

4Net Technologies Ltd

NETWORK SERVICES AGREEMENT



DATED _____ 2018

4NET TECHNOLOGIES LIMITED

and

[CUSTOMER]

NETWORK SERVICES AGREEMENT

This Agreement is dated

2018

PARTIES

- (1) **4NET TECHNOLOGIES LIMITED** incorporated and registered in England and Wales with company number 05448638 whose registered office is at 3 Scholar Green Road, Stretford, Manchester, M32 0TR (“**4Net**”); and
- (2) [**FULL COMPANY NAME**] incorporated and registered in England and Wales with company number [**NUMBER**] whose registered office is at [**REGISTERED OFFICE ADDRESS**] (“**Customer**”).

BACKGROUND

- (A) 4Net is a provider of telecommunications services, hardware, installation, support, professional and other related services.
- (B) The Customer wishes to be provided with certain installation services, hardware, support services, telecommunications network and other services on the terms of this Agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1. **Definitions.** In these Conditions, the following definitions apply:

Annual Charges: means the recurring charges set out in the Order Schedule

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services monthly in advance for Annual Charges and monthly in arrears for Usage Charges, One-off Charges and charges for time, expenses and materials for the month concerned which are all as set out in the Order/Schedule

Commencement Date: the date specified as such on the Order.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.7.

Contract: the contract between 4Net and the Customer for the supply of the Services in accordance with these Conditions.

CPE: the customer premises equipment which is provided by 4Net, or one of 4Net’s suppliers (as the case may be), as set out in the Order.

CPS: carrier pre-selection.

Customer: the person or firm who purchases Services from 4Net as set out on the Order.

Customer Default: has the meaning set out in clause 5.2.

Due Date: has the meaning set out in clause 9.8.

Initial Term: as set out in the Order.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

One-off Charges: means the one-off charges set out in the Order Schedule.

Order: the Customer's order for the Services (attached to these Conditions).

Renewal Period: a period of 12 months

Services: the provision of the existing telephone lines and telephony services and the new telephone lines and telephony services, wide area network (WAN) services, the SIP Services, CPS and other ancillary services which are all as set out in the Order.

Service Levels: the level of service set out in the Order.

SIP Services: a Voice over Internet Protocol (**VoIP**) service based on the Session Initiation Protocol (**SIP**) by which 4Net delivers telephone connectivity to the public switched telephone network (**PSTN**) to the Customer with a compatible phone system (**IP-PBX**) as set out in the Order.

4Net: 4Net Technologies Limited registered in England and Wales with company number 05448638.

Usage Charges: means the usage charges set out in the Order Schedule

1.2. **Construction.** In these Conditions, the following rules apply:

- 1.2.1. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2. a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4. any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. BASIS OF CONTRACT

- 2.1. The Order constitutes an offer by the Customer to purchase the Services from 4Net in accordance with these Conditions.

- 2.2. The Order shall only be deemed to be accepted when 4Net signs the Order at which point and on which date the Contract shall come into existence.
- 2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, proposal, promise or representation made or given by or on behalf of 4Net which is not set out in the Contract. Any proposal, samples, drawings, descriptive matter or advertising issued by 4Net, and any descriptions or illustrations contained in 4Net's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or any other contract between 4Net and the Customer for the supply of the Services.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SITE SURVEY

- 3.1. In certain cases, 4Net, or its suppliers, may need to conduct a site survey at the Customer's premises to ensure the suitability of the Customer's site and/or equipment for the use of the Services. Such surveys and site visits shall be conducted in accordance with these Conditions and such surveys shall incur a charge, payable by the Customer.
- 3.2. Following any site survey, 4Net will notify the Customer of any charges that are required in order for 4Net to provide the Services to the Customer and the Customer may decide to either pay the said charges or cancel the Services. The Customer shall within 5 Business Days of the date of it being notified of such charges notify 4Net of its intention to either pay the charges or cancel the Service, failing which the 4Net may terminate the Contract with immediate effect by giving written notice to the Customer.
- 3.3. If, following any site survey, 4Net is not able to supply the Services to the Customer, 4Net may terminate the Contract with immediate effect by giving written notice to the Customer.
- 3.4. In the event that the Contract is terminated pursuant to clause 3.2 or clause 3.3, 4Net will refund any advance payments made by the Customer to 4Net in respect of the Charges.

4. SUPPLY OF SERVICES

- 4.1. Subject to clause 14.1 and clause 14.2, the Services shall be supplied from the Commencement Date for the Initial Term and, thereafter, shall continue to be supplied for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period unless and until either party gives to the other party not less than three months' written notice to terminate the Contract at the end of the Initial Term or the relevant Renewal Period (as the case may be).
- 4.2. 4Net warrants to the Customer that the Services will be provided using reasonable care and skill. 4Net shall use reasonable endeavours to meet the Service Levels.
- 4.3. 4Net shall use reasonable endeavours to meet any dates to perform, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 4.4. 4Net shall use its reasonable endeavours to provide the Services continuously during the Contract but 4Net does not warrant or guarantee:
 - 4.4.1. that the use of the Services shall be uninterrupted, secure or error-free; or
 - 4.4.2. the call quality; or

- 4.4.3. that all calls made by the Customer will be accepted by the telecommunications network which is used in the provision of the Services.

5. CUSTOMER'S OBLIGATIONS

- 5.1. The Customer shall:

- 5.1.1. ensure that any information it provides is complete and accurate;

- 5.1.2. co-operate with 4Net in all matters relating to the Services;

- 5.1.3. provide 4Net, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by 4Net;

- 5.1.4. provide 4Net with such information and materials as 4Net may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

- 5.1.5. obtain and maintain all necessary licences, permissions and consents which may be required for the receipt of the Services; and

- 5.1.6. keep and make available to 4Net any operating manuals and CDs containing programs or other data supplied with any of the CPE.

- 5.2. If 4Net's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- 5.2.1. 4Net shall be relieved from the performance of any of its obligations to the extent the Customer Default prevents or delays 4Net's performance of any of its obligations; and

- 5.2.2. the Customer shall reimburse 4Net on written demand for any costs, charges or losses sustained or incurred by 4Net arising directly or indirectly from the Customer Default.

- 5.3. The Customer shall not use, and shall prevent its agents, representatives, subcontractors, consultants and employees from using, the Services:

- 5.3.1. in breach of any reasonable instruction given by 4Net to the Customer from time to time;

- 5.3.2. in contravention of any licence, code of practice, instruction or guideline issued by any regulatory body, or any third party's rights;

- 5.3.3. to send, receive, upload, download, use or reuse any information or material or make any calls that are offensive, abusive, indecent, defamatory, obscene, menacing or cause annoyance, inconvenience, needless anxiety or are intended to deceive or are in breach of confidence, copyright, privacy or any other similar right;

- 5.3.4. in a manner which may result in 4Net, or its suppliers, incurring any liability to a third party;

- 5.3.5. in a manner which may damage 4Net's reputation, or its suppliers' reputation, or the reputation of the Services, or otherwise bring 4Net, its suppliers, or the Services into disrepute;

- 5.3.6. fraudulently, improperly, immorally or in connection with a criminal offence or in any way that is unlawful; or
- 5.3.7. in any way 4Net considers to be, or likely to be, detrimental to the provision of the Service to the Customer or to the provision of any service to any other customer of 4Net.

6. CPE

- 6.1. Title in the CPE shall at all times remain with either 4Net or its suppliers (as the case may be).
- 6.2. In respect of any CPE supplied to the Customer under the Contract, the Customer shall:
 - 6.2.1. use the CPE in accordance with any instructions 4Net may provide from time to time and only for the purposes of using the Services in accordance with the Contract;
 - 6.2.2. not move, modify, relocate or any way interfere with the CPE;
 - 6.2.3. not have the CPE repaired or serviced except by 4Net or any suppliers approved by 4Net in writing;
 - 6.2.4. keep the CPE fully insured for risk of loss, theft, destruction, damage;
 - 6.2.5. not create or allow any charges, liens, pledges, or other encumbrances to be created over the CPE; and
 - 6.2.6. permit 4Net, or its suppliers, to inspect and test the CPE at all reasonable times on reasonable notice.
- 6.3. The Customer shall be liable for any damage to the CPE, and 4Net's suppliers' networks, which is caused by the Customer.

7. TELEPHONE NUMBERS

- 7.1. The Customer will not own any telephone number allocated to it, nor will it have the right to sell or transfer any telephone number to any third party without the prior written consent of 4Net.
- 7.2. Where the Customer is using an existing telephone number, and that number is not connected to 4Net's network, 4Net may need to perform additional migration work. The Customer undertakes to provide 4Net with any information it may require to carry out the migration and accepts that the migration may delay the commencement of the Services. 4Net shall have no responsibility for any delays in the commencement of the Services due to the migration unless such delay arises from an act or omission of 4Net.
- 7.3. 4Net reserves the right to change a telephone number allocated to the Customer if 4Net's contract with the third-party provider of the telephone number terminates or 4Net's third party provider changes that telephone number.

8. SIP SERVICES

- 8.1. The SIP Services will only become active after satisfactory testing.
- 8.2. The Customer acknowledges that the SIP Services are supplied as a private service for use for certain specific applications which, as regards public emergency call services, confer only limited service at agreed defined locations and is not sold as a full public service. The Customer agrees that 4Net shall be entitled to provide its supplier in respect of each network termination

point full details of the Customer's name and address to enable 4Net's supplier to fulfil its obligations to Ofcom.

- 8.3. 4Net does not issue the IP address to be used with the SIP Services. 4Net reserves the right to withdraw or change this IP address if for any reason the address ceases to be available.
- 8.4. The point of connection for the IP connect service is the IP address in the public internet which will be notified by 4Net or its supplier to the Customer. 4Net's responsibility does not extend to the transport between this point and the Customer or to any equipment in operation beyond this point, both of which shall be the responsibility of the Customer. The point of connection for the IP connect service is the pre-configured router to be provided by 4Net or its supplier to the Customer. 4Net's responsibility does not extend to any equipment beyond this router, any or all of which shall be the responsibility of the Customer.

9. CHARGES AND PAYMENT

- 9.1. 4Net shall invoice the Customer monthly for the Charges.
- 9.2. All charges shall be calculated by reference to data recorded or logged by 4Net and not to data recorded or logged by the Customer and 4Net's data records and logs shall be prima facie evidence of call parties, call time, and call duration and shall be accepted as such save in the case of manifest error by 4Net.
- 9.3. The Customer shall pay all Usage Charges whether or not the usage was authorised by the Customer.
- 9.4. Where stated in the Order the Customer shall pay the Charges by direct debit upon 4Net submitting an invoice in accordance with this paragraph 9.
- 9.5. Where invoices are to be issued online, 4Net will notify the Customer by email when a new invoice is issued.
- 9.6. The Customer shall pay each invoice submitted by 4Net:
 - 9.6.1. within 21 days of the date of the invoice; and
 - 9.6.2. in full and in cleared funds to a bank account nominated in writing by 4Net.
- 9.7. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable (**VAT**). The Customer shall, on receipt of a valid VAT invoice from 4Net, pay to 4Net such additional amounts in respect of VAT as are chargeable on the supply of the Services.
- 9.8. Without limiting any other right or remedy of 4Net, if the Customer fails to make any payment due to 4Net under the Contract by the due date for payment (**Due Date**):
 - 9.8.1. 4Net shall have the right to charge interest on the overdue amount at the rate of 3 per cent per annum above the then current Barclays Bank plc's base lending rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly; and
 - 9.8.2. 4Net may suspend all Services until payment has been made in full.
- 9.9. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any

credit, set-off or counterclaim against 4Net in order to justify withholding payment of any such amount in whole or in part. 4Net may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by 4Net to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by 4Net. 4Net licences all such rights to the Customer on a non-exclusive basis for the purpose of enabling the Customer to use the Services in accordance with these Conditions, such licence to terminate on termination or expiry of the Contract for any reason.

11. CONFIDENTIALITY

11.1. The Customer shall keep in strict confidence all confidential information concerning the business, affairs, customers, clients or suppliers of 4Net disclosed to the Customer by 4Net, its agents or employees. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to 4Net, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

11.2. This clause 11 shall survive termination of the Contract, howsoever arising.

12. DATA PROCESSING

12.1 In this Clause 12:

12.1.1 **"Data Protection Law"**: means the Data Protection Act 1998 and, from 25 May 2018, the General Data Protection Regulation 2018 ("GDPR") (as amended, superseded or replaced), and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner from time to time;

12.1.2 **"process"**, **"data controller"**, **"data processor"**, **"data subject(s)"**, **"personal data"**, and **"subject access request"** shall have the meaning given in the Data Protection Law.

12.2 The Customer will comply with its obligations as a data controller under Data Protection Law. The Customer warrants and represents that the carrying out by 4Net of processing of the personal data under this Agreement shall not infringe Data Protection Laws.

12.3 The Customer hereby appoints 4Net as data processor in relation to personal data which 4Net receives under or in connection with the performance of this Agreement.

12.4 The details of the personal data processed for the purposes of this Agreement include:

12.4.1 Subject matter: The subject matter of the data processing is the carrying out of the Services under this Agreement.

12.4.2 Duration: The duration of the data processing is until the termination of the Agreement in accordance with its terms.

12.4.3 Purpose: The purpose of the data processing is the provision of the Services to the Customer and the performance of 4Net's obligations under the Agreement or as otherwise agreed by the Parties.

12.4.4 Nature of the processing: As set out [confirm where].

12.4.5 Categories of data subjects: As set out [confirm where].

12.4.6 Types of personal data: As set out [confirm where].

12.5 In processing personal data pursuant to this Agreement, 4Net shall:

12.5.1 act only on documented instructions from the Customer unless required to do so by Data Protection Law, in which case 4Net shall inform the Customer of such legal requirement before carrying out such processing, unless that law prohibits the provision of such information on grounds of public interest;

12.5.2 ensure that all 4Net personnel involved in the processing of personal data (including its staff, agents and subcontractors) are under appropriate obligation of confidentiality;

12.5.3 take all measures required by Article 32 of the GDPR in respect of the personal data;

12.5.4 not engage another processor without the prior written authorisation of the Customer. Where 4Net does engage another processor, 4Net shall impose the same obligations on such processor as are imposed on 4Net by this clause 7;

12.5.5 taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the data subject's rights set out in Chapter III of the GDPR;

12.5.6 assist the Customer in ensuring compliance with the obligations set out in Articles 32 to 36 of the GDPR taking into account the nature of the processing and the information available to 4Net;

12.5.7 at the Customer's choice, delete or return to Customer all personal data in its possession or control after the end of such processing, save that this requirement shall not apply to the extent 4Net is required by Data Protection Law to retain some or all of the personal data.

12.5.8 make available to the Customer all information necessary to demonstrate compliance with this Agreement and allow the Customer (or its authorised representatives) to inspect and audit 4Net's compliance with the terms of this Agreement;

12.5.9 notify the Customer immediately if, in 4Net's opinion an instruction from the Customer infringes Data Protection Law

12.5.10 not cause or permit personal data to be transferred outside the EU without the Customer's prior written consent, unless required to do so by Data Protection Law.

13 LIMITATION OF LIABILITY

13.4 Nothing in these Conditions shall limit or exclude 4Net's liability for:

- 13.4.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 13.4.2 fraud or fraudulent misrepresentation; or
 - 13.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 13.5 Subject to clause 13.1:
- 13.5.1 4Net shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
 - 13.5.1 loss of profit; or
 - 13.5.1 loss of business; or
 - 13.5.1 depletion of goodwill or similar losses; or
 - 13.5.1 loss of anticipated savings; or
 - 13.5.1 loss of contract; or
 - 13.5.1 loss of use; or
 - 13.5.1 loss or corruption of data or information; or
 - 13.5.1 unauthorised use of the Services; or
 - 13.5.1 special, indirect or consequential loss,arising under or in connection with the Contract including any losses that may result from a deliberate breach of the Contract by 4Net, its employees, agents or subcontractors; and
 - 13.5.2 4Net's aggregate liability to the Customer in respect of all other losses arising under or in connection with the Contract in each consecutive 12 month period commencing on the Commencement Date, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by 4Net, its employees, agents or subcontractors shall not exceed the total Charges (less any Usage Charges) paid or payable during by the Customer during that period.
- 13.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.7 This clause 13 shall survive termination of the Contract.
- 14 TERMINATION AND SUSPENSION**
- 14.4 Without limiting its other rights or remedies, 4Net may terminate the Contract with immediate effect by giving written notice to the other party if:
- 14.4.1 the Customer commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
 - 14.4.2 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of

- the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 14.4.3 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 14.4.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 14.4.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 14.4.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 14.4.7 a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- 14.4.8 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- 14.4.9 any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(b) to clause 14.1(h) (inclusive);
- 14.4.10 the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 14.5 Without limiting its other rights or remedies, 4Net may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract by the Due Date and remains in default not less than 28 days after being notified in writing to make such payment.
- 14.6 Without limiting its other rights or remedies, 4Net shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and 4Net if:
- 14.6.1 the Customer is in material breach of any of its obligations under the Contract;
- 14.6.2 the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(h);
- 14.6.3 the Customer fails to pay any amount due under this Contract on the due date for payment;
- 14.6.4 4Net reasonably believes that the Services are being used in an unauthorised or illegal manner; or
- 14.6.5 Ofcom or any other regulatory body requires 4Net to suspend the Services.

15 CONSEQUENCES OF TERMINATION

15.4 On termination of the Contract for any reason:

15.4.1 the Customer shall immediately pay to 4Net all of 4Net's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, 4Net shall submit an invoice, which shall be payable by the Customer immediately on receipt;

15.4.2 all rights and licences granted to the Customer pursuant to the Contract shall cease;

15.4.3 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

15.4.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by an event beyond a that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable.

17 GENERAL

17.4 **Assignment and subcontracting:** The Customer shall not, without the prior written consent of 4Net, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.5 Notices:

17.5.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery, by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or by email at the email address notified by the receiving party in a notice to the other party from time to time, including as updated on an Order.

17.5.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, where receipt of the email is confirmed or acknowledged, including by transmission of an automatic electronic read receipt or a manual acknowledgement from the recipient.

17.5.3 This clause 17.2 shall not apply to the service of any proceedings or other documents in any legal action.

17.6 Waiver:

- 17.6.1 A waiver of any right under the Contract is only effective if it is in writing 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 preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 17.6.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 17.7 Severance:**
- 17.7.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 17.7.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 17.8 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in anyway.
- 17.9 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 17.10 **Variation:** Any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the both parties.
- 17.11 **Governing law and jurisdiction:** This 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

ATTACHMENT 1

THE ORDER SCHEDULE

THIS ORDER SCHEDULE is made on the [DATE].

This Order constitutes an ORDER under the UNIFIED COMMUNICATIONS AGREEMENT dated [] between [Customer] (the “Customer”) and 4Net Technologies Limited (the “Supplier”)

Contents:

Part 1. Description of Products

Part 2. Description of Professional Services

Part 3. Price & Payment

Part 4. Maintenance and Support Services

This ORDER SCHEDULE is signed by [] and 4Net Technologies Limited on the date referred to above.

SIGNED by [NAME OF DIRECTOR])
for and on behalf of)
4NET TECHNOLOGIES LIMITED)

SIGNED by [NAME OF DIRECTOR])
for and on behalf of)
[CUSTOMER])

Notes: - *The Order Schedule is an accompanying document to the main terms and conditions, but is critical as this is where all the detail is documented as to what the customer is buying and the scope of this, the price and payment. This also includes the sections relating to support and SLA. Conditions documented in this section take precedence over the main terms. The sales exec needs to complete this section, including the above Parts 1-4. Where one of the Parts is not required, then mark N/A. The notes stating what needs to be included in these parts is below*

The information from the proposal can be copied and pasted into the sections where relevant – it just needs to make sense and be clear.

Part 1 - Description of Products

Details of Goods, software and licences, their price, any deposit and delivery location.

- To include a high-level description and itemisation of products, licences etc.

Part 2 - Description of Professional Services

Scope of, including any Statement of Work to be attached to the Order and any Fixed Price or T&M Rates.

- To include high level In Scope Services, out of scope services, assumptions made and customer dependencies. These are the main points which need itemising such as installation, PM etc, as detail will be captured in the scope of works.

Part 3 - Price and Payment

Price and Payment

- Include price plus payment milestones/stages. Standard terms are: 50% of total price on order, 40% on equipment delivery, 10% on completion. These need to be documented at this point and any deviation to this requires sign of from RP/VW

Part 4 - Maintenance and Support Services

4.1 COMMENCEMENT AND DURATION

Service shall commence on: **DATE**

The Minimum Term of this Agreement is: **TERM**

NB: Clause 3 of the Support Schedule in the UNIFIED COMMUNICATIONS AGREEMENT relates to the automatic renewal of the Agreement.

4.2 DESCRIPTION OF SERVICES AVAILABLE

4Net is able to provide an increasing portfolio of services focused on the management and support of communications equipment.

4.2.1 Maintenance and Support Service Levels

Two classes of service are available, varying by hours and days of coverage:

Assured	
Hours	08:30 to 17:30
Days	Monday to Friday (excluding Bank and Public Holidays)
Elite	
Hours	24 Hours a Day
Days	7 Days

Definitions

Speed of response is governed by the type of fault or ticket. The table below is not a definitive list but serves as a guide of the classifications that may be relevant and the additional information required in relation to the various faults:

Table 1: Fault/Ticket Definitions

Priority	Definition for Telephony/Communications Systems
1	Critical Fault Loss of service affecting more than 30% of telephony/system endpoints, ports or extensions; loss of contact centre functionality affecting more than 30% of users.
2	Non- Critical Fault, High Business Impact Partial loss of service affecting between 5-30% of the telephony or service users endpoints/ports, or between 5-30% of Telephony/system adjunct functionality
3	Non- Critical Fault Loss of functionality of telephony/system feature set; loss of single telephony port or extensions; incident affecting less than 5% of users.

Fault Handling Procedure and Escalation Procedure During Contracted Hours

On receipt of the Customer fault or Service request the following procedure will be adopted by 4Net:

- Fault is logged onto 4Net Service Desk system. Response time begins at this point.
- The Customer is provided with a 4Net reference number. This reference number should be used for all subsequent correspondence with the Customer in regard to the request.
- Whether the Customer logs the request by e-mail, web portal or telephone call, a reply e-mail will be sent within the times outlined in **Table 2** acknowledging receipt of the request with 4Net reference number attached and instigating the response process. Hours stated in Table 2 reflect working hours under the support cover.
- The details in **Table 2** describe how a fault should be escalated internally within the 4Net Service Desk or from a Field Service call.
- Where the issue is not resolved within the timescales shown, the ticket will move to the next stage of escalation. A 4Net engineer may escalate the ticket within these timescales if deemed necessary.
- The escalation timings relate to the hours covered by the relevant contract

Table 2: SLA and Escalation within Contract Hours

	P1 Call	P2 Call	P3 Call
Within 30 minutes after call logged	E-Mail Response and Engineer to contact Customer		
Within 1 hour after call logged	Engineer works to resolve issue following 4Net procedure	E-Mail Response and Engineer to contact Customer	E-Mail Response and Engineer to contact Customer
Within 4 Hours after Call logged	Escalate to Senior Engineer or Field Service Engineer (where relevant)	Engineer works to resolve issue following 4Net procedure	
Within 8 Hours after Call logged	Escalate to Service delivery manager	Escalate to Senior Engineer or Field Service Engineer (where relevant)	Engineer works to resolve issue following 4Net procedure
Within 12 Hours after call logged	Escalate to Operations Director	Escalate to Senior Engineer	Escalate to Field Service Engineer (where relevant)

Within 16 Hours after call logged	Escalate to Managing Director	Escalate to Service delivery manager	Escalate to Senior Engineer
Within 24 Hours after call logged		Escalate to Operations Director	Escalate to Service delivery manager
Within 72 Hours after call logged		Escalate to Managing Director	Escalate to Operations Director

Normal Fault Diagnosis and Repair

Should the remote engineer be unable to repair the issue within recommended timescales,

(A) the 'Internal Escalation Procedure' outlined in Table 2 will be adopted by 4Net. The aim of this escalation process is to give a clear fault resolution route.

(B) upon completion, the Service Desk engineer should contact the customer with the fault resolution.

(C) the Service Desk Manager or member of the Service Desk will then contact the customer to confirm the rectification of the fault and the case can then be closed.

4.3 SERVICES AND CHARGES

(i)	Maintenance Service	First Year Charge
	Assured	£
	Elite	£
(ii)	Avaya Support Advantage/Upgrade Advantage	
	Avaya SA	£
	Avaya UA	£
(iii)	Resident Engineer/Management Service	
	Dedicated Care	£
(iv)	4Net ESP Managed Services or other Special Requirements as specified in 4.5.	
	Total Charge	£

4.5 LOCATION DETAILS

Locations at which the Service is to be provided:	
Name:	
Address:	
Telephone Number:	
Name:	
Address:	
Telephone Number:	
Name:	
Address:	
Telephone Number:	

4.6 SPECIAL REQUIREMENTS

SIGNED by [NAME OF DIRECTOR])
for and on behalf of)
4NET TECHNOLOGIES LIMITED)

SIGNED by [NAME OF DIRECTOR])
for and on behalf of)
[CUSTOMER])