

SYSTEM MAINTENANCE AGREEMENT TERMS AND CONDITIONS

1.	INTERPRETATION		
1.1	In these Conditions	7.4	Subject to condition 7.3 above, the Supplier 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 Supplier had been advised of the possibility of the Customer incurring the same.
	Supplier: means 4com Limited, of 2 Watt Road, Churchfields, Salisbury, Wiltshire SP2 7UD. Registered in England Number 3601393		
	Group: In relation to the Supplier means 4com Ltd, any company of which 4com Ltd is a subsidiary (its holding company) and any other Subsidiaries of any such holding Company.		
	Subsidiary: In relation to a company wherever incorporated (a holding company) means a "subsidiary" as defined in section 1159 of the Companies Act 2006 and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company.	7.5	To the extent the law does not permit such liability to be excluded and save as otherwise expressly provided, the Supplier's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to £200,000.
	Customer: means the person named overleaf;		
	Equipment: means the equipment detailed overleaf and all internal cabling up to the network test termination point or other demarcation point;		
	Commencement Date: means the date specified overleaf as the commencement date;		
	Agreement Term: means, subject to Clause 9 below and earlier termination in accordance with Clause 10, a period of 7 years from the Commencement Date;		
	Maintenance Services: means the fault rectification service described in clause 4 below.		
2.	SUPPLIER'S UNDERTAKING		
2.1	In consideration of the payment by the Customer of the annual service charge in accordance with the terms of clause 3 the Supplier undertakes to provide the Maintenance Services in respect of the Equipment upon the terms and conditions of this Maintenance Agreement.		
3.	MAINTENANCE CHARGES		
3.1	The annual service charge for the Maintenance Service is payable annually in advance. Payment for services provided to the Customer in addition to the Maintenance Services is due on presentation of an invoice by the Supplier.		
3.2	The Supplier reserves the right to submit invoices to the Customer via e mail.		
3.3	Where payment is outstanding for more than 30 days in respect of any invoice due under this Maintenance Agreement the Supplier may suspend its obligations under this Maintenance Agreement until payment of the overdue amount is made.		
3.4	The Supplier may charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 2 per cent per month (or part of a month) until payment in full is made.		
4.	MAINTENANCE SERVICES		
4.1	Maintenance Services shall comprise		
4.1.1	Upon receipt of a request from a Customer the inspection testing and diagnosing (by attendance on site or remotely) by the Supplier or any fault reporting in an item of Equipment; and		
4.1.2	The carrying out by the Supplier of such repairs replacement of parts or adjustment as the Supplier shall deem necessary to remedy the said fault.		
4.2	Maintenance services will be carried out by duly qualified engineers.		
5.	TIMES FOR MAINTENANCE SERVICES		
5.1	Unless prevented by circumstances beyond the Supplier's control, the Supplier will rectify faults during the following hours as based on the agreed level of service detailed overleaf:		
5.1.1	LEVEL 1: Between the hours of 9.00am and 5.00pm Mondays to Fridays excluding weekends and public holidays		
5.1.2	LEVEL 2: Between the hours of 9.00am and 5.00pm Mondays to Fridays including weekends and public holidays		
5.1.3	LEVEL 3: 24 hours a day including weekends and public holidays		
5.2	The Supplier will use its reasonable endeavours to ensure that response times to the Customers notification of a fault are not more than:	10.2	This Maintenance Agreement shall be automatically extended for a further period of 12 months after the end of the Agreement Term unless the Supplier serves notice to terminate this Maintenance Agreement, such notice to be served at least 90 days before the end of the Agreement Term.
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.	10.3	A notice given to a party under this Clause 10 shall be:
6.	EXCLUSIONS		
6.1	The Supplier shall have no obligations or liability whatsoever under this Maintenance Agreement:		
6.1.1	in respect of any defect arising from wilful damage, negligence (including improper storage), abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration or repair of the Equipment without the Supplier's approval;	11	GENERAL
6.1.2	if any sum owing by the Customer to the Supplier has not been paid;	11.1	The terms of this Maintenance Agreement including the details overleaf, represent the entire agreement between the parties in relation to the maintenance of the Equipment and no variation shall be binding unless signed by the director of the Supplier.
6.1.3	if loss is suffered by the Customer because the Equipment fails to perform to its specifications and the failure is caused by faults in the service provided by the network provider;	11.2	The terms of this Maintenance Agreement may be varied by the Supplier if the Supplier deems such variation to be necessary to comply with any statute, regulation or British Standards Institute requirement.
6.1.4	in respect of any delay in the execution of any repair;	11.3	The annual charge payable under this Maintenance Agreement shall be reviewed annually and may be increased by not more than the rate of inflation determined in accordance with the Retail Prices Index.
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.	11.4	The Supplier reserves the right to make a charge in accordance with its current rates if it is erroneously notified of an Equipment fault on more than two occasions in any calendar month.
6.1.6	in respect of any defect arising due to circumstances beyond the Suppliers reasonable control including (without limitation) flood, fire, lightning, war, sabotage, civil disturbance or governmental action, import regulations or embargoes.	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.
7.	LIMITATION OF LIABILITY	11.6	No delay or failure by the Supplier in enforcing any provision of this Maintenance Agreement shall constitute a waiver of that provision or any other provision. No waiver by the Supplier 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 Supplier shall be effective unless in writing.
7.1	Save as otherwise expressly provided in this Maintenance Agreement, the following provisions set out the Supplier's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer in respect of:	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.
7.1.1	any breach of the Supplier's contractual obligations arising under the Maintenance Agreement; and	11.8	The Supplier may assign its rights and obligations. The Customer may not assign its rights and obligations
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.	11.9	The Supplier may change the Terms of this Maintenance Agreement (including the charges) at any time. The Supplier will publish details of such changes on line on the Supplier's website www.4com.co.uk at least two weeks before the change is to take effect.
	AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE FOLLOWING PROVISIONS OF THIS CLAUSE 7	11.10	This Maintenance Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
7.2	Any act or omission on the part of the Supplier 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 Supplier's liability to the Customer for death or injury resulting from its own or that of its employees', agents' or sub-contractors' negligence shall not be limited.		