NETWORK AGREEMENT - SHORT FORM TERMS - INCORPORATING FIXED LINE/SIP SERVICES

V2.12

Full Terms and Conditions can be viewed on the 4Com website at www.4com.co.uk/terms-and-conditions

1. INTERPRETATION

1.1 In these Terms:

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.

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.

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 relating to the Service.

Service: the telecommunications service detailed in the Network Service Agreement to be provided to the Customer, including telephone lines, broadband, and or SIP services to route or carry calls, and or 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.

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.

Terms: means these terms and conditions.

1.2 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.

2.2 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.

2.3 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.

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, (or as otherwise agreed), and calculated using the details recorded by the Supplier.

3.2 An introductory twenty-five percent discount will be applied to all SIP trunk rentals for the first twelve months only, following which, rentals will revert to 4Com's standard pricing.

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

3.4 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 provided.

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 If call traffic falls significantly below the norm for 30 days or more, the Supplier reserves the right to invoice the shortfall and or raise termination charges based upon the average of the last 3 full billing months.

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 The Supplier shall under no circumstances whatsoever be liable to the Customer whether in contract tort (including negligence), breach of statutory duty, or otherwise, for:

6.4 indirect or consequential loss, loss of profits, business revenue, goodwill or any economic loss arising under or in connection with the Contract; or,

6.5 any claim arising as a result of the default of the network provider or any other third party or faults in the service provided by the network provider or any other third party;

6.6 any claim in circumstances where any sum owing by the Customer to the Supplier has not been paid;

6.7 the imposition of legal or regulatory restrictions which prevent the Supplier from supplying the Service;

6.8 any unavailability of the Service or reduced performance as a result of (i) the suspension of the Service in accordance with these Terms or (ii) the lawful termination, suspension or limitation of any other services that the Supplier provides to the Customer.

6.9 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 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 (within 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

7.2 On termination of the Contract for any reason:

7.2.1 the Customer shall immediately pay to the Supplier all the Supplier's outstanding unpaid invoices in respect of the Services supplied but for which no invoice has been submitted.

7.2.2 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). The charges will be calculated based upon an average of the last 3 full month's billing, multiplied by the number of months remaining within the agreement term, which the Customer agrees represent 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).

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

7.4 If the Supplier provides Non-Geographic number services to the Customer providing inbound call revenues, the Supplier shall withdraw all inbound revenues payable to the Customer upon Termination of this Agreement. The Supplier may in turn, levy a standard monthly rental for the Non-Geographic Number concerned.

7.5 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.

7.6 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 Contact 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. MANAGING THE SERVICE

10.1 If the Customer reports a fault in the Service, the Supplier will respond in line with the level of repair service the Customer has chosen pursuant to the maintenance agreement that the Customer has in place with the Supplier.

10.2 If the Customer reports a fault and the Supplier finds that there is none, or that the Customer has caused the fault, the Supplier may charge the Customer for any work undertaken to discern the reported fault.

11. MONITORING CALLS

The Supplier monitors and records calls relating to customer services and telemarketing. The Supplier does this for training purposes and to improve the quality of its customer services.

12. ACCESS TO AND PREPARING THE PREMISES

12.1 The Customer agrees to prepare the Premises according to any instructions either the Supplier or Openreach may give, and provide Openreach with reasonable access to the Premises.

12.2 When Openreach work is completed, the Customer will also be responsible for putting items back and for any re-decorating.

12.3 If the Supplier or Openreach need to cross other people's land, or put Openreach equipment on their property, (for example a neighbour or landlord), the Customer agrees to obtain their permission.

12.4 The Supplier and Openreach will meet the Customer's reasonable safety and security requirements when on the Premises and the Customer agrees to do the same for the Supplier and Openreach.

12.5 The Customer agrees to provide, at its expense, a suitable place and conditions for the Supplier's Equipment and where required a continuous mains electricity supply and connection points.

12.6 The Customer agrees to look after any equipment owned by Openreach and to pay for any repair or replacement needed if it is damaged, unless it is due to fair wear and tear, or is caused by Openreach or anyone acting on behalf of Openreach.

13. SUSPENSION

13.1 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 condition 10.1.2 apply.

13.2 If the Service is suspended, the Supplier will tell the Customer what needs to be done before it can be re-instated. However the Customer must continue to pay rental charges whilst this Contract continues.

13.3 The Customer acknowledges that if part of the Service is suspended or limited in accordance with this condition 13 this is likely to affect the availability of the remaining element of the Service and the Supplier shall have no liability in this respect.

14. LIMITS OF LIABILITY

14.1 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.

15. THE SUPPLIERS GUARANTEE

15.1 The Supplier guarantees:

15.1.1 to provide the Service by the date agreed with the Customer as described in condition 2.2;

15.1.2 not to disconnect the Service by mistake.

15.1.3 to set into place a repair to a Service Failure in line with the repair service the Customer has chosen. For standard service this means by midnight on the first weekday (not including public and bank holidays) after the day the fault is reported to The Supplier.

15.1.4 to keep any appointment the Supplier makes with the Customer under this Contract.

16. CALL DIVERSION

16.1 If the Supplier diverts the Customer's calls to another terminating number at the Customer's request (UK Geographic or UK Mobile), the person calling the Customer will not have to pay any additional costs for making that call, however the charges for the diverted part of the Call will be billed to the Customer.

17. GENERAL

17.1 Assignment and other dealings.

17.1.1 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.

17.1.2 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.

17.2 Notices. 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 7.1.1, and shall be delivered by recorded delivery.

17.2.1 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 7.1.2;

(b) by facsimile to the relevant fax number as the Customer may have notified to the Supplier;

(c) by email to the relevant email address as the Customer may have notified to the Supplier.

17.2.2 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.

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

17.2.4 Subject to condition 7.1.1 and 7.1.2, 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.

17.3 Severance. 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.

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.

17.4 Waiver. 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.

17.5 No partnership or agency. 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 the other party in any way.

17.6 Data Protection. 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 of 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.

17.7 Third Parties 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.

17.8 Variation. 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.

17.9 Resolving Disputes. 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.

17.10 Governing law. 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.

17.11 Jurisdiction. 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).