

**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:

**Commencement Date** this a reference to the date detailed overleaf as the Commencement Date;

**Customer** this is a reference to the person named overleaf;

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

**Maintenance Services** in line with clause 4 below this is a reference to fault rectification;

**Minimum Term** 7 years from the Commencement Date;

**Previously Paid Termination Charges** means the early termination charges paid by the Seller on behalf of the Customer to the Customer's previous maintenance provider at any time before or after the Commencement Date; and

**Seller** means Nix Networks Limited, trading as Nix Networks Limited, a Limited Company incorporated and registered in England and Wales with company number 12045243 whose registered office is at Winchester Hill Business Park, Winchester Hill, Romsey, Hampshire, SO51 7UT.

**2 BASIS OF CONTRACT**

2.1 The Seller undertakes to provide the Maintenance Services in respect of the Equipment upon the terms and conditions of this Maintenance Agreement. This is in line with the terms of clause 3 in consideration of the Customer's payment for the annual service charge.

2.2 This Maintenance Agreement shall come into force on the Commencement Date and subject to clause 2.3 below, shall continue in force by the Seller or any fault reporting in accordance with these terms, until the end of the Minimum Term. The term of this Maintenance Agreement shall automatically extend for 36 months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term, unless either party gives written notice to the other, no later than 42 days before the end of the Minimum Term or the relevant Extended Term as the case may be.

2.3 In the event the Customer has ten or less employees, clause 2.2 shall not apply. Instead this Maintenance Agreement shall continue, unless terminated earlier in accordance with the provisions of this Maintenance Agreement, until either party gives 42 days written notice to the other party to terminate this Maintenance Agreement expiring on the end of the Minimum Term.

**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 to be paid by the Customer upon presentation of the Seller's invoice.

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

3.3 Payments outstanding for more than 30 days in relation to an overdue invoice in line with this Maintenance Agreement entitles the Seller to suspend its obligation under this Maintenance Agreement until the overdue amount is settled.

3.4 On any amount unpaid the Seller is entitled to charge the Customer interest the rate of 2% per month or part of a month until payment is settled in full. Interest will be charged both before and after any judgements.

**4 MAINTENANCE SERVICES**

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.

4.1 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 nonpresentation from circumstances outside the Seller's 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 Customer's notification of a fault are not more than:

5.2.1 8 working hours if the Equipment has failed completely; or

5.2.2 16 working hours if the Equipment has failed partially.

**6 EXCLUSIONS**

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 Seller's 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 subcontractors 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 indirect or consequential loss, 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:

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 Provide the Seller with regular access to 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**

Where the Seller agrees, during the terms of this Maintenance Agreement 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 DATA PROTECTION**

The following definitions are used in this clause 10:

**Applicable Law** means (i) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or which is applicable in any jurisdiction that the Maintenance Services are provided to or in respect of; (ii) the common law and laws of equity as applicable to the parties (or either of them) from time to time; (iii) any binding court order, judgment or decree as applicable to the parties (or either of them) from time to time; or (iv) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over that party or any of that party's assets, resources or business;

**Customer Personal Data** means any Personal Data which the Seller receives pursuant to the performance of the Maintenance Services;

**Data Protection Legislation** means all applicable data protection legislation including from 25 May 2018 onwards Regulation (EU) 2016/679 (the General Data Protection Regulation or the GDPR) and any national implementing laws, regulations and secondary legislation (or in the event that the UK leaves the European Union, all equivalent legislation enacted in the UK in respect of the protection of Personal Data) (all as amended, updated or re-enacted from time to time); and

**Personal Data, Data Subject, Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation.

10.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. Subject to clause 10.8, the parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Seller is the Data Processor in respect of Customer Personal Data. Clause 10.7 sets out the nature and purpose of processing by the Seller, the duration of the processing and the types of Personal Data and categories of Data Subject.

10.3 Without prejudice to the generality of clause 10.2, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Seller for the duration of this Maintenance Agreement.

10.4 Without prejudice to the generality of clause 10.2, the Seller shall, in relation to any Customer Personal Data processed by it in connection with the performance by the Seller of its obligations under this Maintenance Agreement:

10.4.1 process that Customer Personal Data only on the written instructions of the Customer unless the Seller is required by Applicable Law to process Customer Personal Data otherwise than in accordance with the Customer's written instructions. Where the Seller is relying on Applicable Law as the basis for processing Customer Personal Data, the Seller shall promptly notify the Customer of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits the Seller from so notifying the Customer;

10.4.2 immediately inform the Customer if the Seller becomes aware of a written instruction given by the Customer under clause 0 that, in the Seller's opinion, infringes Data Protection Legislation and the Seller shall be entitled to suspend the Maintenance Services (or at the Seller's discretion just the part of the Maintenance Services which are impacted by the infringement) until such time as the parties have agreed appropriate amended instructions which are not infringing;

10.4.3 ensure that it has in place appropriate technical and organisational measures: a) to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it); and b) in so far as possible and taking into account the nature of the processing, to assist the Customer in the fulfilment of the Customer's obligations to respond to any request from a Data Subject relating to Customer Personal Data;

10.4.4 ensure that all personnel who process Customer Personal Data are obliged to keep the Customer Personal Data confidential except where disclosure is required in accordance with Applicable Law;

10.4.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities;

10.4.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination or expiry of this Maintenance Agreement unless required by Applicable Law to store the Customer Personal Data; and

10.4.7 maintain and on request provide to the Customer information to demonstrate its compliance with this clause 10 and allow for audits by the Customer or the Customer's designated auditor subject to the Customer; giving the Seller reasonable prior notice of such information requests or audits; keeping all information obtained or generated thereby strictly confidential (save for disclosure required by Applicable Law); and ensuring that such audit or inspection is undertaken during normal business hours and with minimal disruption to the Seller's business.

10.5 The Customer consents to the Seller appointing the following as third-party processors of Customer Personal Data under this Maintenance Agreement:

Name or categories of sub-processor	What sub-processing do they do
NIX Communications Group Limited	All Customer information required for the provision of the Maintenance Services.
Unify	All Customer information required for delivery of the Equipment.
Oak	All Customer information required for the management of encrypted call files.
Gamma	All Customer information required for the provision of Equipment and management of the Maintenance Services.
Sage & Union Street	Secure storage of Customer bank details for invoicing and payment.

10.6 The Seller confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 10. As between the Customer and the Seller, the Seller shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 10.

10.7 This clause sets out the nature and purpose of processing by the Seller, the duration of the processing by the Seller, the types of Personal Data and the categories of Data Subject:

10.7.1 **Purpose of processing:** For the purpose of the supply by the Seller of the Maintenance Services to the Customer in accordance with this Maintenance Agreement.

10.7.2 **Nature of processing:** Use of data in order to contact and liaise with the Customer and for the supply of the Equipment and Maintenance Services.

10.7.3 **Duration of processing:** The term of this Maintenance Agreement.

10.7.4 **Types of Personal Data:** Full names, email addresses, emails and contact telephone numbers of employees and directors of the Customer.

10.7.5 **Categories of Data Subject:** Data in relation to employees of the Customer.

10.8 The Seller records and monitors all calls received and made by it and will be the Data Controller in respect of any Personal Data collected as a result. Please see the Seller's privacy notice at <https://www.nixcommunications.co.uk/privacy-policy/> for details of how the Seller will use Personal Data collected from such calls.

**11 TERMINATION**

11.1 In addition to the provisions of clause 2.2, this Maintenance Agreement can be terminated:

a) by the Customer during the Minimum 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 Minimum Term after the date of termination; or

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

11.2 A notice given to a party under this Clause 11 shall be:

11.2.1 sent to the party for the attention of the Managing Director at the address specified overleaf; and

11.2.2 sent by recorded delivery.

11.3 In the event this Maintenance Agreement is terminated prior to the expiry of the Minimum Term due to any act or omission of the Customer, the Customer shall on demand, in addition to its payment obligations under clause 11.1(a), reimburse to the Seller the Previously Paid Termination Charges.

**12 GENERAL**

12.1 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.

12.2 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.

12.3 The annual charge detailed within this Maintenance Agreement is subject to annual review. Increases will be 5% year on year.

12.4 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.

12.5 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.

12.6 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.

12.7 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.

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

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