

1. DEFINITIONS	
1.1	In these Terms:
1.1.1	Commencement Date: means the application date of these Terms, being 30 days after the date of notice to the Customer of the same.
	Equipment: means the Equipment detailed in the Order Form and all internal cabling up to the network test termination point or other demarcation point.
	Fair Usage Policy: means the Supplier's fair usage policy as set out on the Supplier's website.
	Group: In relation to the Supplier, any company of it is a Subsidiary (its holding company) and any other Subsidiaries of any such holding company.
	Introductory Offer: means any incentive, rebate or discount provided by the Supplier at point of sale.
	Minimum Term: means the minimum contract period applied to the Services as specified in your Contract.
	Service: means the Support Services detailed in these Terms and the Contract, and any documents attached to or referred to in them, to be provided to the Customer.
	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 company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such a holding company.
	Supplier: means 4Com Network Services Limited, a company registered in England and Wales with company number 06472696 and whose registered office is at One Lansdowne Plaza, 24 Christchurch Road, Bournemouth BH1 3NE.
	Suppliers Website: means www.4com.co.uk
	Terms: means these terms and conditions.
	Third Party Licences: means any open-source software licences relating to the Software, including the general public licence (if applicable), and any proprietary third-party software licences.
	Working Day: means and day apart from Saturday, Sunday, or any public holidays in England.
	Working Hours: means the hours between 9:00am and 5:00pm on any Working Day.
	Headings are for convenience only and do not affect interpretation.
2.	SUPPLY OF SUPPORT SERVICES
2.1	In consideration of the payment by the Customer of the applicable service charge, either monthly, or Pay As You Go (PAYG) as set out in the Order and in accordance with condition [6], the Supplier undertakes to provide the Support Services in accordance with these Terms.
2.2	The monthly Support Services will commence on the Commencement Date and shall continue, unless terminated by the customer by giving not less than 30 days' notice to the Supplier.
2.3	For the avoidance of doubt, expiry or termination of the Support Service shall not affect the continued provision of the remainder of the Services.
2.4	The Support Services, which are described in clauses [2 to 6] (inclusive) of these Terms, DO NOT include the support of any PSTN / Analogue element of the Service, which are provided via BT, in line with the level of support chosen, details of which are set out on the Supplier's website.
3.	SUPPORT SERVICES
3.1	The Support Services shall further comprise:
3.1.1	a telephone helpdesk to provide first line fault support;
3.1.2	remote diagnosis and where possible, correction of faults using software management software; and
3.1.3	second line on-site technical support.
3.2	Contact details for the Support Services are available on the Supplier's Website.
3.3	The standard Support Services are provided during Working Hours only. However, if the Customer requires the provision of remote Support Services outside of Working Hours (which it shall request via the dedicated out-of- hours support telephone number on the Supplier's Website) such support may be provided by the Supplier at its discretion, at its then standard rates, (as varied from time to time) and subject to agreement with the Customer.
3.4	On-site support outside of Working Hours is not included in the standard Support Service. If additional on-site support is required outside of Working Hours it may be provided by the Supplier at its discretion, at its then standard rates, (as varied from time to time) and subject to agreement with the Customer.
3.5	The Supplier may from time to time provide Support Releases or updated versions of the Software.
3.6	Where a Non-Critical Fault is reported in a forthcoming Support Release, then for a reasonable period before the issue of such Support Release, the Supplier may decline to provide assistance in respect of that Non-Critical Fault.
4.	RESPONSE TIMES FOR SUPPORT SERVICES
4.1	Unless prevented by circumstances beyond the Supplier's control, the Supplier will use its reasonable endeavours to respond to the Customer's notification of a fault and commence remote work on fixing the same within:
4.1.1	8 Working Hours if the Equipment has failed completely; or
4.1.2	16 Working Hours if the Equipment has failed partially.
4.2	Response times shall commence from the date and time the Supplier receives a request from the Customer, provided the request is received within Working Hours (and if it is not, the request will be deemed to have been received when Working Hours commence at the start of the next Working Day).
5.	EXCLUSIONS FROM SUPPORT SERVICES
5.1	The Supplier is not obliged to provide the Support Services where faults arise from the following (but it may do so at its discretion, at its then standard rates, (as varied from time to time), and subject to agreement with the Customer):
(a)	misuse, incorrect use of or damage to the Software, Services or Equipment from whatever cause (other than an act or omission by the Supplier), including failure or fluctuation of electrical power;
(b)	failure to maintain the necessary environmental conditions for use of the Software, Services or Equipment;
(c)	use of the Software in combination with any equipment or software not provided by the Supplier or approved by the Supplier or any fault in any such equipment or software;
(d)	relocation of the Software Services or Equipment by any person other than the Supplier or a person acting under the Supplier's instructions;
(e)	any breach of the Customer's obligations under the Contract however arising or having the software maintained by a third party.
6.	CHARGES FOR SUPPORT SERVICES
6.1	The charges for the Support Services are payable in advance at the intervals described in the Contract unless PAYG options are exercised, in which case the support provided will be invoiced within the following monthly invoice. In either event payment is due on presentation of an invoice by the Supplier and must be made by direct debit.
6.1.1	Charges for Support Services can be found on the Supplier's website @ www.4com.co.uk
6.2	A late payment fee will be added to future invoices in the instance that a direct debit has failed or been cancelled by the Customer.
6.3	Should the Services be suspended due to non-payment a charge may be applied to reinstate the Services (details of charges can be found at www.4com.co.uk)
6.4	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.
6.5	The Supplier reserves the right on not less than one month's notice to increase the charges for Support Services on an annual basis with effect from April of each year in line with the percentage increase in the Retail Prices Index in the preceding 12-month period, for which figures have been made available by the Office for National Statistics (or since the last such price increase, if longer).
7.	LIMITATION OF LIABILITY
7.1	Neither party excludes or limits its liability to the other for:
(a)	death or personal injury resulting from its negligence;
(b)	fraud or fraudulent misrepresentation.
(c)	breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.
7.2	Subject to condition [7.1], 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:
7.2.1	any indirect, special or consequential loss; or
7.2.2	any of the following categories of loss:
(a)	loss of profits;
(b)	loss of sales or business;
(c)	loss of opportunity, agreements or contracts;
(d)	loss of or damage to goodwill;
(e)	loss of or damage to data.
7.2.3	any claim made against the Customer by a third party that does not follow a breach of these Terms by the Supplier;
7.2.4	any loss or damage to the Customer caused by or arising from any act or omission of the Customer, the network provider, any public telephone operator, any other direct or indirect supplier to the Customer, or any other third party;
7.2.5	the imposition of legal or regulatory restrictions which prevent the Supplier from supplying the Services (including Support Services) or any Additional Services (or any part thereof).
7.3	Subject to conditions [7.1 & 7.2], the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the lesser of:
(a)	the aggregate of all charges payable or paid by the Customer for the Services supplied (or to be supplied) in the 12 month period beginning on the Commencement Date or its anniversary in which the event giving rise to the claim occurs; or
(b)	£200,000
7.4	The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
7.5	This condition [7] shall survive termination of the Contract.
7.6	The Customer shall fully indemnify the Supplier in respect of loss or damage to the Supplier's property or death of any of the Supplier's employees caused by the negligence or wilful misconduct of the Customer.
7.7	Subject to conditions [7.1 & 7.2], the Supplier shall under no circumstances whatsoever be liable to the Customer whether in contract, tort (including negligence), breach of statutory duty, or otherwise;
7.7.1	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;
7.7.2	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;
7.7.3	in respect of any delay in the execution of any repair;
7.7.4	in respect of remedying defects in electricity or network supply to the Equipment, defects caused by failures or surges of electrical power, or failure of the Equipment due to changes in the electrical supply service or the public network.
7.8	Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
8.	THE CUSTOMERS OBLIGATIONS
8.1	The Customer agrees that it will:
8.1.1	pay the Supplier all amounts due under the Contract at the due times;
8.1.2	ensure that the Equipment is not, without prior approval from the Supplier moved at any time from the address at which it was originally installed, or altered, adjusted or interfered with in any way except by the Supplier's servants or agents.
8.1.3	Alterations include the reprogramming of the Equipment to change network providers for the purpose of least cost routing, provide the Supplier with full access to the Equipment and Software during the hours of the agreed service level to enable Support Services to be carried out;
8.1.4	pay the Supplier's charges for reprogramming the Equipment required as a result of an error by any person other than the Supplier's servants or agents;
8.1.5	not alter or extend the Equipment without prior consent of the Supplier (an additional charge may, at the Supplier's sole discretion be made for the repair/replacement of altered Equipment);
8.1.6	provide the Supplier 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
9.1	If at any time throughout the term of the Contract the Supplier agrees to provide the Customer with any additional equipment ("additional equipment") and or Services, then:
9.1.1	such additional equipment, Services and associated software will form part of the Equipment and Software for the purposes of this Contract; and
9.1.2	the service charge for the Support Services shall be increased by a monthly amount equal to the agreed service charge 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, unless PAYG Options have been exercised.
10.	FORCE MAJEURE
10.1	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
10.2	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 subcontractors (Force Majeure Event).
	If the Force Majeure Event prevents the Supplier from providing any of the Service for more than 4 weeks, either party shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the other party.
	DATA PROTECTION
	For the purpose of this clause (11):
11.1	Data Protection Laws means all applicable data protection and privacy legislation from time to time in force to which a party is subject, including the Data Protection Act 2018 and UK GDPR (as defined in the Data Protection Act 2018).
11.1.1	Personal Data, Personal Data Breach, Data Subject, Data Controller, Data Processor and processing have the meanings given to them in applicable Data Protection Laws (and related expressions including process and processed shall be construed accordingly.
11.2	The Customer and the Supplier will comply with their respective obligations under Data Protection laws. This clause [11] is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Data Protection Laws.
11.3	Except where clause [11.4] applies, the Supplier shall be the Data Controller for any Personal Data it receives pursuant to the Contract. Further information about how the Supplier collects, shares, processes and protects Personal Data can be found in the Supplier's current Privacy Policy, which can be found at www.4com.co.uk Where the Customer provides the Supplier with Personal Data about any other individuals, it will provide them with details of the Supplier's current Privacy Policy.
11.4	In respect of Personal Data received by the Supplier which is contained within call recordings made or stored on behalf of the Customer (the Customer Personal Data) under the Contract, the Supplier will be the Data Processor and the Customer will be the Data Controller, and the following provisions of this clause [11.4] will apply.
11.4.1	Without prejudice to the generality of clause [11] 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 Supplier for the duration and purposes detailed in the Contract.
11.4.2	Without prejudice to the generality of clause [11] the Supplier will, in relation to any Customer Personal Data processed by it under the Contract:
(a)	Process that Customer Personal Data only on the written instruction of the Customer, unless the Supplier is required by applicable law to process Customer Personal Data otherwise than in accordance with the Customer's written instructions. Where the Supplier is relying on applicable law as the basis for processing Customer Personal Data, the Supplier will notify the Customer of this before performing the processing unless the applicable law prohibits such notification on important grounds of public interest.
(b)	Promptly inform the Customer if the Supplier believes any instruction given by the Customer is likely to infringe Data Protection Laws, and the Supplier will be entitled to suspend the relevant Services and/or Additional Services until the parties have agreed appropriate amended instructions which are not infringing.
(c)	Ensure that it has in place appropriate technical and organisational measures to protect the Customer Personal Data against unauthorised or unlawful processing, loss, destruction or damage appropriate to the risk having regard to the state of technological development and the cost of implementing any measures.
(d)	Ensure that all personnel who process Personal Customer Data are obliged to keep the Customer Personal Data confidential except where disclosure is required in accordance with applicable law.
(e)	Notify the Customer without undue delay on becoming aware of a Personal Data Breach involving Customer Personal Data.
(f)	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 Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities.
(g)	At the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination or expiry of the applicable Services and/or Additional Services unless required by applicable law to store the Customer Personal Data.
(h)	On request provide to the Customer information to demonstrate its compliance with this clause 16 and allow for and/or contribute to reasonable audits by the Customer (or its auditor) subject to the Customer; giving the Supplier 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 Supplier's business.
11.4.3	The Customer hereby provides its prior, general authorisation for the Supplier to appoint processors to process the Customer Personal Data provided the Supplier ensures that the terms of such appointments comply with Data Protection laws and are consistent with this clause [23]. The Supplier will inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Data Protection Law, the Customer will indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
11.4.4	The Customer hereby provides its prior, general authorisation for the Supplier to transfer Customer Personal Data outside of the UK provided that the Supplier will ensure that all such transfers are effected in accordance with Data Protection Laws. For these purposes, the Customer will promptly comply with any reasonable request of the Supplier, including any request to enter into relevant personal data protection clauses.
11.4.5	Particulars of the processing:
(a)	Purpose of processing: (The provision of call recording functionality and storage in accordance with the Contract).
(b)	Nature of processing: (The collection, organisations, and hosting of call recordings).
(c)	Duration of processing: (The duration of call recording collection and storage requested by the Customer under the Contract).
(d)	Types of Personal Data: (Names, home addresses, email addresses, contact telephone numbers and any other Personal Data revealed by a data subject in a call recording).
(e)	Categories of Data Subject: (Personnel, customers, potential customer, suppliers and potential suppliers of the Customer and personnel of the Customer's customers, potential customers, suppliers and potential suppliers).
11.5	The Customer will indemnify the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this clause [11]
12.	GENERAL
12.1	Assignment and other dealings:
12.1.1	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, or Group Company.
12.1.2	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.
12.2	Notices:
12.2.1	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 this condition [24.2], and shall be delivered by recorded delivery.
12.2.2	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 this condition [24.2]; or
(b)	by email to the relevant email address as the Customer may have notified to the Supplier.
12.2.3	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 Working 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 email by the Supplier, one working Day after transmission.
12.2.4	The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
12.2.5	Subject to conditions 24.2.1 and 24.2.2, 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.
12.3	Severance:
12.3.1	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 or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
12.3.2	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.
12.4	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.
12.5	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, or to bind, the other party in any way.
12.6	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.
12.7	Variation: The Supplier shall provide adequate notice not shorter than one month of any contractual modifications likely to be of material detriment to the Customer. The Customer may, following receipt of any such proposed modifications likely to be of material detriment, terminate or withdraw from the Contract without penalty upon written notice to the Supplier. These Terms may be varied by the Supplier if required to comply with any amended statute, regulation, or other applicable law. Subject only to the foregoing terms of this clause [24.7], no variation of the Contract shall be effective unless it is agreed in writing and signed by the Supplier.
12.8	Complaints: Customer complaints will be dealt with in accordance with the Supplier's complaints code of practice available on the Supplier's Website.
12.9	Entire Agreement: 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.
12.10	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.
12.11	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).