

4net Technologies Ltd

UNIFIED COMMUNICATIONS AGREEMENT



DATED _____ 2015

4NET TECHNOLOGIES LIMITED

and

[CUSTOMER]

UNIFIED COMMUNICATIONS 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, Lancashire 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, professional and other services on the terms of this Agreement.

AGREED TERMS

1 Interpretation

1.1 The following definitions apply in this Agreement:

Additional Charges: all charges payable by the Customer in accordance with the Support Services Schedule in addition to the Annual Charge

Annual Charge: the annual charge for the Support Services as set out in the Order.

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

Commencement Date: as set out in the Order.

Delivery Location: the delivery location set out in the Order.

Deposit: the deposit payable by the Customer in respect of the Goods as set out in the Order.

Due Date: has the meaning set out in clause 5.4.

Equipment: the equipment to which the Support Services apply as set out in the Order.

Force Majeure Event: has the meaning given in clause 10.

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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 rights, topography 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.

Initial Term: as set out in the Order.

Order: the Customer's order for the Goods and/or Services as set out in Attachment 1 to this Agreement and any further orders as agreed between the parties which refer to this Agreement and which shall be in a substantially similar form to the order set out in Attachment 1.

Price: the price for the Goods and/or Services as set out in the Order.

Professional Services: the professional services to be provided by 4net as set out in the Order.

Renewal Period: a period of 12 months.

Services: means the Professional Services and the Support Services as appropriate.

Support Services: the support services to be provided by 4net as set out in the Order.

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

Sites: the locations set out in the Order.

Software: any software installed on or supplied with the Goods or as set out on the Order.

Specification: any specification for the Goods issued by the manufacturer.

Statement of Work: the detailed plan describing the Professional Services attached to the Order (if any).

Support Services Commencement Date: the date for the commencement of support services as set out in the Order.

Support Hours: the hours of support set out in the Order.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Conflict

- 2.1 The provisions of the main body of this Agreement shall be supplemented by any applicable additional provisions set out in the Schedules.
- 2.2 In the event that any provision of the main body of this Agreement conflicts with any provision of any Schedule, the provisions of the Schedule shall take precedence.

3 Commencement and term

- 3.1 This Agreement commences on the Commencement Date and, subject to clause 8, shall continue until delivery of all Goods and completion of the Services.

4 Orders

- 4.1 When the Customer wishes 4net to provide it with Goods and/or Services, it shall send an Order to 4net. Each Order shall be deemed to be a separate offer by the Customer to purchase Services on the terms of this agreement, which 4net shall be free to accept or decline at its absolute discretion.
- 4.2 No Order shall be deemed to be accepted by 4net until it issues a written acceptance of the Order or (if earlier) 4net commences provision of the Services to the Customer.
- 4.3 Each Order shall refer to this Agreement and be deemed to incorporate all provisions of this Agreement.

5 Price and Payment

- 5.1 The Customer shall pay each invoice submitted by 4net:
- 5.1.1 within 30 days of the date of the invoice; and
 - 5.1.2 in full and in cleared funds to a bank account nominated in writing by 4net.
- 5.2 Any charges include the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by 4net for the supply of the Services unless otherwise stated on the Order.
- 5.3 The charges are exclusive of VAT, which 4net shall add to its invoices at the appropriate rate.
- 5.4 Without limiting any other right or remedy of 4net, if the Customer fails to make any payment due to 4net under this Agreement by the due date for payment (**Due Date**):
- 5.4.1 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
 - 5.4.2 4net may suspend all Services until payment has been made in full.
- 5.5 The Customer shall pay all amounts due under this Agreement 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.

6 Confidentiality

- 6.1 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.
- 6.2 All materials, equipment and tools, drawings, specifications and data supplied by 4net to the Customer shall at all times be and remain the exclusive property of 4net, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to 4net, and shall not be disposed of or used other than in accordance with 4net's written instructions or authorisation.
- 6.3 This clause 6 shall survive termination of this Agreement, howsoever arising.

7 DATA PROCESSING

- 7.1 In this Clause 7:
- 7.1.1 **"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;
- 7.1.2 **"process"**, **"data controller"**, **"data processor"**, **"data subject(s)"**, **"personal data"**, and **"subject access request"** shall have the meaning given in the Data Protection Law.
- 7.2 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.
- 7.3 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.
- 7.4 The details of the personal data processed for the purposes of this Agreement include:
- 7.4.1 Subject matter: The subject matter of the data processing is the carrying out of the Services under this Agreement.
- 7.4.2 Duration: The duration of the data processing is until the termination of the Agreement in accordance with its terms.
- 7.4.3 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.
- 7.4.4 Nature of the processing: As set out [confirm where].
- 7.4.5 Categories of data subjects: As set out [confirm where].
- 7.4.6 Types of personal data: As set out [confirm where].
- 7.5 In processing personal data pursuant to this Agreement, 4Net shall:

- 7.5.1 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;
- 7.5.2 ensure that all 4Net personnel involved in the processing of personal data (including its staff, agents and subcontractors) are under appropriate obligation of confidentiality;
- 7.5.3 take all measures required by Article 32 of the GDPR in respect of the personal data;
- 7.5.4 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;
- 7.5.5 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;
- 7.5.6 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;
- 7.5.7 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.
- 7.5.8 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;
- 7.5.9 notify the Customer immediately if, in 4Net's opinion an instruction from the Customer infringes Data Protection Law
- 7.5.10 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.

8 Limitation of liability

- 8.1 The following provisions set out the entire financial liability of 4net (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - 8.1.1 any breach of this Agreement howsoever arising;
 - 8.1.2 any use made by the Customer of the Services or any part of them; and
 - 8.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with this Agreement.
- 8.2 Nothing in this Agreement shall limit or exclude 4net's liability for:
 - 8.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

- 8.2.2 fraud or fraudulent misrepresentation; or
- 8.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- 8.2.4 any matter in respect of which it would be unlawful for 4net to exclude or restrict liability.
- 8.3 Subject to clause 8.1 and clause 8.2:
- 8.3.1 4net shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
- (a) loss of profit; or
 - (b) loss of business; or
 - (c) depletion of goodwill or similar losses; or
 - (d) loss of anticipated savings; or
 - (e) loss of contract; or
 - (f) loss of use; or
 - (g) loss or corruption of data or information; or
 - (h) any special, indirect or consequential loss,
- arising under or in connection with this Agreement including any losses that may result from a deliberate breach of this Agreement by 4net, its employees, agents or subcontractors; and
- 8.3.2 4net's aggregate liability to the Customer arising under or in connection with this Agreement 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 this Agreement by 4net, its employees, agents or subcontractors shall not exceed the total Price paid or payable by the Customer during that period.
- 8.4 The Customer shall be responsible for putting in place and maintaining all necessary technical and other measures to ensure the security of its networks and systems (including the Equipment). The Customer acknowledges and agrees that 4net shall have no liability in respect of any unauthorised use of the Customer's networks and systems (including the Equipment) arising from 4net's provision of the Services or otherwise under this Agreement and that the Customer shall be responsible for all sums due to third parties for the use of the same (including any monies due to communications providers for use of their systems, whether authorised by the Customer or not).
- 8.5 Except as set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 8.6 The Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) 4net shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.
- 8.7 This clause 8 shall survive termination of this Agreement.
- 9 Termination**
- 9.1 Without limiting its other rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- 9.1.1 the other party commits a material breach of this Agreement 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;
 - 9.1.2 the other party 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;
 - 9.1.3 the other party 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 that other party with one or more other companies or the solvent reconstruction of that other party;
 - 9.1.4 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 9.1.5 a creditor or encumbrancer of the other party 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;
 - 9.1.6 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 other party;
 - 9.1.7 a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 9.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 9.1.9 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1.2 to clause 9.1.8 (inclusive);
 - 9.1.10 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 9.2 Without limiting its other rights or remedies, 4net may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement by the Due Date and remains in default not less than 28 days after being notified in writing to make such payment.
- 9.3 Without limiting its other rights or remedies, 4net shall have the right to suspend provision of the Services under this Agreement or any other contract between the Customer and 4net if the Customer becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.9, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10 Consequences of Termination

- 10.1 On termination of this Agreement for any reason:

- 10.1.1 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;

10.1.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry; and

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

11 Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under this Agreement 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.

12 General

12.1 **Entire agreement:** This Agreement 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 this Agreement. 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 Goods and/or Services described in them. They shall not form part of this Agreement or any other contract between 4net and the Customer for the supply of the Goods and/or Services.

12.2 **Assignment and subcontracting:** 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 this Agreement.

12.3 Notices:

12.3.1 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.

12.3.2 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.

12.3.3 This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action.

12.4 Waiver:

12.4.1 A waiver of any right under this Agreement 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 this Agreement 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.

12.4.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

12.5 **Severance:**

12.5.1 If a court or any other competent authority finds that any provision of this Agreement (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 this Agreement shall not be affected.

12.5.2 If any invalid, unenforceable or illegal provision of this Agreement 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.

12.6 **No partnership:** Nothing in this Agreement 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.

12.7 **Third parties:** A person who is not a party to this Agreement shall not have any rights under or in connection with it.

12.8 **Variation:** Any variation, including the introduction of any additional terms and conditions, to this Agreement, shall only be binding when agreed in writing and signed by the both parties.

12.9 **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.

This Agreement has been entered into on the date stated at the beginning of it.

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

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

SUPPLY SCHEDULE

1. Basis of schedule

The terms of the main body of this Agreement and the terms of this Schedule shall apply to the supply of Goods and Software under the Agreement.

2. Delivery

- 2.1. 4net shall deliver the Goods to the Delivery Location at any time after 4net notifies the Customer that the Goods are ready.
- 2.2. The Customer shall accept delivery of the Goods at the Delivery Location on the delivery date.
- 2.3. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 2.4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 2.5. The Customer will inspect the Goods on delivery and notify 4net in writing within 3 Business Days of delivery of any defect in the Goods provided that if no such notification is given it shall be conclusively presumed that the Goods are complete and in good order and condition.
- 2.6. 4net may deliver the Goods by instalments, which shall be invoiced and paid for separately.

3. Quantity and description

- 3.1. The quantity and description of the Goods and Software shall be as set out in the Order.
- 3.2. 4net reserves the right (but does not assume the obligation) to make any change in any specification of the Goods which is required to conform with any applicable legislation or which does not materially affect the quality or performance of the Goods.

4. Warranty

- 4.1. Where 4net is not the manufacturer of the Goods, 4net shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to 4net.
- 4.2. 4net warrants that on delivery, and for a period of 3 months from the date of delivery ("warranty period"), the Goods shall conform in all material respects with any applicable Specification.
- 4.3. Subject to paragraph 4.4, if:
 - 4.3.1. the Customer gives notice in writing to 4net during the warranty period within a reasonable time of discovery that any of the Goods does not comply with the warranty set out in paragraph 4.2; and
 - 4.3.2. 4net is given a reasonable opportunity of examining such Goods; and
 - 4.3.3. the Customer (if asked to do so by 4net) returns such Goods to 4net's place of business at the Customer's cost,4net shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 4.4. 4net shall not be liable for Goods' failure to comply with the warranty set out in paragraph 4.2 if:
- 4.4.1. the Customer makes any further use of such Goods after giving notice in accordance with paragraph 4.3; or
 - 4.4.2. the defect arises because the Customer failed to follow 4net's or manufacturer's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice; or
 - 4.4.3. the Customer alters or repairs such Goods without the written consent of 4net; or
 - 4.4.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 4.5. Except as provided in this paragraph 4, 4net shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in paragraph 4.2.
- 4.6. Except as set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 4.7. This Schedule shall apply to any repaired or replacement Goods supplied by 4net.

5. Title and risk

- 5.1. The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2. Title to the Goods shall not pass to the Customer until 4net has received payment in full (in cash or cleared funds) for the Goods.
- 5.3. Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1. hold the Goods on a fiduciary basis as 4net's bailee;
 - 5.3.2. store the Goods separately from all other held by the Customer so that they remain readily identifiable as 4net's property;
 - 5.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.3.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 5.3.5. notify 4net immediately if it becomes subject to any of the events listed in clause 8.1; and
 - 5.3.6. give 4net such information relating to the Goods as 4net may require from time to time.
- 5.4. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, or 4net reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy 4net may have, 4net may at any time require the Customer to deliver up the Goods and, if the

Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

- 5.5. On termination of this Agreement for any reason 4net's rights in this paragraph 5 shall remain in full effect.

6. Price

- 6.1. The price of the Goods shall be the price set out in the Order.

- 6.2. 4net shall invoice the Customer for the price of the Goods as set out in the Order.

7. Intellectual property rights

- 7.1. The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods are and shall remain the sole property of 4net or (as the case may be) third party rights owner.

- 7.2. In relation to the Software:

7.2.1. the Customer acknowledges that it is buying only the media on which the software is recorded and the accompanying user manuals;

7.2.2. nothing contained in this Agreement shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and

7.2.3. the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licences, terms of use and registration requirements relating to them. The end user licence terms for Avaya Software are included in the Annex to this Schedule.

8. Termination

If the Customer becomes subject to any of the events listed in clause 8.1 then, without limiting any other right or remedy available to 4net, 4net may cancel or suspend all further deliveries under this Agreement without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.



ANNEX to Supply Schedule
AVAYA END USER LICENCE TERMS

The Avaya END USERS LICENCE TERMS will be sent separately and updated from time to time.

PROFESSIONAL SERVICES SCHEDULE

1. Basis of Schedule

The terms of the main body of this Agreement and the terms of this Schedule shall apply to the supply of Professional Services by 4NET to the customer.

2. Supplier's obligations

- 2.1. 4net shall provide the Professional Services using reasonable skill and care and in accordance with any Statement of Work.
- 2.2. 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.

3. Customer's obligations

- 3.1. The Customer shall:
 - 3.1.1. co-operate with 4net in all matters relating to the Professional Services;
 - 3.1.2. provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by 4net;
 - 3.1.3. provide in a timely manner such information as 4net may request, and ensure that such information is accurate in all material respects;
 - 3.1.4. be responsible (at its own cost) for preparing the relevant premises for the supply of the Professional Services; and
 - 3.1.5. carry out its obligations as set out in the Statement of Work.
- 3.2. If 4net's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to 4net on demand all reasonable costs, charges or losses sustained or incurred by 4net.

4. Price and payment

- 4.1. Paragraph 4.2 shall apply if the Professional Services are to be provided on a time-and-materials basis. Paragraph 4.3 shall apply if the Professional Services are to be provided for a fixed price.
- 4.2. Where the Professional Services are provided on a time-and-materials basis:
 - 4.2.1. the price payable for the Professional Services shall be calculated in accordance with 4net's daily rates set out in the Order;
 - 4.2.2. 4net's standard daily rates are calculated on the basis of an day worked between 9.00 am and 5.30 pm on weekdays (excluding weekends and public holidays);
 - 4.2.3. 4net shall be entitled to charge at an overtime rate of 150% of the normal rate for time worked by members of the project team outside the hours referred to in paragraph 4.2.2 and on Saturdays and 200% of the normal rate on Sundays and public holidays;
 - 4.2.4. 4net shall ensure that all members of the project team complete time sheets recording time spent providing the Professional Services, and 4net shall use such time sheets to calculate the charges covered by each monthly invoice referred to in paragraph 4.2.5; and
 - 4.2.5. 4net shall invoice the Customer as set out in the Order for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this paragraph 4. Each invoice shall set out the time spent by

each member of the project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

- 4.3. Where the Professional Services are provided for a fixed price the total price for the Professional Services shall be the amount set out in the Order. 4net shall invoice the Customer for the price of the Professional Services as set out in the Order.
- 4.4. All payments payable to 4net under this Professional Services Schedule shall become due immediately on termination of this Agreement, despite any other provision.

SUPPORT SERVICES SCHEDULE

1. Basis of schedule

The terms of the main body of this Agreement and the terms of this Schedule shall apply to any Order submitted by the Customer to 4net for the supply of Support Services.

2. Supply of support services

2.1. 4net shall supply the Support Services to the Customer subject to reasonable notice from the Customer that any of the Equipment is faulty.

2.2. 4net warrants to the Customer that the Support Services will be provided using reasonable care and skill. 4net shall use reasonable endeavours to meet the Service Levels.

3. Support Services commencement

3.1. Support Services commence on the Support Services Commencement Date and run for the Initial Term and shall automatically extend for a Renewal Period at the end of the Initial Term and at the end of each Renewal Period. Either party may give written notice to the other party not less than 45 days before the end of the Initial Term or the relevant Renewal Period to terminate this Agreement at the end of the Initial Term or the relevant Renewal Period as the case may be.

4. Customer's obligations

4.1. The Customer shall:

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

4.1.2. co-operate with 4net in all matters relating to the Support Services;

4.1.3. 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;

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

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

4.1.6. keep and make available to 4net any operating manuals and CDs containing programs or other data supplied with any of the Equipment.

4.2. If 4net's performance of any of its obligations under this Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

4.2.1. 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

4.2.2. 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. Location

5.1. 4net shall provide the Support Services in respect of the Equipment at the Sites.

6. Exclusions

- 6.1. The Support Services do not include services required:
- 6.1.1. as a result of damage to the Equipment caused by the Customer, its employees, its subcontractors or any other person.
 - 6.1.2. to be performed outside of Support Hours;
 - 6.1.3. where there is no fault with the Equipment or any fault cannot be replicated;
 - 6.1.4. due to the Equipment not being used in accordance with its manufacturer's published instructions;
 - 6.1.5. due to the use of parts or supplies not approved by 4net or the Equipment's manufacturer
 - 6.1.6. due to the alteration, modification or repair of the Equipment by a party other than 4net and its authorised representatives;
 - 6.1.7. where the Customer has not carried out procedures or services, recommended by 4net, to the Equipment;
 - 6.1.8. as a result of any physical damage to the Equipment other than through fair wear and tear;
 - 6.1.9. relating to any software which is a version no longer supported by the manufacturer or to which the manufacturer charges additional fees for support of the same.
- 6.2. 4net shall, following a request for support by the Customer in the circumstances set out in paragraph 6.1, be entitled to charge the Customer the Additional Charges where 4net provides support services in respect of the same.

7. Price and payment

- 7.1. The Price for the Support Services shall be the Annual Charge and any Additional Charges.
- 7.2. The Additional Charges shall be calculated on a time and materials basis in accordance with 4net's standard daily fee rates, as amended from time to time, which for each individual person are calculated on the basis of units of half a Business Day.
- 7.3. 4net shall invoice the Customer the Annual Charge annually in advance. Any Additional Charges will be invoiced as and when incurred.
- 7.4. 4net may by not less than 2 months written notice to the Customer increase the Annual Charges for the Support Services with effect from the commencement of the new Renewal Period.

8. Replacement parts

- 8.1. 4net may supply reconditioned replacement parts where, in the opinion of 4net, any parts of the Equipment require replacement. Once such replacement parts have been installed, those parts shall become the property of the Customer.
- 8.2. Any parts replaced by 4net shall upon removal become the property of 4net and the Customer warrants that 4net shall have free and unencumbered title to the same.

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 Helpdesk 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 Helpdesk 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 helpdesk engineer should contact the customer with the fault resolution.
- (C) the Helpdesk 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])