



## 1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement the following terms shall have the following meanings: -

“Act” means the Telecommunications Act 1984 and amendments to the Act that may be made from time to time.

“Agreement” means the agreement between the Service Provider and the Subscriber for the provision of Network Services incorporating these terms and conditions and the Order Form.

“Connection Date” means the date when the network carrier having received the Subscriber Details from the Service Provider is in a position to and has agreed to commence provision of the Network Service to the Subscriber.

“Number Translation Service” means any telecommunications service provided by Elementel which commences with a non-geographic code requiring translations by the Elementel switch for onward routing to the Subscriber and including services such as 0800 Freephone, local rate, national rate and premium rate telephone call facilities.

“Network Services” means the provision of per minute indirect access network capacity as is required to complete voice telephone calls and data transmission domestically and internationally via the public switched telephone network more particularly detailed on the Order Form and described in the Service Provider’s service literature and as modified or substituted from time to time to be provided here under by the Service Provider to the Subscriber.

“Order Form” means the Subscriber Order Form which sets out details of the Service Provider the Subscriber and other particulars relating to the provision of the Network Services.

“Service Provider” means Elementel, 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. “Service Provider” includes the Service Provider’s permitted assigns employees and agents.

“Subscriber” means the person, firm or company specified on the Order Form and any other person reasonably appearing to act within that person’s firm’s or company’s authority and includes where relevant the Subscriber’s permitted assigns employees and agents.

“Subscriber Details” means the service numbers of lines to be connected to the Network Services.

## 2. SUPPLY OF NETWORK SERVICES

The Service Provider undertakes to use all reasonable endeavours to supply the Network Services to the Subscriber as and from the Connection Date subject to and on the terms of this Agreement.

## 3. DURATION

This Agreement shall come into full force and effect from the date hereof and subject to earlier termination in accordance with its terms shall continue thereafter until the same is terminated by either party by the service upon the other of no less than 90 day’s written notice such notice to expire at any time.

## 4. CONDITIONS OF USE OF NETWORK SERVICES

4.1 The Subscriber agrees and undertakes:

4.1.1 to use the Network Services in accordance with such conditions as may be notified to it in writing by the Service Provider from time to time

4.1.2 not to cause any attachments other than those approved for connections under the Act to be connected to the Network Services and the Service Provider shall not be under any obligation to connect or keep connected any Subscriber apparatus if it does not so conform or if in the reasonable opinion of the Service Provider it is liable to cause death, personal injury, damage or impair the quality of the Network Services

4.1.3 not to contravene the Act or any other relevant regulations or licenses granted there under

4.1.4 not to use the Network Services as a means of communication for a purpose other than that for which the Network Services are provided and as may be set out from time to time in the Service Provider’s service literature

4.1.5 not to use the Network Services to communicate any material which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, obscene or menacing character

4.1.6 not to use the Network Services in a manner which constitutes a violation or infringement of the rights of any other party

4.1.7 to maintain its telecommunications apparatus at all times during the period of this Agreement in good working order and in conformation with the relevant standard or approval for the item being designated under section 22 of the Act

4.1.8 to provide the Service Provider with all such information as it reasonably requests relating to the Subscriber’s telecommunications apparatus

4.2 If the Service Provider is installing auto-dialling equipment the Subscriber shall provide at the Service Provider’s request and at the Subscriber’s expense, suitable mains electricity supply (if necessary), with connection where the Service Provider requires to enable the Service Provider to provide the Network Services.

4.3 If any equipment is installed or provided by or on behalf of the Service Provider for the purposes of providing the Network Services (including without limitation any auto-dialler) the Subscriber undertakes not to alter or move such equipment or any part thereof without the Service Provider’s prior written consent. The Subscriber agrees that any equipment installed or provided by or on behalf of the Service Provider shall at all times remain the property of the Service Provider and shall be returned to the Service Provider forthwith upon request.

4.4 the Subscriber shall indemnify the Service Provider against all liabilities, claims, damages, losses and expenses arising from the use by the Subscriber of the Network Services in breach of this Agreement.

4.5 This clause 4.5 shall apply to the Number Translation Service.

4.5.1 The Subscriber hereby acknowledges that the telephone numbers allocated as part of the Number Translation Service do not belong to the Subscriber and the Subscriber accepts that it shall not acquire any rights whatsoever in any such telephone numbers and the Subscriber shall make no attempt to apply for registration of the same as a trade or service mark whether on its own or in conjunction with some other words or trading style.

4.5.2 The service provider shall be entitled for operational or technical reasons or in order to comply with any numbering scheme or other obligation imposed on the Service Provider by the Licenses or by any other competent authority to withdraw or change any telephone or code (or group thereof) allocated to the Subscriber as part on the Number Translation Service PROVIDED THAT the service provider gives the Subscriber the maximum period of notice in writing thereof practicable in the circumstances.

4.5.3 The Subscriber acknowledges and agrees that any Number Translation Service including any telephone numbers provided as part of that service shall only be provided by the Service Provider and available for use by the Subscriber for the duration of this Agreement.

## 5. WHOLESALE LINE RENTAL

5.1 The customer agrees that signing this agreement will terminate any prior line rental agreement with BT or an alternative provider. The Customer authorises the service provider to use all the information the Customer provides in order to liaise directly with BT and or the other provider. In signing this agreement the Customer agrees to take line rental services for the Minimum Period / Term specified on the Customer order form. Following the Minimum Period / Term, the line rental services shall continue until terminated by either party giving no less than 90 day’s written notice to the other party

5.2 “All conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise and all liabilities (if any) of THE SERVICE PROVIDER arising there from are hereby wholly excluded. Without prejudice to the generality of the foregoing, THE SERVICE PROVIDER does not warrant that the WLR Service or the operation of the System will be uninterrupted or error free or will meet the Company’s requirements”.

5.3 “THE SERVICE PROVIDER save for Charges in respect of WLR Services which shall be invoiced monthly in advance”.

5.4 The service provider may, by giving the customer 30 day’s written notice increase the charges for this service.



## **6. ACCESS TO PREMISES AND PROVISION OF INFORMATION**

6.1 To enable the Service Provider to exercise its obligations under this Agreement:

6.1.1 The Subscriber shall permit or procure permission for the Service Provider and any other person(s) authorised by the Service Provider to have reasonable access to its premises and its telephone system and other equipment and shall provide such reasonable assistance as the Service Provider requests.

6.1.2 The Service Provider will normally carry out work, by appointment and during normal working hours but may request the Subscriber to provide access at other times but such requests shall not oblige the Subscriber to provide such access.

6.2 At the Subscriber's request, the Service Provider may agree to work outside normal working hours and the Subscriber shall pay the Service Provider's reasonable charges for complying with such a request.

6.3 If the Subscriber requests maintenance or repair work which is found to be unnecessary, the Subscriber may be charged for the work and the costs incurred. The Service Provider will give notice that work is considered unnecessary prior to completion and raising charges.

## **7. SUSPENSION OF SERVICE**

7.1 The Service Provider may at its sole discretion elect to suspend forthwith provision of the Network Services until further notice without compensation having given the Subscriber as much notice as is reasonable under the circumstances either orally (confirming such notification in writing) or in writing in the event that:

7.1.1 the Subscriber is in breach of a material term of this Agreement including for the purposes of this Agreement its failure to pay charges to the Service Provider on the due date

7.1.2 the Service Provider is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative authorities

7.1.3 the Service Provider suspects that the Network Services are being used fraudulently

7.1.4 the Service Provider is entitled to suspend provision of any other telecommunications service under the terms of any other agreement with the Subscriber.

7.2 The Subscriber shall reimburse the Service Provider for all reasonable costs and expenses incurred by the implementation of such suspension and/or the recommencement of the provision of the Network Services as appropriate, but only where the suspension is implemented as a consequence of breach, fault or omission of the Subscriber.

## **8. LIABILITY**

8.1 Nothing in this Agreement shall exclude or restrict the Service Provider's liability for death or personal injury resulting from the negligence of the Service Provider or of its employees while acting in the course of their employment with the Service Provider.

8.2 Neither party shall be liable to the other in contract, tort or otherwise for any loss of business, contracts, anticipated savings or profits or for any other indirect or consequential loss whatsoever.

8.3 The Service Provider's liability in contract, tort or otherwise arising out of or in connection with the performance of its obligations under this Agreement shall be limited to £1 million for any one incident or series of incidents and £2 million in aggregate.

8.4 The Service Provider shall not be liable to the Subscriber for any breach of any provision of this agreement caused by any reason outside the control or responsibility of the Service Provider including without limitation the failure of any third party public telecommunications operator or network carrier to provide network capacity (or any element thereof) to the Service Provider on which it was reliant for the purposes of this Agreement (whether in breach of contract or otherwise) any Act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities.

8.5 The Service Provider shall not in any event be liable to the Subscriber for any indirect, consequential or incidental loss or special damages howsoever arising or for any loss of revenue, business, anticipated savings or profits and the Subscriber shall indemnify and keep the Service Provider indemnified against any claims and expenses arising out of the foregoing.

8.6 For the avoidance of doubt, the Service Provider shall not in any event be liable to the Subscriber or any third party for any claims, liabilities, damages, costs or losses, whether direct or indirect, or for any loss of revenue, business, anticipated savings or profit arising in connection with the failure of the Subscriber to comply with any or all of its obligations under this Agreement.

8.7 The Service Provider cannot accept liability for calls that may have been made fraudulently via the Subscribers own equipment. Any call charges incurred will be charged as per the Subscribers current tariff plan.

## **9. CHARGES AND PAYMENTS**

9.1 The Subscriber shall be invoiced monthly by the Service Provider and agrees to pay charges within 14 days of receipt of invoice.

9.2 Usage charges will be as detailed in the Service Provider's price list as varied from time to time.

9.3 The Service Provider shall have the right to alter the charges in the Service Provider's price list from time to time by giving the Subscriber not less than 28 days' notice.

9.4 Usage charges payable shall be calculated by reference to data recorded or logged by or on behalf of the Service Provider and not by reference to any data recorded or logged by the Subscriber.

9.5 Where calls are provided by Carrier Pre Select (CPS) on WLR lines (provisioned through the service provider) and where any changes that are made by the customer or BT results in the calls routing over BT, then the agreed CPS rates will not apply. Please refer to the Service Provider's standard WLR rates, which will be automatically applied without notice.

9.6 The Service Provider reserves the right to charge a late payment fee of £35 plus VAT should the Customer fail to make payment for network services 7 calendar days after the due date. The Customer will be forewarned of the charge 1 calendar before the charge is applied. The charge will be included on the subsequent bill. Part Payment of bills will not exclude the raising of a late payment charge.

9.7 The Service Provider reserves the right, should the Customer fail to make payment for network services 10 calendar days after the due date, to restrict or suspend the Service relating directly to the unpaid amounts until the Customer has paid in full. Should the Service Provider restrict or suspend the Service the Customer will be charged a reconnection fee of £35+VAT to reconnect the Service. The charge will be included on the subsequent bill.

9.8 The Service Provider 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.

9.9 All sums referred to in this Agreement are exclusive of Value Added Tax and any taxes of a similar nature which may from time to time be introduced.

9.10 Payment of all sums due to the Service Provider shall be made without any set-off whatsoever

9.11 The Service Provider reserves the right to charge an administration fee of £15 plus VAT per invoice if the Customer has cancelled its Direct Debit instruction or has insufficient funds in the bank account on the Direct Debit due date, without informing the Customer in advance.

## **10. TERM AND TERMINATION**

10.1 Each Service Contract shall start from the date the Service is made available and continue for the Minimum Period / Term. Either party may terminate such Service Contract by giving ninety (90) days written notice to the other, such notice to expire no earlier than the end of the Minimum Period / Term. In the case of termination by the Subscriber, any such written notice shall not be effective unless (i) given by email to the service provider by an authorised member of the Subscriber, providing full details of the Service Contract including all circuit details and addresses to be terminated, and (ii) The Service Provider has confirmed such termination notice by email within three working days of its receipt.



10.1.2 If the subscriber terminates the contract before the end of Minimum Period / Term, the subscriber will be charged the remaining rental of the lines and or broadband circuit contract. In the case of calls, a monthly average will be taken from the last 3 months call spend and the subscriber will be charged this monthly average for the remaining months of the Minimum Period / Term.

10.2 In addition to the Service Provider's other rights, the Service Provider may end any Service Contract and/or suspend the provision of any Service under a Service Contract:

10.2.1 immediately following the expiry of 14 days' written notice from the Service Provider to the Subscriber for non-payment of any Charges and payment has not been made following such notice; or

10.2.2 immediately in writing if the Subscriber materially breaches these Terms, any Service Contract or any other agreement the Subscriber has with the Service Provider (or if such breach is capable of being remedied, after expiry of written notice requiring such breach to be remedied within 14 days and the Subscriber has failed to remedy such breach); or

10.2.3 immediately if bankruptcy or insolvency proceedings are brought against the Subscriber (or its parent company), a receiver or administrator is appointed over any of the Subscriber's (or its parent company's) assets or the Subscriber (or its parent company) goes into liquidation or enters into a voluntary arrangement with its creditors other than for the purposes of reorganisation (or any similar event in its country of incorporation takes place); or

10.2.4 as soon as required if the Service Provider is obliged to by a decision or direction of any governmental body or regulatory authority.

10.2.5 Notwithstanding anything to the contrary expressed or implied in the Agreement the Service Provider (without prejudice to their own rights) may terminate this Agreement forthwith in the event that any license under which the Subscriber has the right to run its telecommunication system and connect it to the Network Services is revoked, amended or otherwise ceases to be valid.

10.3 Upon termination of a Service Contract, all Charges incurred by the Subscriber for the use of the Services up to the date of termination shall be due and payable in full and on demand and the Subscriber shall have no right to withhold, deduct or set off any such amounts.

10.4 Upon termination of a Service Contract for whatever reason the Subscriber shall immediately stop using the Services prescribed in such Service Contract and the Subscriber's right to use such Services shall immediately terminate.

10.5 Termination or expiry of a Service Contract shall not affect any accrued rights or obligations or those intended to be of a continuing nature or to come into force upon termination or expiry.

10.6 Where the Service Provider suspends for Subscriber breach and subsequently reconnects Services the Subscriber may be liable for a reasonable reconnection fee which shall be notified to the Subscriber in advance.

10.7 If the Subscriber cancels an order, or requests that an order already placed is significantly modified (e.g. changes in address; Service type; point of presence or presentation), prior to the connection date, as defined in the relevant Service Contract, then notwithstanding the Service Provider's other rights pursuant to the Service Contract, the Subscriber shall pay all costs incurred by the Service Provider as a result of such cancellation or modification (this includes any rejected transactions). The amount payable shall be calculated by reference to the number of days prior to the connection date that the Service Provider receives the cancellation or modification request from the Subscriber. Where installation charges are not payable or are discounted for a particular Service Contract, the Service Provider may charge a cancellation charge by applying the percentages below to its then current standard Installation Charges (as notified to the Subscriber). Additionally, the Service Provider may charge the Subscriber for all costs which it has incurred in relation to provision of the Services (e.g. costs associated with network or infrastructure builds or obtaining way leaves) on and prior to the date upon which it receives the early cancellation request from the Subscriber.

Working Days Before Connection	Cancellation Charge Payable - percentage of installation charge (%)
1	100
1 < 5	75
5 < 10	50
10 < 20	25
20	0

10.8 If the Subscriber cancels a Service without cause after the connection and prior to the end of the Minimum Period / Term, then all Charges that would have been payable until the end of the Minimum Period / Term (together with any relevant notice period) shall immediately become due and payable.

## 11. ASSIGNMENT

The Service Provider may, but the Subscriber shall not (without the prior written consent of the Service Provider such consent not to be unreasonably withheld or delayed), assign or delegate or otherwise deal with all or any of its rights or obligations under this Agreement.

## 12. GENERAL

12.1 This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations made by either party, whether oral or written. This Agreement may be modified upon the Service Provider giving to the Subscriber not less than 30 day's prior written notice thereof.

12.2 Failure by either party to exercise or enforce any right conferred to this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

12.3 By signing the Order Form the Subscriber thereby agrees to the total exclusion of all its terms and conditions of business from this Agreement.

12.4 Any notice, invoice or other document which may be given by either party under this Agreement shall be in writing (except as provided otherwise) and shall be deemed to have been duly given if addressed to the party to which it is to be given and if left at or delivered by pre-paid mail, telex or facsimile (provided that such facsimile is then confirmed by pre-paid mail) to that party's address as shown on the Order Form or in either case at such other address as has been notified by one party to the other.

12.5 This Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties hereby submit to the jurisdiction of the English courts.

12.6 Any director or representative of a limited company who signs on behalf of the Subscriber will be deemed an authorised signatory and thereby guarantee the Subscriber's acceptance of its obligations under this Agreement.

12.7 Any terms that would be implied herein by statute or common law shall be excluded to the fullest extent permitted by law.