

MASTER SERVICE AGREEMENT - Incorporating 4Com Network Services Terms & Conditions, and HiHi Support & Software Licence Terms & Conditions

V5.0

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

1. **DEFINITIONS**
- 1.1 In these Terms:
 - Additional Services:** means such additional services as are to be provided to the Customer by 4Com Network Services Ltd from time to time, such as Additional Call Recording Storage, Anti-Fraud Protection, and/or HiHi Discover.
 - Commencement Date:** means the commencement date of the Minimum Term, being the day upon which number porting completes for all relevant numbers (Port Date).
 - Contract:** means the Master Service Agreement for the provision of the Services (including the Support Service) incorporating these Terms.
 - Customer:** means the customer named in the Contract for whom the Supplier has agreed to provide the Services in accordance with these Terms.
 - 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 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.
 - Intellectual Property Rights:** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
 - Introductory Offer:** means any incentive, rebate or discount provided by 4Com Network Services as part of the sale.
 - License:** means the Software licence granted under condition [12] of these Terms.
 - Licensed Users:** means the employees and agents of the Customer who use the Equipment and/or the Services.
 - Minimum Term:** means the minimum contract period applying to the Services as specified in the Master Service Agreement.
 - Microenterprise or Small Enterprise Customer:** means a customer acting in the course of a business carried on by it, for whom not more than 10 individuals work (whether as employees or volunteers or otherwise).
 - Non-Critical Fault:** means any reproducible fault in the Software other than a fault which substantially hinders or prevents the Customer from using a material part of the functionality of the Software in question.
 - Not-For-Profit Customer:** means a Customer for whom not more than 10 individuals work (whether as employees or otherwise but excluding volunteers) and which, by virtue of its constitution or any enactment (a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes; and (b) is prohibited from directly or indirectly distributing among its members any part of its assets (otherwise than for charitable or public purposes).
 - Number Porting:** is the process of moving a telephone number from one communications provider (CP) to another in order to provide the Service(s).
 - Order:** the Contract issued by the Supplier to the Customer setting out the Services to be provided (including any Support Service), and the applicable charges.
 - Service:** the telecommunications service detailed in these Terms and the Contract, and any documents attached to or referred to in them, to be provided to the Customer, including as applicable, telephone lines, broadband, and/or SIP services to route or carry calls, and/or data traffic.
 - Software:** means the Supplier's proprietary software, operating systems, features, and applications contained on the Equipment or in the cloud and used on the Equipment and in respect of the Services and all subsequent amendments and updates to, or new versions of, such Software as may be provided pursuant to these Terms.
 - Support Services:** means the support services described in conditions [14 to 18] (inclusive) below.
 - 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:** means 4Com Network Services Limited, being 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.
 - Supplier's Website:** means www.4com.co.uk
- 1.2 **Terms:** means these terms and conditions.
2. **Third Party Licence:** means any open-source software licences relating to the Software, including the general public licence (if applicable), and any proprietary third-party software licences.
- 2.1 **Working Day:** means any day apart from Saturday, Sunday or any public holidays in England.
- 2.2 **Working Hours:** means the hours between 9.00am and 5.00pm on any Working Day.
- 2.3 Headings are for convenience only and do not affect interpretation.
- 2.4 **SUPPLY OF THE SERVICE**
- 2.1 The Supplier cannot guarantee and does not warrant that the Service(s) will be free of interruptions or will be fault-free, and the Supplier will not be held liable for any loss or damages should the Service be interrupted from time to time. The Customer accepts that there may also be degradation in the quality of the Service from time to time and subject always to clause 2.1 below, the Supplier will not be liable for any loss or damages should the quality of the Service provided be affected by such Matters.
- 2.2 During the Minimum Term, and any extended term thereafter, the Supplier may also supply Additional Services either as detailed below, or as otherwise agreed between the Supplier and the Customer. Where Additional Services are agreed to be provided, references to Services in these Terms include such Additional Services.
- 2.3 Call Recording functionality is included as part of the Service and recordings are stored free of charge for 6 months. The Customer can alter the period for which call recordings are stored at any time using their call recording portal. Call storage exceeding the free 6-month allowance (Additional Call Recording Storage) will incur additional storage charges. Call recordings will be deleted after 6 months if additional storage is not requested and paid for.
- 2.4 The Customer shall be responsible for the cost of all calls made, and recorded by the Supplier as having been made, in respect of the Services provided. Save only to the extent expressly agreed pursuant to any Anti-Fraud Protection Additional Service the Supplier may agree to provide, the Supplier shall not be held liable for any costs associated with fraudulent calls made via the Services, howsoever caused. The Customer agrees to take all reasonable steps to prevent any such fraudulent calls. These steps must include, but are not limited to, adopting any security measures notified to it by, or recommended by, the Supplier from time, and adopting all reasonable security measures within their telephone systems (including without limitation keeping any passwords robust and confidential). Non-compliance may result in exclusion of any Anti-Fraud Protection Additional Service offered by the Supplier. Notwithstanding the foregoing, the Supplier reserves the right to take such actions as it deems reasonably necessary to prevent any fraudulent actions of which it may become aware, including without limitation by limiting access to international calls, to certain lines or to other telecommunications systems.
- 2.5 The Customer shall engage in any fraudulent or improper use of the Services, or any use that would breach the Supplier's Fair Usage Policy or any applicable OFCOM terms.
- 2.6 Where the Services comprise a VoIP (Voice over Internet Protocol) telephony service:
- 2.6.1 The Customer should note that their ability to call emergency organisations (i.e. police, fire, ambulance or coastguard services) may cease if there is a power cut or power failure, or a failure of the internal connection on which the VoIP service relies;
- 2.6.2 where the VoIP telephony service is to be used principally at a single fixed location, the Customer is advised to register with the Supplier the address of the place where the service is to be used prior to its activation, and update that address information if there is any change;
- 2.6.3 where the VoIP telephony service is to be accessed from multiple locations, the Customer is advised to register and update the location information associated with it, whenever accessing the VoIP telephony service from a new location.
- 2.6.4 The Suppliers HiHi VoIP system will only operate whilst the SIP numbers/SIP trunks provided pursuant to the Services are hosted on the Supplier's network. Should the SIP numbers/SIP trunks be moved to another telecoms provider at the Customer's request, the Supplier's HiHi VoIP system will no longer operate. However, in these circumstances the Customer will remain liable for the remainder of the equipment leasing term (which itself is a reflection of the separate leasing arrangement funding the provision of the equipment).
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 costs calculator provided to the Customer with the Order, and which may be signed by the Customer to indicate their agreement to it (or as otherwise agreed), and calculated using the details recorded by the Supplier, but subject always to the remaining provisions of these Terms.
- 3.2 Additional Services will be charged at the Supplier's applicable rates as at the point of supply, which the Customer will be notified of in advance via a durable medium.
- 3.3 Any applicable value added tax, or other taxes or duties, are payable by the Customer in addition.
- 3.4 The Supplier reserves the right on not less than one month's notice to increase the charges for Services (including for the avoidance of doubt any 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).
- 3.5 If the Customer is a Microenterprise or Small Enterprise Customer, or a Not-For-Profit Customer, the Customer may, following receipt of any proposed increase in the charges for the Services during the Minimum Term (other than any VAT or other tax increase, where the price increase was set out in the original Order for the Services) terminate or withdraw from the Contract without penalty upon written notice to the Supplier.
4. **TERMS OF PAYMENT**
- 4.1 Billing for the Service(s) will commence from the first day of the month following the porting of the Service(s) and shall continue, unless terminated earlier in accordance with condition [7], for the Minimum Term.
- 4.2 The Supplier will invoice the Customer for sums due at monthly intervals.
- 4.3 Sums due will be payable in full on the date specified by the invoice. All payments must be made by direct debit.
- 4.4 Invoices will be sent to the Customer via email. A relevant email address must be provided for billing purposes.
- 4.5 The Customer may also view its invoices online at the Supplier's website www.4com.co.uk
- 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 A late payment fee will be added to future invoices in the instance that a direct debit has failed/ cancelled by the Customer.
- 4.8 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)
- 4.9 If the Customer fails to make any payment due to the Supplier by the due date, then, without limiting the Supplier's other remedies, the Customer shall pay costs and interest on the overdue amount at the applicable rate from time to time under the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
5. **CUSTOMER OBLIGATIONS**
- 5.1 The Customer will allow the Supplier, at its reasonable request, free and safe access to its premises and service connection points, and reasonable access to information and assistance from the Customers employees.
6. **SWITCHING**
- 6.1 If the Customer is a Microenterprise or Small Enterprise Customer, or a Not-For-Profit Customer, and a migration of Fixed-Line Telecommunications Services and/or DSL Broadband Services takes place within Openreach's or KCOM's Access Network, the Customer has a right to cancel the Contract at no cost (other than any charges in respect of the transfer that are passed to the Supplier by BT/Openreach or KCOM, and any surveyors' or other costs incurred in digging underground for the purposes of the transfer at the Customer's request) from the point of sale to the completion of the Transfer Period (i.e. the period of 10 Working Days starting after the Working Day on which Openreach notify the Customer's previous provider that the order will be activated or in the case of KCOM, which starts on the Working Day on which KCOM notify the Customer's previous provider that the order will be activated). Subject to clause [6.1] above, 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 any provisioning work already undertaken (for example but without limitation, any such charges passed to the Supplier by BT/Openreach or KCOM, and any surveyors' or other costs incurred in digging underground). If the Customer wishes to terminate the Services on or after the Connection Date it can only do so in accordance with these Terms.
7. **TERMINATION**
- 7.1 The Services, (other than Support Services, see 14.2) may be terminated (subject to condition 7.2 and 7.3), by the Customer giving at least 90 days written notice to the Supplier provided that expiry of the notice coincides with the completion of the Minimum Term. In other words, the Customer cannot terminate for its convenience prior to the end of the Minimum Term. If no such notice has been provided, the term of the Contract shall automatically continue at the end of the Minimum Term (such extension being the Extended Term), unless a party gives to the other party not less than 30 days' written notice at any time to terminate the Contract.
- 7.2 If the Customer is a Microenterprise or Small Enterprise Customer, or a Not-For-Profit Customer, the Minimum Term shall not be more than 24 months for the relevant Services.
- 7.3 This Contract may be terminated by the Supplier with immediate effect if:
 - (a) a payment due by the Customer under this Contract is overdue and remains overdue more than 14 days after notice by the Supplier requiring payment of the overdue amount.
 - (b) the Customer is in breach of any other 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 if the breach is capable of remedy does not remedy the breach within 14 days of the Supplier's notice of such breach;
 - (c) there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Taxes Act 2010) that has not been pre-agreed by the Supplier.
 - (d) the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration Order (or being a sole trader 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
- 7.4 On termination of the Contract for any reason:
 - 7.4.1 The Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices plus applicable interest and, in respect of Services 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;
 - 7.4.2 If the Contract is terminated by either party at any point during which an Introductory Offer exists, or the direct debit mandate is cancelled for any reason, the Customer agrees to give up any further entitlement to the offer that they will no longer be entitled to receive any benefit of such an offer past the point of Termination.
 - 7.4.3 The Customer shall immediately pay the charges in respect of the remainder of the Minimum Term. The charges will be calculated based upon an average of the last 3 full months' billing for the Services (but not for any Support Service element of the billing), multiplied by the number of months remaining within the Minimum Term, which the Customer agrees represents a genuine estimate of the loss suffered as a result of the breach. Such amount shall never exceed an amount equal to the charges for the remainder of the Minimum Term.
 - 7.4.4 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
 - 7.4.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
 - 7.5 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.
 - 7.6 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.
 - 7.7 The Customer does not own the number(s) provided to it, however this agreement is personal to the Customer. The Customer has no right to sell or to agree to transfer the number(s) provided to it for use with the Services and the Customer shall not try to do so.
 - 7.8 The Customer does have the right to request to migrate numbers to another provider subject to its contractual obligations contained within this Contract being met, and also subject to it paying an administration charge of £99 per number that is to be migrated to another provider. The Supplier has certain obligations in respect of the switching process (whether or not that also includes telephone number migration, or "porting"), and compensation for the Customer may be available if those obligations are not met. See the Supplier's Website and/or the OFCOM website at www.ofcom.gov.uk for details.
8. **SUSPENSION**
- 8.1 The Service (which for the avoidance of doubt in this clause [8] includes any Support Services) and any Additional Services may be suspended by the Supplier without notice and without prejudice to the Supplier's rights under condition 7 if any of the events set out at 7.2 occur.
- 8.2 If the Service and/or any Additional Services are 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 said Services whilst the Contract continues. The Customer acknowledges that if part of the Service or Additional Services are suspended or limited in accordance with this condition 8, this is likely to affect the availability of the remaining element of the Service and Additional Services and the Supplier shall have no liability in this respect.
9. **ACCESS TO AND PREPARING THE PREMISES**
- 9.1 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.
- 9.2 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.
- 9.3 Terminal equipment may be supplied subject to a separate leasing agreement, which may set out any restrictions on the use of it.
10. **MANAGING THE SERVICE - PSTN / ANALOGUE LINES**
- 10.1 Support in respect of any PSTN / ANALOGUE element of the Service will be provided via BT. If the Customer reports a fault in any PSTN / Analogue element of the Service, the default BT repair service levels applicable from time to time will apply (unless otherwise agreed in writing with the Supplier), details of which are set out on the Supplier's Website.
- 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 reserves the right to charge the Customer for any work undertaken to discern the reported fault.
- 10.3 In respect of the PSTN / Analogue element of the Service:
 - 10.3.1 the Supplier's total liability (whether in contract, tort (including negligence) or otherwise) for any losses or costs caused to the Customer in respect of the support provided via BT shall be limited to the compensation actually received by the Supplier from BT in respect of such losses or costs.
11. **CALL DIVERSION**
- 11.1 If the Supplier diverts the Customer's calls to another terminating number at the Customer's request (UK Geographic or UK Mobile), the charges for the diverted Call will be borne by the Customer.
12. **SOFTWARE LICENCE**
- 12.1 The Supplier grants, subject to these Terms, to the Customer the non-exclusive, non-transferable right to use the Software on the Equipment for its business purposes.
- 12.2 The Software may be used only by Licensed Users, except as follows:
 - 12.2.1 the Software may be used on any replacement for all or any part of the Equipment;
 - 12.2.2 the Licence may, with the prior written consent of the Supplier, be extended to additional Licensed Users or in respect of additional Equipment, provided that any appropriate additional fee is paid to the Supplier before such use;
 - 12.2.3 if the Equipment becomes inoperable for any reason, the Software may be temporarily used on backup equipment until the Equipment is repaired, and the Customer may use the Software for the purpose of testing whether any such backup equipment is suitable for use while the Equipment is inoperable.
- 12.3 The Customer shall comply with any Third-Party Licences that are disclosed to it and shall indemnify and hold the Supplier harmless against any loss of damage which it may suffer or incur as a result of the Customer's breach of such terms howsoever arising. The Supplier may treat the Customer's breach of any Third-Party Licence as a breach of this Contract.
- 12.4 The Customer shall not give access to the Software through any network of computers to users who are not employees or agents of the Customer.
- 12.5 The Customer shall use reasonable endeavours to enable the Customer to use the Software 24 hours a day 7 days a week except for planned and/or unscheduled support provided the Supplier has used reasonable endeavours to give the Customer at least six Working Hours' notice in advance of such support.
- 12.6 The Customer may not make adaptations or variations of the Software without the prior written consent of the Supplier or disassemble, decompile, reverse translate or in any other manner decode the Software, except as permitted by law.
13. **OWNERSHIP**
- 13.1 The Intellectual Property Rights in the Software (other than the Third-Party Software) are, and shall remain, the property of the Supplier, and the Supplier reserves the right to grant a licence to use the Software to any other party or parties.
- 13.2 The Software (and any related documentation) are proprietary to the Supplier (or the appropriate third-party rights owner(s)) and the Customer acquires no rights in or to the Software or the said documentation other than those expressly granted by these Terms.
- 13.3 The Customer shall use reasonable endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in the Software and shall promptly report to the Supplier any such infringement that comes to its attention. The Customer shall be responsible for, and shall be liable for, all use of the Software by its Licensed Users. Without prejudice to the foregoing obligation, the Customer shall:
 - 13.3.1 ensure that each Licensed User, before starting to use the Software is made aware that the Software is proprietary to the Supplier and that it may only be used and copied in accordance with these Terms;
 - 13.3.2 ensure that third parties to have access to the Software with the prior written consent of the Supplier, who may require that such third party executes a written confidentiality agreement before being given access to the Software.
14. **SUPPLY OF SUPPORT SERVICES**
- 14.1 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 [18]), the Supplier undertakes to provide the Support Services in accordance with these Terms.
- 14.2 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.

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- 14.3 For the avoidance of doubt, expiry or termination of the Support Service shall not affect the continued provision of the remainder of the Services. However, termination of the Contract in accordance with its terms, shall also operate to terminate the Support Services.
- 14.4 The Support Services, which are described in clauses (14 to 18) (inclusive) of these Terms, DO NOT include the support of any PSTN/Analogue element of the Service, which is provided by the Supplier via BT, the terms of which are set out in clause (10).
- 14.4.1 upon receipt of a request from a Customer (which shall be made by telephone, email or via the Supplier's Website) the diagnosing by the Supplier of any fault reported in an item of Equipment; and
- 14.4.2 the Supplier's reasonable endeavours to carry out such repairs/replacement of parts or adjustment as the Supplier shall deem necessary to remedy the said fault.
- 14.5 The Support Services, which are described in clauses (14 to 18) (inclusive) of these Terms, DO NOT include the support of any PSTN / Analogue element of the Service, which is provided via BT, the terms of which are set out in clause (10).
- 15. SUPPORT SERVICES**
- The Support Services shall further comprise:
- 15.1 a telephone helpdesk to provide first line fault support;
- 15.1.1 remote diagnosis and where possible, correction of faults using software management software; and
- 15.1.2 second line on-site technical support.
- 15.1.3 Contact and support for the Support Services are available on the Supplier's Website.
- 15.2 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 option at its then standard rates (as varied from time to time) and subject to agreement with the Customer.
- 15.4 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 option at its then standard rates (as varied from time to time) and subject to agreement with the Customer.
- 15.5 The Supplier may from time to time provide Support Releases or updated versions of the Software.
- 15.6 Where a Non-Critical Fault is to be corrected 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.
- 16. RESPONSE TIMES FOR SUPPORT SERVICES**
- 16.1 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:
- 16.1.1 8 Working Hours if the Equipment has failed completely; or
- 16.1.2 16 Working Hours if the Equipment has failed partially.
- 16.2 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).
- 17. EXCLUSIONS FROM SUPPORT SERVICE**
- 17.1 The Supplier is not obliged to provide the Support Services where faults arise from the following (but it may do so at its option 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.
- 17.2 The Supplier is not obliged to provide the Support Services unless the Customer is using the most recent version of the Software.
- 17.3 The provision of the Support Services is subject to compliance by the Customer with the Fair Usage Policy. A failure on the part of the Customer to comply with the Fair Usage Policy may result in additional charges being levied by the Supplier as referred to in the Fair Usage Policy.
- 18. CHARGES FOR SUPPORT SERVICES**
- 18.1 The charges for the Support Services are payable in advance at the intervals described in the Contract, unless PAYG options are exercised. The Support Services 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.
- 18.2 The provisions of clauses 4.2 to 4.4 (inclusive), 4.6 and 4.7 shall also apply to the charges for the Support Services for the avoidance of any doubt.
- 18.3 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.
- 19. LIMITATION OF LIABILITY**
- 19.1 Neither party excludes or limits its liability to the other for:
- 19.1.1 death or personal injury resulting from its negligence;
- 19.1.2 fraud or fraudulent misrepresentation;
- 19.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.
- 19.2 Subject to condition [19.1], 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:
- 19.2.1 any indirect, special or consequential loss; or
- 19.2.2 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.
- 19.2.3 any claim made against the Customer by a third party that does not follow a breach of these Terms by the Supplier;
- 19.2.4 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;
- 19.2.5 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).
- 19.3 Subject to condition [19.1 & 19.2], 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:
- 19.3.1 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
- 19.3.2 £200,000.
- 19.4 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.
- 19.5 This condition [19] shall survive termination of the Contract.
- 19.6 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 willful misconduct of the Customer.
- 19.7 Subject to conditions [19.1 & 19.2], the Supplier shall under no circumstances whatsoever be liable to the Customer whether in contract, tort (including negligence), breach of statutory duty, or otherwise:
- 19.7.1 in respect of any defect arising from willful 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;
- 19.7.2 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;
- 19.7.3 in respect of any delay in the execution of any repair;
- 19.7.4 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.
- 19.8 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 20. THE CUSTOMER'S OBLIGATIONS**
- 20.1 The Customer agrees that it will:
- 20.1.1 pay the Supplier all amounts due under the Contract at the due times;
- 20.1.2 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. Alterations include the reprogramming of the Equipment to change network providers for the purpose of least cost routing;
- 20.1.3 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;
- 20.1.4 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;
- 20.1.5 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);
- 20.1.6 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.
- 21. ADDITIONAL EQUIPMENT**
- 21.1 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:
- 21.1.1 such additional equipment, Services and associated software will form part of the Equipment and Software for the purposes of this Contract; and
- 21.1.2 the service charge for the Support Services shall be increased by an amount equal to the agreed service charge for the Support Services 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.
- 22. FORCE MAJEURE**
- 22.1 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 subcontractors (**Force Majeure Event**).
- 22.2 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.
- 23. Data Protection:**
- For the purpose of this clause [23]:**
- 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).
- 23.1.2 **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).
- 23.2 The Supplier and the Customer shall comply with their respective obligations under Data Protection Laws. This clause [23] is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Data Protection Laws.
- 23.3 Except where clause [23.4] 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.
- 23.4 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 [23.4] will apply.
- 23.4.1 Without prejudice to the generality of clause [23] 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.
- 23.4.2 Without prejudice to the generality of clause [23] 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.
- 23.4.3 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.
- 23.4.4 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 standard data protection clauses.
- 23.4.5 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) **Type 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).
- 23.5 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 an 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 [23].
- 24. GENERAL**
- 24.1 Assignment and other dealings.**
- 24.1.1 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.
- 24.1.2 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.
- 24.2 **Notices.**
- 24.2.1 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.
- 24.2.2 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.
- 24.2.3 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.
- 24.2.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 24.2.5 Subject to condition 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.
- 24.3 **Severance.**
- 24.3.1 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.
- 24.3.2 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.
- 24.4 **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.
- 24.5 **No partnership or agency.** Nothing in this 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.
- 24.6 **Third parties.** The Supplier may exercise any of its rights or fulfill 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.
- 24.7 **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.
- 24.8 **Complaints.** Customer complaints will be dealt with in accordance with the Supplier's complaints code of practice available on the Supplier's Website.
- 24.9 **Disputes.** The Supplier will try to resolve any disputes with the Customer. However, if the parties cannot agree, and the Customer is a Microenterprise or Small Enterprise Customer, or a Not-For-Profit Customer, Customer may refer the dispute to the Supplier's nominated alternative dispute resolution (ADR) service. Details of the ADR service nominated by the Supplier and how to refer a dispute to them are set out on the Supplier's Website.
- 24.10 **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.
- 24.11 **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.
- 24.12 **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).