



## MAINTENANCE AGREEMENT

### BACKGROUND

- a) The Seller carries on the business of selling the Products and Services.
- b) The Customer wishes to buy and the Seller wishes to supply and sell the Products & Services subject the terms and conditions set out in this agreement.

#### 1. INTERPRETATION in this Maintenance Agreement:

Seller: means ElementTel Ltd, a Limited company incorporated and registered in England, company registration number 08227791 and whose registered office is Chancery House, Abbey Park Industrial Estate, Premier Way, Romsey, Hampshire, SO51 9DQ.

Customer: this is a reference to the person or company named overleaf;

Equipment: this a reference to the equipment detailed overleaf and includes all internal cabling as well as the network test termination point or other demarcation point;

Commencement Date: this a reference to the date detailed overleaf as the commencement date; Agreement Term: this is a period of 7 years from the commencement date subject to clause 9 below and earlier termination in line with clause 10 Maintenance Services: in line with clause 4 below this is a reference to fault rectification.

### 2. SELLER'S UNDERTAKING

2.1 The Seller undertakes to provide the maintenance services in respect of the equipment upon the terms and conditions of this agreement. This is in line with the terms of clause 3 in consideration of the customer's payment for the annual service charge.

### 3. MAINTENANCE CHARGES

3.1 It is for the customer to pay the annual service charge for the Maintenance Service that is payable per annum in advance. Services provided to the customer in addition to the maintenance services are due for payment by the customer upon presentation of the Sellers' invoice.

3.2 The Seller may elect to invoice the customer via email.

3.3 Payments outstanding for more than 14 days in relation to an overdue invoice in line with this maintenance agreement entitles the Seller to suspend its obligation under the maintenance agreement until the overdue amount is settled.

3.4 The Seller reserves the right to charge daily interest on amounts outstanding 14 days after invoice until payment in full is received, at a rate equal to 8% per annum above the Lloyds Bank Plc Base Lending Rate as current from time to time, accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgement, and compounding quarterly.

### 4. MAINTENANCE SERVICES

4.1 Included within Maintenance Services:

4.1.1 Upon receipt of a request from a Customer the inspection testing and diagnosing (by attendance on site or remotely) by the Seller or any fault reporting in an item of Equipment; and

4.1.2 The carrying out by the Seller of such repairs replacement of parts or adjustment as the Seller shall deem necessary to remedy the said fault.

4.2 Appropriately qualified engineers will carry the maintenance in question.

### 5. TIMES FOR MAINTENANCE SERVICES

5.1 The Seller commits to rectify faults in line with the following hours based upon the agreed tier of service detailed overleaf (this commitment is subject to non-prevention from circumstances outside the Sellers control):

5.1.1 TIER 1: From the hours of 9.00am and 5.00pm Mondays to Fridays excluding weekends and public holidays

5.1.2 TIER 2: From the hours of 9.00am and 5.00pm Mondays to Fridays including weekends and public holidays

5.1.3 TIER 3: 24 hours a day including weekends and public holidays

5.2 The Seller will use its reasonable endeavours to ensure that response times to the Customers notification of a fault are not more than:

5.2.1 12 working hours if the equipment has failed completely; or

5.2.2 24 working hours if the equipment has failed partially.

### 6. EXCLUSIONS

6.1 Under this maintenance agreement the Seller accepts no obligations or liability whatsoever:

6.1.1 in respect of any defect arising from wilful damage, negligence (including improper storage), abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Equipment without the Seller's approval;

6.1.2 sums owing by the Customer to the Seller remain unsettled;

6.1.3 where loss is suffered by the Customer due to the Equipment neglecting to perform to its specifications and the failure is based on faults in the service provided by the network provider;

6.1.4 in respect of any delay in the execution of any repair;

6.1.5 in respect of remedying defects in electricity or network supply to the Equipment; defects caused by failures or surges of electrical power; failure of the Equipment due to changes in the electrical supply service or the public network.

6.1.6 in respect of any defect arising due to circumstances beyond the Sellers reasonable control including (without limitation) flood, fire, lightning, war, sabotage, civil disturbance or governmental action, import regulations or embargoes.

### 7. LIMITATION OF LIABILITY

7.1 Unless, otherwise expressly provided in this Maintenance Agreement, the following provisions set out the Seller's entire liability (including any liability for the acts and omissions of its employees, agents and subcontractors) to the Customer in respect of:

7.1.1 any breach of the Seller's contractual obligations arising under the Maintenance Agreement; and

7.1.2 any representation (other than fraudulent misrepresentation) statement or tortious act or omission including negligence arising under or in connection with these conditions. AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE FOLLOWING PROVISIONS OF THIS CLAUSE 7

7.2 Any act or omission on the part of the Seller or its employees, agents or sub-contractors falling within clause 7.1 above is described as an "Event of Default".

7.3 To the extent the law does not permit such liability to be excluded the Seller's liability to the Customer for death or injury resulting from its own or that of its employees', agents' or subcontractors' negligence shall not be limited.

7.4 Subject to condition 7.3 above, the Seller shall not be liable to the Customer in respect of any Event of Default for any increased costs, expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings 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 the Seller had been advised of the possibility of the Customer incurring the same.

7.5 To the extent the law does not permit such liability to be excluded and save as otherwise expressly provided, the Seller's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to £200,000.

## **8. THE CUSTOMER'S OBLIGATIONS**

The Customer undertakes to agree to:-

8.1 Settle with the Seller outstanding amounts owed under this maintenance agreement within the agreed settlement dates.

8.2 make sure that the Equipment is not:

8.2.1 from the address of original installation not moved

8.2.2 altered, adjusted or interfered with in any way except by the Seller's servants or agents. Alterations include the reprogramming of the Equipment to change network providers for the purpose of least cost routing;

8.3 the customer must provide the Seller with complete access to the Equipment during the agreed hours in line with the agreed service tier to enable maintenance of the said Equipment to be carried out;

8.4 in the event of errors, by persons other than the Seller's servants or agents, the customer must pay the Seller's charges for reprogramming the Equipment due to such errors.

8.5 not alter or extend the Equipment without prior notification to the Seller (an additional charge may, at the Seller's sole discretion be made for the maintenance of altered Equipment); provide the Seller with details of the installer of the Equipment, a copy of its Pre-Connection Inspection Certificate and access to all relevant site records;

## **9. ADDITIONAL EQUIPMENT**

9.1 Where the Seller agrees, during the agreement term to provide the customer with additional equipment ('additional equipment'):

(a) such additional equipment will form part of the Equipment for the purposes of this Maintenance Agreement and the Agreement Term shall be extended to a period of 7 years from the date on which the additional equipment was provided to the Customer; and

(b) the annual service charge for the Maintenance Service of the Equipment shall be increased by an amount equal to the agreed service charge for the Maintenance Service as specified on the Additional Equipment purchase order in respect of the additional equipment such increase to be effective from the date on which the additional equipment is provided to the Customer.

## **10. TERMINATION**

10.1 The following circumstances may lead to the termination of this Agreement:

(a) with effect from the end of the Agreement Term, or any subsequent anniversary thereof, by either party giving at least 90 days' notice to the other to expire on the last day of the Agreement Term or on an anniversary of that day;

(b) by the Customer during the Agreement Term by giving at least 90 days written notice to the Seller expiring on an anniversary of the Commencement Date. To validly terminate this Maintenance agreement in this way the customer must pay the annual service charges in respect of the remainder of the Agreement Term after the date of termination.; or

(c) by the Seller if the Customer is in breach of any provision of this Agreement and does not rectify the breach within 14 days of the Seller's notice of such breach.

10.2 A notice given to a party under this Clause 10 shall be:

(a) sent to the party for the attention of the [Managing Director and or Senior Partner] at the address specified overleaf; and

(b) sent by recorded delivery.

## **11 GENERAL**

11.1 The entire agreement between the parties in relation to the maintenance of the equipment are represented by the terms of this Maintenance Agreement including the details overleaf. Variations will only become binding when they have been signed by the director of the Seller.

11.2 If the Seller, in an effort to comply with any statute, regulation or British Standards Institution requirement deems it necessary to vary any terms of this Maintenance Agreement, then the Seller may do so.

11.3 The annual charge detailed within this agreement is subject to annual review. The seller reserves the right to increase the monthly (or annual) cost based upon the number of service requests during the previous twelve months. Additionally, the seller reserves the right to increase the monthly (or annual) cost based upon the age and serviceability of the equipment.

11.4 Where the Seller receives erroneous notification of an equipment fault in excess of two occasions in any calendar month, the Seller has the discretion to make a proportionate charge in line with current rates.

11.5 Any notice shall be in writing addressed to the addressee at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.6 No delay or failure by the Seller in enforcing any provision of this Maintenance Agreement shall constitute a waiver of that provision or any other provision. No waiver by the Seller of any breach of the Maintenance Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Seller shall be effective unless in writing.

11.7 If any provision of this Maintenance Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Maintenance Agreement and the remainder of the provision in question shall not be affected.

11.8 This Maintenance Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts.

11.9 Whilst the Seller may assign its rights and obligations, the Customer may not assign its rights.