effective Date.

(e)``Service Levels'' shall mean the qualitative or quantitative standards of performance applicable to

the Services, and described in the Fifth Schedule hereto as the same may be modified from time to time

by a written agreement between the Parties.

**Article 2 - Scope and Term of Agreement**

 *Term* The term of this Agreement will commence on the date set forth on page 1 of this Agreement (the ``Effective Date''), and will continue until terminated by the agreement of the Parties, or for cause pursuant to the terms of Clause 10 provided that at any time on or after the third anniversary of the Effective Date, this Agreement may be terminated by either of the parties hereto by giving at least sixty (60) days prior written notice to the other party.

**Article 3 - Services**

(a) *Services*

The Manager agrees to provide the Services described in the Sixth Schedule hereto subject to the terms

of this Agreement.

(b) *Performance Standards* The Manager shall perform the Services in accordance with the Service

 Levels. The Manager shall use commercially reasonable efforts to remedy any failure to meet the

Service Levels.

**Article 4 - Service Fees and Payment**

(a) *Fees* The Fees payable by the Client for the Services to be provided by the Manager during each

year of this Agreement are set forth in the Seventh Schedule.

(b) *Payment*

(i)Monthly fees shall be due and payable in arrears on the fifteenth (15th) day of each month following

the month in which the Services are rendered. Fractional months, if any, shall be pro-rated.

(ii)The Fees payable for Supplemental Services shall be agreed in writing prior to the provision of the

Supplemental Services to the Client. Payment for Supplemental Services shall be invoiced monthly

and shall be due thirty (30) days from the date of invoice.

(c) *Annual Fees Adjustment* The Fees set forth in the Seventh Schedule for each fiscal year

commencing on, and after the Effective Date, shall be deemed, automatically without any further act

by either party, increased in an amount equal [to the percentage salary increase received by full time

employees of the Client, compounded in each year by the amount of the adjustment percentage applied

for each previous year that this Agreement was in place.

(d) *Interest* Without waiving any other right, upon balances of any kind past due in excess of thirty

(30) days, the Manager reserves the right to charge interest at the rate of 15 per cent per annum from

the due date until the total sum due has been paid.

**Article 5 - The Client Resources**

1. ***The Client Software Systems***

 (i)The Client hereby grants to the Manager, and the Manager hereby accepts, a paid up, nonexclusive

right and license to use and copy and modify any of the Client software systems identified in the

Eighth Schedule hereto for use in;

(a) providing Services to the Client

(b) providing services to other permitted customers of the Manager on a service bureau basis, and

(c) the Manager's own internal use.

(ii)With the cooperation and assistance of the Manager, the Client shall use all its efforts to obtain any

 third party consents necessary for the Manager to operate Client software systems as hereunder.

**(b) *Modification to Client Software Systems; Newly Acquired Rights***

(i) the Manager shall own all right, title and interest in any modifications made by the Manager to

 Manager Software Systems.

(ii)With regard to existing or new software systems in which the Client first acquires a right to grant a

license after the Effective Date, the Client shall grant to the Manager, and the Manager shall be deemed

to accept, a paid up, nonexclusive right and license to market, use, copy, sublicense and modify the

same:

(a) in providing Services to the Client;

(b) providing services to other customers of the Manager on a service bureau basis and;

(c) for the Manager's own internal use.

**(c) *Manager Software Systems***

(i)The parties hereto acknowledge and agree that the Manager owns, and shall continue to own, all

right, title and interest in and to Manager Software Systems, except to the extent otherwise expressly

provided in this Agreement.

(ii)The Manager hereby grants to the Client, and the Client hereby accepts, a paid up, nonexclusive

 right and license to use, copy, sublicense and modify any Manager Software Systems identified in the

 second Schedule for use in

(a) providing services to permitted customers of the Client and;

(b) the Client's own internal use.

(iii)Except as necessary to use Manager Software Systems as permitted, the Client shall not permit

 Manager Software Systems, or any portion or derivative thereof, to be disclosed to third parties, sold,

assigned, leased, copied or commercially exploited in any way, with or without charge, by the Client or

 its Subsidiaries, or their respective employees or agents.

(iv)With the cooperation and assistance of the Client, the Manager shall use its commercially

reasonable efforts to obtain any third party consents necessary for the Client to use Manager Software

Systems as contemplated hereunder.

(v)The parties acknowledge and agree that Manager Software Systems are the valuable property of the

Manager. Any material violation of any restriction on the disclosure, use or exploitation of Manager

Software Systems would cause the Manager irreparable injury for which no adequate remedy exists at

 law, and shall entitle the Manager to preliminary and other injunctive relief, in addition to whatever

 other rights and remedies the Manager may have.

**(d)*****Client Equipment***

(i)The parties hereto acknowledge and agree that the Client owns and shall continue to own all right,

title and interest in and to the Equipment, except to the extent otherwise expressly provided in this

Agreement.

(ii)The Client will make available to the Manager, for the Manager's use, all Equipment that is

expressly referenced in the First Schedule as being provided by Client to the Manager.

**(e) *Additional Equipment***

If during the term of this Agreement the Manager requires any additional Equipment (other than

personal computers, modems, printers and related personal Equipment used by the Manager's

personnel) to provide the Services to the Client or the Client requires any Equipment for its employees

that will be managed or maintained by the Manager, such as laptops, modems, personal computers or

printers, the Manager will procure all such Equipment for and on behalf of the Client and the Client

will pay for the Equipment and all taxes related thereto.

**(f) *Facilities***

(i)Client Facilities Commencing on the Effective Date or such other date as agreed in writing between

the parties, the Client will provide to the Manager at the Facility such space, office furnishings,

 janitorial service, telephone service, secretarial support, utilities and office-related equipment, supplies

 and duplicating services at the Facility as the Manager may require to provide the Services to the

 Client, including (where applicable) the space, furnishings, and equipment utilized by the applicable

 transitioned employees (if any) who were performing such services prior to the Effective Date. The

 Client will allow the Manager access to the Facility twenty-four (24) hours a day, seven (7) days a

 week. In addition, the Client will provide necessary storage space for backup data files, and will

 provide such additional storage space as may be required by any regulatory authority with jurisdiction

 over the Client's business.

(ii)Manager Facilities Subject to the requirements of any laws, rules and regulations applicable to the

 Client, the Manager may from time to time perform the Services, including processing of the Client's

 data, in facilities maintained by the Manager (``Manager Facilities'') as the Manager deems

appropriate.

**(g) *Third Party Services Contracts***

On or prior to the Effective Date the Client will provide the Manager with a list of all Third Party

Service Contracts related to the Operational Management of the Systems. The Manager will assume

responsibility for the applicable third-party service contracts as of the Effective Date. The Client

 agrees that until the Manager assumes responsibility for any third-party service contract it will

manage all third-party service contracts to expire at the earliest reasonable date. Commencing on the

 Effective Date the Client will make available to the Manager during the term thereof, at a charge to

 the Manager equal to the amounts the Client is obligated to pay under such third-party service

 contracts, the services provided by third parties pursuant to each third-party service contract and

utilized by the Client prior to the Effective Date in performing the Services. Commencing on the

Effective Date, the Manager will have administrative and management responsibility for managing

such third-party services to the same extent as if the Manager were the contracting party for such

services during the term of such unless the assumption of such administrative and management

responsibilities by a third party are prohibited under the terms of any third-party service contract. The

Client will terminate, amend, or assign to the Manager any such third-party service contract, as the

Manager may request from time to time.

**Article 6 - Management and Change Control Procedure**

(a)Relationship Managers The Manager and the Client hereby acknowledge and agree that in the case

of the Client, [name of individual nominated], and in the case of the Manager, [name of individual

 nominated], will be, respectively, the Client's and the Manager's representative under this Agreement

 (each, a ``Relationship Manager'') from the Effective Date until replaced by the Client or the Manager,

as the case may be. Each Relationship Manager will:

(i)have overall responsibility for managing and coordinating the performance of the Client's or the

 Manager's obligations under this Agreement,

(ii)be authorized to act for and on behalf of the Client or the Manager with respect to all matters

 relating to this Agreement, and

(iii)work with the Operational Managers for the Client or the Manager, as applicable, to establish

 appropriate uniform procedures for the Services to be provided by the Manager to the Client.

(b)the Client hereby covenants and agrees that such party's Relationship Manager shall not be

 reassigned to no longer act as such party's Relationship Manager without the Manager's prior

 consent.

(c)the Client further covenants and agrees that if such party's Relationship Manager leaves the employ

 of the Client or is reassigned in compliance with the provisions of Clause 6(b), such party's

 Relationship Manager shall only be replaced by the Client with an employee of the Client consented to

by the Manager.

(d)*Operational Managers* Each party will appoint an individual (each, an ``Operational Manager'')

who will serve as such party's representative under this Agreement. Each Operational Manager will

(i)have overall responsibility for managing and coordinating the performance of such party's

obligations under this Agreement and

(ii)be authorized to act for and on behalf of such party with respect to all matters relating to this

 Agreement. Neither of the Operational Managers shall be reassigned or replaced by the applicable

party without the other party's prior consent, which consent shall not be unreasonably withheld.

**Article 7 - Safeguarding of Data, Disaster Recovery and Audit Rights**

(a) *Client Data*

The parties hereto acknowledge and agree that the Client owns and will continue to own all right, title

and interest in and to Client Data.

(b) *Safeguarding Client Data*

The Manager shall be entitled to presume that the data security procedures and the procedures for

 storing and transferring data used by the Client prior to the Effective Date are satisfactory to the

 Client.

**Article 8 - Risk of Loss**

Each Party shall be responsible for risk of loss of, and damage to, any Equipment or software systems in its possession or under its control.

**Article 9 - Performance Review, Dispute Resolution and Arbitration**

(a) *Scope*

The dispute resolution procedures specified in this Clause 9 shall apply to all matters arising

out of this Agreement and each that relate to technical matters such as Service Levels and performance

 of Services. With respect to any other dispute arising under this Agreement, including, without

 limitation, any security issues, the parties hereto shall have recourse to a court of competent

 jurisdiction, in accordance with the provisions of Clause 22.

(b) *Arbitration*

Any dispute that is not resolved through negotiation will be settled exclusively by final and binding

 arbitration in accordance with the following:

(i)the arbitration will be conducted in accordance with the then current arbitration rules of International

 Chamber of Commerce.

(ii)The arbitration will be conducted by an arbitration panel consisting of three neutral arbitrators

selected in accordance with the above. The arbitration will be conducted in the English language.

(iii)The arbitration proceedings will take place in Helsinki.

**Article 10 - Termination**

(a)Notwithstanding any provisions herein contained this Agreement may be terminated forthwith by

either party by notice in writing from the party not at fault if any of the following events shall occur,

namely:

(i)if the other party shall commit any act of bankruptcy, shall have a receiving order made against it,

 shall make or negotiate for any composition or arrangement with or assignment for the benefit of its

 creditors or if the other party, being a body corporate, shall present a petition or have a petition

presented by a creditor for its winding up or shall enter into any liquidation (other than for the purposes

of reconstruction or amalgamation), shall call any meeting of its creditors, shall have a receiver of all

or any of its undertakings or assets appointed, shall be deemed by virtue of the relevant statutory

 provisions under the applicable law to be unable to pay its debts, or shall cease to carry on business;

(ii)if the other party shall at any time be in default under this Agreement and shall fail to remedy such

 default within 30 days from receipt of notice in writing from the first party specifying such default.

If any such event referred to in this sub-clause shall occur, termination shall become effective forthwith

 or on the date set forth in such notice.

(b)The expiry or termination of this Agreement shall be without prejudice to the rights of the parties

 accrued up to the date of such expiry or termination.

(b)*Minimum Revenue Termination* If at the end of each twelve (12) month period (each a ``Base

 Period'') commencing on the Effective Date, for reasons beyond the reasonable control of the

 Manager, the Manager has not received revenues (excluding any prepayments hereinafter referred to

 and any revenues associated with the Services, during such Base Period that, in the aggregate, equal at

least [ ], then, during the first three (3) months after such Base Period, the Manager will have the right

 to terminate this Agreement by providing at least sixty (60) days prior written notice to the Client.

(c) *Notice* The Client or the Manager, as the case may be, will provide notice in accordance with

Clause 16 to the other party of termination pursuant to this Clause 10.

**Article 11 - Representations, Warranties and Covenants**

(a)Representations, Warranties and Covenants of the Manager—The Manager represents, warrants and

covenants as follows:

(i)As of the Effective Date, the Manager has full power and authority to enter into this Agreement and

to perform its obligations hereunder. The Manager will comply with all applicable provisions hereof.

(ii)The Manager will perform the Services and meet the specifications and Service Levels set forth in

this Agreement.

(b)Representations, Warranties and Covenants of the Client—The Client represents, warrants and

 covenants that as of the Effective Date the Client has full power and authority to enter into and to

 perform its obligations thereunder. The Client will comply with all applicable provisions hereof.

**Article 12 - Indemnities and Liability**

(a) *Cross Indemnity*

The Manager and the Client each agree to indemnify, defend and hold harmless the other and the

 other's Subsidiaries from any and all claims, actions, losses, damages, liabilities, costs and expenses,

 including reasonable attorneys' fees and expenses, arising out of or relating to the death or bodily

 injury of any agent, employee, customer, business invitee or business visitor of the indemnitor or its

 Subsidiaries, or arising out of or relating to loss of or damage to tangible real or tangible personal

 property, to the extent that such claim, action, liability, loss, damage, cost or expense was proximately

 caused by the indemnifying party's tortuous act or omission, or by those of its agents or employees.

1. *Patent Indemnity*

The Manager and the Client each agree to indemnify, defend and hold harmless the other and

the other's Subsidiaries from any and all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees and expenses, arising out of any claims of infringement of any patent, or a trade secret, or any copyright, trademark, service mark, trade name or similar proprietary rights conferred by contract or by common law or by any law of any applicable jurisdiction alleged to have occurred because of Systems provided by the indemnitor or its Subsidiaries under this Agreement.

(c) *Consequential or Punitive Damages* In no event shall either party be liable to the other in

connection with the provision or use of Services for indirect, incidental, consequential, special or

 punitive damages, including, without limitation, damages for lost profits or economic damage or

 injury to property or reputation regardless of the form of action, whether in contract, indemnity,

 warranty, strict liability or tort and regardless of whether such party has reason to know or in fact

 knows of the possibility thereof.

(d) *Limitations of Liability* In the event the Manager shall be liable to the Client on account of the

 performance or non-performance of its respective obligations under this Agreement, whether arising

 by negligence, wilful misconduct or otherwise, the amount recoverable for all events, acts or

 omissions shall not exceed, in the aggregate, an amount equal to three times the aggregate monthly

 compensation payable by the Client to the Manager under this Agreement during the month in which

the event giving rise to the damages first arose.

(e)*Disclaimer of Warranties* Except as otherwise expressly provided herein, the Manager makes no

 and hereby disclaims all warranties, express or implied, including any warranties of merchantability or

 fitness for a particular purpose relating to any goods or services provided by the Manager to the Client

 pursuant this Agreement.

(f) *Survival* The provisions of this Clause 12 shall survive any termination of this Agreement and

the consummation of the transactions contemplated hereby.

**Article 13 - Confidentiality**

(a) All Confidential Information relating to the Client or the Manager will be held in confidence by the

Manager or the Client, as the case may be, to the same extent and in at least the same manner as such

 party protects its own confidential or proprietary information. Neither the Manager nor the Client will,

 and each will cause its respective Subsidiaries to not, disclose, publish, release, transfer or otherwise

 make available Confidential Information of the other party in any form to, or for the use or benefit of,

 any Person without the other party's written consent.

(b) Upon the termination of this Agreement, the Manager or the Client, as the case may be, shall return

 to the Client or the Manager, as the case may be, any Confidential Information of the other party then

 held by the Client or by the Manager.

**Article 14 - Miscellaneous**

(a) *Attorneys' Fees* If any legal action or other proceeding is brought for the enforcement of this

 Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with

 any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable

 attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to

 which it may be entitled.

(b) *Media Releases* All media releases, public announcements and public disclosures by the Client or

the Manager relating to this Agreement or the transactions contemplated hereby, including, without

 limitation, promotional or marketing material (but not including any announcement intended solely for

 internal distribution at the Client or the Manager, as the case may be, or any disclosure required by

 legal, accounting or regulatory requirements beyond the reasonable control of the Client or the

 Manager, as the case may be) shall be co-ordinated with and approved by the Client and the Manager

 prior to the release thereof.

(c) *Relationship of Parties* The Manager, in furnishing Services to the Client hereunder, is acting only

as an independent contractor. Except as otherwise provided herein, the Manager does not undertake by

 this Agreement or otherwise to perform any obligation of the Client, whether regulatory or

 contractual, or to assume any responsibility for the Client's business or operations. The Manager has

 the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be

performed, all work to be performed by the Manager under this Agreement.

 **Article 15 - Force Majeure**

Each party hereto will be excused from performance hereunder for any period and to the extent that it is prevented from performing, in whole or in part, under this Agreement as a result of delays caused by the other party or an act of God, war, civil disturbance, court order, adverse weather condition, labor dispute, third party non-performance, or other cause beyond its reasonable control, including failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment, and such non-performance shall not be a default hereunder or a ground for termination hereof.

**Article 16 - Notices**

Any notice required or permitted under the terms of this Agreement or required by statute, law or regulation shall (unless otherwise provided) be in writing and shall be delivered in person or sent by e-mail as appropriate to the respective parties as follows:

Client & e-mail address:

Manager & e-mail address:

or to such other address as may from time to time be designated by notice hereunder. Any such notice shall be in the English language and shall be considered to have been received on the next working day following delivery.

**Article 17 - Assignment**

Neither this Agreement nor the Services performed hereunder may be assigned by either party whether voluntarily or involuntarily or by operation of law, in whole or in part, to any party without the prior written consent of the other party. No such assignment by either party without consent, howsoever occurring, shall relieve the assignor of its obligations hereunder.

**Article 18 - Waiver**

Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed, nor shall be deemed to be, a waiver of that party's rights hereunder, nor in any way affect the validity of the whole or any part of this Agreement, nor prejudice that party's rights to take subsequent action.

**Article 19 - Headings**

The headings of the paragraphs of this Agreement are inserted for convenience of reference only, and are not intended to be part of, or to affect, the meaning or interpretation of this Agreement.

**Article 20 - Agreement**

This Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the parties hereto prior to this Agreement, and constitutes the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment to, or modification of, this Agreement shall be effective unless it is in writing and signed by, and on behalf, of both parties.

**Article 21 - Severability**

In the event that any or any part of the terms, conditions or provisions contained in this Agreement shall be determined by any competent authority to be invalid, unlawful, or unenforceable to any extent such term, condition, or provision shall to that extent be severed from the remaining terms and conditions, which shall continue to be valid and enforceable to the fullest extent permitted by law.

**Article 22 - Law**

The parties hereby agree that this Agreement shall be construed in accordance with Finnish Law.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement on the date above written.

SIGNED for and on behalf of the Client by:

Date:

SIGNED for and on behalf of the Manager by:

Date:

***ARTICLE 23 - SCHEDULES***

**THE FIRST SCHEDULE**

EQUIPMENT

**THE SECOND SCHEDULE**

MANAGER SOFTWARE SYSTEMS

**THE THIRD SCHEDULE**

FACILITY

**THE FOURTH SCHEDULE**

RESTRICTED APPLICATION SOFTWARE SYSTEMS

**THE FIFTH SCHEDULE**

SERVICE LEVELS

**THE SIXTH SCHEDULE**

SERVICES

**THE SEVENTH SCHEDULE**

FEES

**THE EIGHTH SCHEDULE**

CLIENT SOFTWARE SYSTEMS