

1. INTERPRETATION

- 1.1 In this Contract the following terms have the definitions shown next to them:
 - Broadband:** means ADSL/ADSL 2+ and/or FTTC/FTTP, SDSL, Leased lines or any other connection commonly accepted as Broadband.
 - Call:** means a signal, message or communication that is silent, spoken or visual.
 - Call Diversion:** means the diversion specified in condition 15.
 - 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 with whom the Supplier contracts to provide the Service.
 - Customer Equipment:** means equipment that is not part of the Supplier's network, and which the customer uses or plans to use with the Service.
 - Group:** in relation to the Supplier means 4Com plc, any company of which 4Com plc is a Subsidiary (its holding company) and any of its Subsidiaries of any such holding company.
 - Line Rental Agreement:** means the agreement overleaf.
 - Minimum Term:** means the minimum contract period applying to the Service as specified in the Line Rental Agreement.
 - Openreach:** means the company within BT Group that has responsibility for the UK access network.
 - Premises:** means the place at which the Supplier agrees to provide the Service.
 - Service:** means the facility to make or receive a Call (or both) and any related services listed that the Supplier agrees to provide to the Customer under the Contract.
 - Service Failure:** means the continuous total loss of the facility to make or receive a Call, or of any related service provided to the Customer under this Contract.
 - Subsidiary:** means 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.
 - Supplier:** means 4Com Network Services Limited a company incorporated in England and Wales with company number of 06472696 and whose registered office is at Loewy House, 11 Enterprise Way, Aviation Park West, Christchurch BH23 6EW.
 - Supplier's Equipment:** means equipment (placed by the Supplier at the Premises to supply the Service).
 - Supplier's Website:** www.4com.co.uk.
 - Terms:** means these terms and conditions.

2. PROVIDING THE SERVICE

- 2.1 The Service will commence on the Connection Date and shall continue, unless terminated earlier in accordance with condition 10, 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 The Supplier shall provide the Service to the Customer 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 Supplier's 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 but the Customer shall continue to be responsible for all charges.
- 2.3 The Customer accepts that occasionally the Supplier will provide instructions regarding the Service. The Customer must follow these instructions.
- 2.4 The Supplier may take instruction from a person who it thinks, with good reason, is acting with the Customer's permission.
3. **PHONE BOOK AND DIRECTORY ENTRIES**
 - 3.1 The Service includes a telephone number. This number will be put in the appropriate BT Phone Books, together with the Customer's details, and made available from BT's Directory Enquiries Service unless the Customer requests otherwise.
 - 3.2 The Supplier may agree to a special entry in the BT Phone Books at an additional charge.
 - 3.3 The Customer does not own any number nor has any right to sell or to agree to transfer any number provided to it by the Supplier.
4. **CHARGES AND DEPOSITS**
 - 4.1 The Customer agrees to pay all charges for the Service as shown on the front of the Line Rental Agreement, (or as otherwise agreed), and calculated using the details recorded by the Supplier.
 - 4.2 Unless condition 4.4 applies, rental charges will normally be invoiced monthly in advance, and Call charges will normally be invoiced monthly in arrears.
 - 4.3 The Supplier will send its first invoice shortly after providing the Service, and then at regular intervals, usually every month. Sometimes the Supplier may send the Customer an invoice at a different time.
 - 4.4 If the Customer orders a temporary Service, the Supplier may invoice the Customer for the rental charge in advance for the whole period of the temporary Service.
 - 4.5 The Supplier will send invoices for the Service to the address requested by the Customer. The Customer may also view its invoices on-line at the Supplier's Website.
 - 4.6 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.
 - 4.7 The Supplier reserves the right to add or amend line connection details to the Contract should additional services or any other existing service be found at point of survey and/or installation or if requested by the Customer, and the Customer agrees to pay for these additional services.
 - 4.8 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. MANAGING THE SERVICE

- 5.1 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.
- 5.2 If the Supplier agrees to work outside the hours covered by the repair service the Customer has chosen, the Customer must pay the Supplier's additional charges for doing so.
- 5.3 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.
6. **MONITORING CALLS**
 - 6.1 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.
7. **ACCESS TO AND PREPARING THE PREMISES**
 - 7.1 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.
 - 7.2 When Openreach work is completed, the Customer will also be responsible for putting items back and for any re-decorating which may be needed.
 - 7.3 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.
 - 7.4 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.
 - 7.5 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.
 - 7.6 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.
8. **CUSTOMER EQUIPMENT**
 - 8.1 If the Customer wishes to connect Customer Equipment to the Openreach network other than by using an Openreach main telephone socket, the Customer must get permission from the Supplier.
 - 8.2 Any Customer Equipment must be:
 - 8.2.1 technically compatible with the Service and not harm the Openreach network or another customer's equipment;
 - 8.2.2 connected and used in line with any relevant instructions, standards or laws.

9. MISUSING THE SERVICE

- 9.1 Nobody must use the Service to make offensive, indecent, menacing, nuisance or hoax Calls; or fraudulently or in connection with a criminal offence. The action the Supplier can take if this happens is explained in condition 10 (breach). If a claim is made against the Supplier because the Service is misused in this way, the Customer must reimburse the Supplier in respect of any sums the Supplier is obliged to pay.
10. **TERMINATION**
 - 10.1 This Contract may be terminated:
 - 10.2 notwithstanding condition 2.1 and subject to condition 7.3, by the Customer giving at least 90 days written notice to the Supplier to terminate 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
 - 10.2.1 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 (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
 - (d) if the Customer fails to enter into and/or maintain a valid contract with the Supplier for broadband services, network services and maintenance services.
 - 10.3 On termination of the Contract for any reason:
 - 10.3.1 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;
 - 10.3.2 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
 - 10.3.3 conditions which expressly or by implication have effect after termination shall continue in full force and effect.
 - 10.4 Notwithstanding condition 10.2 in the event of termination of the Contract:
 - 10.4.1 by the Customer pursuant to condition 10.1.1 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
 - 10.4.2 by the Supplier pursuant to condition 10.1.2 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).
11. **SUSPENSION**
 - 11.1 The Service may be suspended by the Supplier without notice and without prejudice to the Supplier's rights under condition 10 in the event any of the events set out at condition 10.1.2 apply.
 - 11.2 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. The Customer

- acknowledges that if part of the Service is suspended or limited in accordance with this condition 11 this is likely to affect the availability of the remaining element of the Service and the Supplier shall have no liability in this respect.
- 11.3 **LIMITS OF LIABILITY**
- 11.4 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.
- 11.4.1 The Supplier cannot guarantee and does not warrant that the Services will be free of interruptions or will be fault-free and 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 degradation to 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.
- 11.5 Subject to condition 12.2, the Supplier shall under no circumstances whatsoever be liable to the Customer whether in contract tort (including negligence), breach of statutory duty, or otherwise, for:
 - 11.5.1 indirect or consequential loss, loss of profits, business revenue, goodwill or any economic loss arising under or in connection with the Contract; or,
 - 11.5.2 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;
 - 11.5.3 any claim in circumstances where any sum owing by the Customer to the Supplier has not been paid;
 - 11.5.4 the imposition of legal or regulatory restrictions which prevent the Supplier from supplying the Service;
 - 11.5.5 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.
- 11.6 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982, to the fullest extent permitted by law, excluded from the Contract.
- 11.7 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.
- 11.8 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.
- 11.9 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.
12. **FORCE MAJEURE**
 - 12.1 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**).
13. **THE SUPPLIERS GUARANTEE**
 - 13.1 The Supplier guarantees:
 - 13.1.1 to provide the Service by the date agreed with the Customer as described in condition 2.2;
 - 13.1.2 not to disconnect the Service by mistake.
 - 13.1.3 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.
 - 13.1.4 to keep any appointment the Supplier makes with the Customer under this Contract.
 - 13.2 If the Supplier is late in providing the Service or repairing a Service Failure, the Customer may choose Call Diversion as described in condition 14. This is only available if it is reasonably practicable, as technical restrictions may sometimes prevent this option.
14. **APPLICATION OF THIS GUARANTEE**
 - 14.1.1 This guarantee applies to the Service, including generally any related services the Supplier provides to the Customer.
 - 14.1.2 This guarantee does not apply if;
 - 14.1.3 Someone other than Openreach has caused the fault;
 - 14.1.4 Openreach asks for access to the Premises and the Customer does not allow this;
 - 14.1.5 Openreach reasonably asks for help and the Customer does not provide it;
15. **CALL DIVERSION**
 - 15.1 If Call Diversion is provided to the Customer, the Supplier will divert the Customer's incoming calls to another fixed line or mobile telephone number of the Customer's choice. Once the Supplier has provided the Service or repaired a Service Failure, the Supplier will cancel the Customer's Call Diversion.
 - 15.2 The number chosen must be a UK number, but there are some number ranges to which the Supplier will not divert the Customer's calls (for example, 0800 and 0870 numbers).
 - 15.3 If the Supplier diverts the Customer's Calls to a mobile number, the person calling the Customer will not have to pay extra costs for making that Call, however the Charges for the diverted part of the Call are to be borne by the Customer.
16. **GENERAL**
 - 16.1 **Assignment and other dealings.**
 - 16.1.1 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.
 - 16.1.2 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.
 - 16.2 **Notices.**
 - 16.2.1 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 16.2.2, and shall be delivered by recorded delivery.
 - 16.2.2 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 condition 16.2.1;
 - (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.
 - 16.2.3 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.
 - 16.2.4 The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.
 - 16.2.5 Subject to condition 16.2.1 and 16.2.2, 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.
- 16.3 **Severance.**
 - 16.3.1 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 condition shall not affect the validity and enforceability of the rest of the Contract.
 - 16.3.2 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.
- 16.4 **Waiver.**
 - 16.4.1 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.
- 16.5 **No partnership or agency.**
 - 16.5.1 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.
- 16.6 **Data Protection.**
 - 16.6.1 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.
- 16.7 **Third parties.**
 - 16.7.1 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.
- 16.8 **Variation.**
 - 16.8.1 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.
- 16.9 **Resolving Disputes.**
 - 16.9.1 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.
- 16.10 **Governing law.**
 - 16.10.1 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.
- 16.11 **Jurisdiction.**
 - 16.11.1 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.