

1. INTERPRETATION

- 1.1 In these Terms:
Act: means the Telecommunications Act 1984.
Business Days: a day other than a Saturday, Sunday or public holiday in England when banks in London are open.
Connection Date: the date the Service is connected to enable billing to commence.
Contract: means the contract for the provision of the Service incorporating these Terms.
Customer: means the person named in the Network Service Agreement for whom the Supplier has agreed to provide the Service in accordance with these Terms.
Equipment: means the equipment detailed in the Order Form and which has either been purchased by the Customer or leased by the Customer from the Supplier.
Group: in relation to the Supplier, means 4Com plc, and any company of which 4Com plc is a Subsidiary (its holding company) and any other Subsidiaries of any such holding company.
Input Material: means any documents and other materials and all necessary data and other information provided by the Customer relating to the Service.
Minimum Term: means the minimum contract period applying to each of the Services as specified in the Network Services Agreement.
Network Service Agreement: means the Network Service Agreement overleaf.
Provisioning Work: the placing of the necessary orders to transfer the Service to the Supplier from the Customer's existing service provider.
Service: the telecommunications service detailed in the Network Service Agreement to be provided to the Customer's telephone lines and/or SIP services by the Supplier to route or carry network traffic calls and data traffic.
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 a holding company.
Supplier: the 4Com entity shown on the Network Services Agreement being a company registered in England and Wales with company number 06472696 and whose registered office is at Loewy House, 11 Enterprise Way, Aviation Park West, Christchurch, Dorset BH23 6EW.
Supplier's Website: www.4com.co.uk.

Terms: means these terms and conditions.
 1.2 Any reference to any legislative provision is a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 Headings are for convenience only and do not affect interpretation.

2. SUPPLY OF THE SERVICE

2.1 The Service will commence on the Connection Date and shall continue, unless terminated earlier in accordance with condition 7, for the Minimum Term. The term of the Contract shall automatically extend for 12 months (**Extended Term**) at the end of the Minimum Term and at the end of each Extended Term, unless a party gives written notice to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate the Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.

2.2 Pending the Connection Date the Supplier will undertake the Provisioning Work.

2.3 The Supplier will provide the Service subject to these Terms. It is a condition of Service provision that the Customer has a broadband connection with the Supplier (or otherwise approved by the Supplier) and enters into a maintenance agreement with the Supplier in respect of equipment and any software provided by the Supplier. The Supplier shall have no liability to the Customer if the Customer fails to comply with such conditions.

2.4 In the event the Customer decides prior to the Connection Date that it does not wish to proceed with the Service, then it must notify the Supplier in writing by recorded delivery prior to the Connection Date. The Supplier shall be entitled to charge the Customer an administrative fee for the Provisioning Work already undertaken. If the Customer wishes to terminate the Services on or after the Connection Date it can only do so in accordance with the Terms.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

2.6 The Supplier reserves the right to alter the specifications of the Service before or after the Connection Date if the Service has been superseded with a similar or improved product and/or to ensure that the Service conforms to any applicable safety or other statutory requirements.

3. PRICE OF THE SERVICE

3.1 The price of the Service shall be the relevant price at the time the Service is in use as stated in the Network Service Agreement. Calls may be subject to a connection charge and/or rounding dependent on the tariff provided.

3.2 Any applicable value added tax, import or export duties or other taxes or duties are payable by the Customer in addition.

3.3 The Supplier shall be entitled to vary the tariff stated in the Network Service Agreement from time to time by providing not less than four weeks' notice to its Customers. Such notice to be posted upon the Supplier's Website.

4. TERMS OF PAYMENT

4.1 The Supplier will invoice the Customer for sums due at monthly intervals.
 4.2 Sums due will become payable in full on the date specified by the invoice. All payments must be made by direct debit.

4.3 The Supplier shall submit invoices to the Customer via email. A relevant email address must be supplied by the Customer.

4.4 The Customer may also view its invoices on line at the Supplier's Website.

4.5 The Customer agrees to pay all charges for the Service whether the Service is used by the Customer or someone else, and upon receipt of the Supplier's invoice.

4.6 The Supplier may charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per month (or part of a month) until payment in full is made.

5. CUSTOMER OBLIGATIONS

5.1 The Customer agrees that it will:
 5.1.1 allow the Supplier, at its reasonable request, free and safe access to its premises and service connection points, access to information and assistance from the Customers employees;

5.1.2 not to in any way whatsoever, cause calls to be made which are not routed over the Supplier's preferred network, whether by the use of an auto dialler used to route calls over a different network, or by the use of a manually inputted code, or via cps, or by any other method whatsoever (save in respect of calls to exempt numbers, as notified to the Customer from time to time);
 5.1.3 ensure that only attachments approved for connection under the Telecommunications Act 1984 be connected with the Service;

5.1.4 not to use the Service or the Equipment in a manner which constitutes a violation or infringement of the rights of any other party;

5.1.5 obtain and comply with any permission, licence, consent, registration and approval necessary for the use of the Service and/or the Equipment;

5.1.6 indemnify and keep indemnified the Supplier in full against all loss (including loss of profit), liabilities, damages, claims, charges, losses and expenses incurred by the Supplier as a result of any breach of the Customer's obligations under the Contract.

6. WARRANTIES AND LIABILITIES

6.1 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

6.2 The Supplier cannot guarantee and does not warrant that the Services will be free of interruptions or will be fault-free and we will not be held liable for any loss or damages should the Services be interrupted from time to time. You accept that there may also be degradations in the quality of the Service from time to time and that we will not be liable for any loss or damages should the quality of the Service we provide be affected by such matters.

6.3 If the Customer uses the SIP service to make Emergency Calls, the location information received by the emergency services will be limited to the installation address of the Site, which may not be the location from which the call originated, and as such the Customer may be required to provide information about the Customer's location to the emergency services to allow them to respond; Emergency Calls made using the Service may fail if there is a power failure or connection failure. In the event of a power failure it is your responsibility to ensure that you have the means to make emergency calls.

6.4 The Supplier shall not be held liable for any costs associated with fraudulent calls made via the Service howsoever caused, and the Customer agrees to take all reasonable steps to ensure that this does not happen. These steps must include, but are not limited to, ensuring that all available security measures are installed/employed within their telephone systems. Non-compliance may result in exclusion of any Anti-Fraud protection offered by the Supplier.

7. TERMINATION

7.1 This Contract may be terminated:
 7.1.1 notwithstanding condition 2.1 and subject to condition 7.3, by the Customer giving at least 90 days written notice to the Supplier to coincide with the completion of the Minimum Term, or any subsequent Extended Term (as the case may be) expiring on an anniversary of the Connection Date; or

7.1.2 by the Supplier with immediate effect if:

(a) the Customer is in breach of any provision of this Contract or any other contract that the Customer has in place with the Supplier or any third party funder of goods or services provided by the Supplier and does not rectify the breach within 14 days of the Supplier's notice of such breach;

(b) there is a change of control of the Customer (with the meaning of section 1124 of the Corporation Taxes Act 2010);

(c) the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a limited company) goes into liquidation; or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or the Customer ceases, or threatens to cease, to carry on business; or the Supplier reasonably apprehends that any of these events is about to occur in relation to the Customer and notifies the Customer accordingly; or
 (d) if the Customer fails to enter into and/or maintain a valid contract with the Supplier for broadband services, line rental and maintenance services.

7.2 On termination of the Contract for any reason:

7.2.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Service supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

7.2.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

7.2.3 conditions which expressly or by implication have effect after termination shall continue in full force and effect.

7.3 Notwithstanding condition 7.2 in the event of termination of the Contract:

7.3.1 by the Customer pursuant to condition 7.1.1 the Customer shall immediately pay the charges in respect of the remainder of the Minimum Term or the Extended Term (as the case may be); or

7.3.2 by the Supplier pursuant to condition 7.1.2 the Customer shall immediately pay such proportion of the charges in respect of the remainder of the Minimum Term or the Extended Term (as the case may be) after the date of termination as the Supplier calculates (acting reasonably) represents a genuine estimate of the loss suffered as a result of the breach. Such amount shall never exceed the amount equal to the charges for the remainder of the Minimum Term or the Extended Term (as the case may be).

7.4 The Customer hereby agrees to repay in full, any termination charges paid by the Supplier on behalf of the Customer to a previous Supplier, should the Customer wish to end this Contract at any time prior to the Minimum Term.

7.5 If the Customer has been allocated a Non-Geographic Number by the Supplier providing inbound call revenue, the Supplier shall in its own discretion upon termination of this Contract rescind all inbound revenues payable to the Customer.

7.6 You accept that you do not own the number(s) provided to you and that this agreement is personal to you. Therefore you have no right to sell or to agree to transfer the number(s) provided to you for use with the Services and you must not try to do so.

7.7 You do have the right to request to migrate numbers to another provider subject to your contractual obligations contained within this agreement being met, and also subject to you paying an administration charge of £99 per number that you wish to be migrated to another provider.

8. SUSPENSION

8.1 The Service may be suspended by the Supplier without notice and without prejudice to the Supplier's rights under condition 7 in the event any of the events set out at 7.1.2 apply.

8.2 If the Service is suspended or limited, the Supplier will tell the Customer what needs to be done before they can be reinstated. However the Customer must continue to pay all charges relating to the Services whilst the Contract continues. The Customer acknowledges that if part of the Service is suspended or limited in accordance with this condition 8 this is likely to affect the availability of the remaining element of the Service and the Supplier shall have no liability in this respect.

9. FORCE MAJEURE

9.1 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of an event beyond the reasonable control of the Supplier, including but not limited to failures or surges of electrical power, damage to property by third parties, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of the Supplier or subcontractors (Force Majeure Event).

10. GENERAL

10.1 Assignment and other dealings.

10.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

10.1.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

10.2 Notices.

10.2.1 Any notice or other communication given to the Supplier by the Customer under or in connection with the Contract shall be in writing, addressed to its registered office or such other address as the Supplier may have specified to the Customer in writing in accordance with condition 10.2.2, and shall be delivered by recorded delivery.

10.2.2 Any notice or other communication given to the Customer by the Supplier shall be given by any of the following methods (at the Supplier's discretion):

- (a) in writing, addressed to the Customer's registered office (if it is a Company) or its principal place of business (in any other case) or such other address as the Customer may have specified to the Supplier in writing in accordance with clause 10.2.1;
 (b) by facsimile to the relevant fax number as the Customer may have notified to the Supplier; or
 (c) by email to the relevant email address as the Customer may have notified to the Supplier.

10.2.3 A notice or other communication shall be deemed to have been received if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier or recorded delivery on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email by the Supplier, one Business Day after transmission.

10.2.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

10.2.5 Subject to condition 10.2.1 and 10.2.2, both the Supplier and the Customer can sign notices or other communications via electronic signatures. The Customer shall comply with any direct debit e-signature instructions provided to it by the Supplier from time to time.

10.3 Severance.

10.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

10.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

10.4 Waiver.

10.4.1 A waiver of any right under the Contract or law is only effective if it is in writing (and in the case of the Supplier signed by an officer of the Supplier) and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

10.5 No partnership or agency.

10.6 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

10.7 Data Protection.

10.7.1 The Customer and the Supplier will comply with their respective obligations under the Data Protection Act 1998 (DPA). Where one party transfers personal data (as defined in the DPA) to another for processing, the receiving party will process that data only for the period and to the extent necessary for the performance of the Contract; will take measures to keep it secure; and, where it transfers personal data outside the European Economic Area or to any subcontractor to ensure that it is adequately protected.

10.8 Third parties.

10.8.1 The Supplier may exercise any of its rights or fulfil any of its obligations hereunder through any company in its Group. Other than a company in the Supplier's Group, a person who is not a party to the Contract shall not have any rights to enforce its terms.

10.9 Variation.

10.9.1 Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier. Notwithstanding this the Supplier may change these Terms (including the charges) at any time. The Supplier will publish details of such changes on-line on the Supplier's Website at least two weeks before the change is to take effect.

10.10 Resolving Disputes.

10.10.1 The Supplier will try to resolve any disputes with the Customer. However, if the parties cannot agree, the Customer may refer the dispute to any recognised dispute resolution service. Details of these and how to refer a dispute are set out within the Supplier's Website.

10.11 Governing law.

10.11.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

10.12 Jurisdiction.

10.12.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).