WARRANTY AGREEMENT - TERMS & CONDITIONS

V6.0

1. INTERPRETATION

1.1 In these Conditions
Supplier: means 4Com Network Services Ltd, and whose registered office is 500 Brook Drive, Reading, RG2 6UU. Registered in England Number 06472696.
Group: In relation to the Supplier means 4Com Technologies Ltd, any company of which 4Com Technologies Ltd is a subsidiary (its holding company) and any other Subsidiaries of any such holding Company.
Subsidiary: In relation to a company wherever incorporated (a holding company) means a "subsidiary" as defined in section 1159 of the Companies Act 2006 and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company.
Customer: means the person named overleaf;
Equipment: means the equipment detailed overleaf and all internal cabling up to the network test termination point or other demarcation point; Commencement Date: means the date specified overleaf as the commencement date; or in the alternative the Commencement Date will be the Confirmation of Delivery Date (which is the date the installation of the Equipment has been signed off by the Customer) Agreement Term: means, subject to Clause 9 below and earlier termination in accordance with Clause 10, a period of 7 years from the Commencement Date; On-Site Warranty Services: means the fault rectification service described in clause 4 below. Fair Usage: means, 24 or less requests for works in each annual period.

2. SUPPLIER'S UNDERTAKING

2.1 In consideration of the payment by the Customer of the annual service charge in accordance with the terms of clause 3 the Supplier undertakes to provide the On-Site Warranty Services in respect of the Equipment upon the terms and conditions of this On-Site Warranty Agreement.

3. ON-SITE WARRANTY CHARGES

3.1 The annual service charge for the On-Site Warranty Service is payable annually in advance, it is agreed that this may be 3 months in advance to allow for any annual administration to take place. Payment for services provided to the Customer in addition to the On-Site Warranty Services is due on presentation of an invoice by the Supplier.
3.2 The Supplier reserves the right to submit invoices to the Customer via e mail.
3.3 Where payment is outstanding past the due date in respect of any invoice due under this On-Site Warranty Agreement the Supplier may suspend its obligations under this On-Site Warranty Agreement until payment of the overdue amount is made.
3.4 The Supplier may charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 2 per cent per month (or part of a month) until payment in full is made.

4. ON-SITE WARRANTY SERVICES

4.1 On-Site Warranty Services shall comprise
4.1.1 Upon receipt of a request from a Customer the inspection testing and diagnosing (by attendance on site or remotely) by the Supplier or any fault reporting in an item of Equipment; and
4.1.2 The carrying out by the Supplier of such repairs replacement of parts or adjustment as the Supplier shall deem necessary to remedy the said fault.
4.2 On-Site Warranty services will be carried out by duly qualified engineers.

5. TIMES FOR ON-SITE WARRANTY SERVICES

5.1 Unless prevented by circumstances beyond the Supplier's control, the Supplier will rectify faults during the following hours as based on the agreed level of service detailed overleaf:
5.1.1 LEVEL 1: Between the hours of 9.00am and 5.00pm Mondays to Fridays excluding weekends and public holidays.
5.1.2 Deliberately left blank.
5.1.3 LEVEL 3: 24 hours a day including weekends and public holidays
5.2 The Supplier will use its reasonable endeavours to ensure that response times to the Customers notification of a fault are not more than:
5.2.1 8 working hours if the equipment has failed completely; or
5.2.2 16 working hours if the equipment has failed partially.

6. EXCLUSIONS

6.1 The Supplier shall have no obligations or liability whatsoever under this On-Site Warranty Agreement: 6.1.1 in respect of any defect arising from wilful damage, negligence (including improper storage), abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration or repair of the Equipment without the Supplier's approval;
6.1.2 if any sum owing by the Customer to the Supplier has not been paid;
6.1.3 if loss is suffered by the Customer because the Equipment fails to perform to its specifications and the failure is caused by faults in the service provided by the network provider;
6.1.4 in respect of any delay in the execution of any repair;
6.1.5 in respect of remedying defects in electricity or network supply to the Equipment; defects caused by failures or surges of electrical power; failure of the Equipment due to changes in the electrical supply service or the public network.
6.1.6 in respect of any defect arising due to circumstances beyond the Suppliers reasonable control including (without limitation) flood, fire, lightening, war, sabotage, civil disturbance or governmental action, import regulations or embargoes.

7. LIMITATION OF LIABILITY

7.1 Save as otherwise expressly provided in this On-Site Warranty Agreement, the following provisions set out the Supplier's entire liability (including any liability for the acts and omissions of its employees, agents and subcontractors) to the Customer in respect of: 7.1.1 any breach of the Supplier's contractual obligations arising under the On-Site Warranty Agreement; and
7.1.2 any representation (other than fraudulent misrepresentation) statement or tortious act or omission including negligence arising under or in connection with these conditions.

AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE FOLLOWING PROVISIONS OF THIS CLAUSE 7

7.2 Any act or omission on the part of the Supplier or its employees, agents or subcontractors falling within clause above is described as an "Event of Default".
7.3 To the extent the law does not permit such liability to be excluded the Supplier's liability to the Customer for death or injury resulting from its own or that of its employees', agents' or sub-contractors' negligence shall not be limited.
7.4 Subject to condition 7.3 above, the Supplier shall not be liable to the Customer in respect of any Event of Default for any increased costs, expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Customer incurring the same.
7.5 To the extent the law does not permit such liability to be excluded and save as otherwise expressly provided, the Supplier's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to £200,000.

8. THE CUSTOMER'S OBLIGATIONS

The Customer agrees that it will:-
8.1 pay the Supplier all amounts due under this On-Site Warranty Agreement at the due times, which will be stated on the invoices issued pursuant to clause 3.
8.2 ensure that the Equipment is not:
8.2.1 moved at any time from the address at which it was originally installed,
8.2.2 altered, adjusted or interfered with in any way except by the Supplier's servants or agents. Alterations include the reprogramming of the Equipment to change network providers for the purpose of least cost routing;
8.3 provide the Supplier with full access to the Equipment during the hours of the agreed service level to enable On-Site Warranty Services to the Equipment to be carried out;
8.4 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;
8.5 not alter or extend the Equipment without prior notification to the Supplier (an additional charge may, at the Supplier's sole discretion be made for the repair/replacement of altered Equipment);
8.6 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;
8.7 reasonably request works under this contract and agrees where applicable that any usage in excess of Fair Usage, could, at the Suppliers discretion, incur an additional charge pursuant to clause 9.3.

9. ADDITIONAL EQUIPMENT AND ADDITIONAL SERVICES

9.1 If at any time throughout this On-Site Warranty Agreement Term the Supplier agrees to provide the Customer with any additional equipment ("additional equipment") any such equipment will form part of the Equipment for the purposes of this On Site Warranty Agreement and the annual service charge will be amended proportionally by the Supplier.
9.2 The Supplier agrees to provide day to day support in addition to the conditions in clause 4, these can include remote programming changes, advice and training where there isn't any actual Fault Reporting.
9.3 If the Supplier deems the level of support being provided is not proportional to the relative charge pursuant to clause 3 while considering clause 8.7, then the Supplier will apply an appropriate increase to the annual service charge.
9.4 Any increase in the annual service charge pursuant to clause 9 will have supporting evidence for any such increase which can be provided to the Customer when requested.

10. TERM AND TERMINATION

10.1 Subject to clause 10.2, this On-Site Warranty Agreement may be terminated:
(a) by the Customer during the Agreement Term by giving at least 90 days written notice to the Supplier expiring on an anniversary of the Commencement Date. To validly terminate this On-Site Warranty Agreement in this way the customer must pay the annual service charges in respect of the remainder of the On-Site Warranty Agreement Term after the date of termination; or
(b) by the Supplier if the Customer is in breach of any provision of this On-Site Warranty Agreement and does not rectify the breach within 14 days of the Supplier's notice of such breach. Upon termination by the Supplier, the Customer must pay the annual service charges in respect of the remainder of the On-Site Warranty Agreement Term after the date of termination
10.2 This On-Site Warranty Agreement shall be automatically extended for a further period of 12 months after the end of the Agreement Term unless the Supplier serves notice to terminate this On-Site Warranty Agreement, such notice to be served at least 90 days before the end of the Agreement Term in accordance with clause 10.3:
10.3 A notice given to a party under this Clause 10 shall be:
(a) sent to the party for the attention of the [Managing Director] at the address specified overleaf; and
(b) sent by recorded delivery.
(c) Or sent by fax or email by the Supplier in the event of a breach of clause 3, but in any event the Supplier will issue a formal notice under 10.3(a) and (b) prior to the actual termination of the Agreement.

11. GENERAL

11.1 The terms of this On-Site Warranty Agreement including the details overleaf, represent the entire agreement between the parties in relation to the On-Site Warranty of the Equipment and no variation shall be binding unless signed by the director of the Supplier.
11.2 The terms of this On-Site Warranty Agreement may be varied by the Supplier if the Supplier deems such variation to be necessary to comply with any statute, regulation or British Standards Institute requirement.
11.3 The annual charge payable under this On-Site Warranty Agreement shall be reviewed annually and may be increased by not more than the rate of inflation determined in accordance with the Retail Prices Index.
11.4 The Supplier reserves the right to make a charge in accordance with its current rates if it is erroneously notified of an Equipment fault on more than two occasions in any calendar month.
11.5 Any notice shall be in writing addressed to the addressee at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
11.6 No delay or failure by the Supplier in enforcing any provision of this On-Site Warranty Agreement shall constitute a waiver of that provision or any other provision. No waiver by the Supplier of any breach of the On-Site Warranty Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Supplier shall be effective unless in writing.
11.7 If any provision of this On-Site Warranty Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this On-Site Warranty Agreement and the remainder of the provision in question shall not be affected.
11.8 The Supplier may assign its rights and obligations. The Customer may not assign its rights and obligations
11.9 The Supplier may change the Terms of this On-Site Warranty Agreement (including the charges) at any time. TheSupplier will publish details of such changes on line on the Supplier's website www.4Com.co.uk at least two weeks before the change is to take effect.
11.10 This On-Site Warranty Agreement shall be governed by the law of England and the parties submit to the exclusive jurisdiction of the English courts.