

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these conditions:
- 4COM:** means the 4COM entity shown on the Order Form being a company registered in England and Wales and whose registered office is at Lowey House, 11 Enterprise Way, Aviation Park West, Christchurch, Dorset, BH23 6EW.
- 4COM Group:** in relation to the Supplier means 4Com plc, any company of which 4Com plc is a Subsidiary (its holding company) and any other Subsidiaries of any such holding Company.
- 4COM Website:** www.4com.co.uk.
- Business Day:** day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- Credit Application Period:** the period of 6 months from the date of the Order Form.
- Equipment:** the equipment agreed in the Order Form to be rented by You from 4COM or a Funder.
- Funder:** a third party finance provider willing to provide finance for the Equipment and enter into a Rental Agreement with You.
- Order Form:** the order form overleaf signed by You.
- Privacy Policy:** 4COM's privacy policy available on the 4COM Website.
- Rental Agreement:** means the agreement for the rental of the Equipment in the standard form produced by the Funder or 4COM as the case may be.
- Services:** the assistance to be provided by 4COM pursuant to condition 2.3 below together with all other services which 4COM deems is required in readiness for and to install the Equipment which shall include without limitation ordering of the Equipment and associated licences, order administration, the booking of engineers, installation and site surveys.
- Services Fee:** a fee payable to 4COM in respect of the provision of the Services calculated in accordance with condition 2.8 and payable in accordance with condition 2.2, 2.4, 2.7 or 2.9.
- Start Date:** means the commencement of the hire of the Equipment as such term is defined in the Rental Agreement;
- User:** has the meaning given in condition 2.13.1.
- User Data:** means any data, information or content relating to a User which is obtained by 4COM, directly or indirectly, from your organisation or its Users through use of the Equipment.
- You or Your:** the person, firm or company who signs the Order Form order the Equipment.
- Clause and paragraph headings shall not affect the Interpretation of these conditions and conditions.

2. THE CONDITIONS

- 2.1 By signing the Order Form You expressly agree to hire the Equipment in accordance with the conditions of the Rental Agreement, subject to the Funder and/or 4COM (as the case may be) approving Your application for finance within the Credit Application Period.
- 2.2 You will use Your best endeavours to obtain third party finance from a Funder and to enter into a Rental Agreement as soon as possible after the date of this Order Form. You agree that you will be bound to enter into a Rental Agreement in the event any application for finance that you make is approved within the Credit Application Period and that if you obtain finance and fail to enter into the Rental Agreement you will be liable to pay the Services Fee.
- 2.3 4COM shall use reasonable endeavours to assist You with Your application for third party finance from a Funder and in this respect 4COM will assist with the completion of all necessary application forms but shall have no liability to You if any application You make fails to secure the finance requested.
- 2.4 You will make available to 4COM or a Funder all information reasonably requested by either of them in support of Your application for finance for the Equipment and You will co-operate with 4COM in all respects to facilitate the said finance. If You fail to provide all necessary information within 28 days of the date of the Order Form 4COM shall have the right (but not the obligation) to terminate Your order for the Equipment and/or you will be liable to pay 4COM the Services Fee.
- 2.5 In the event Your application for third party finance with a Funder is unsuccessful within the Credit Application Period, 4COM may, in its sole discretion, provide finance for You and enter into a Rental Agreement with You directly, but shall be under no obligation to do so. If 4COM is agreeable to this You agree that you will enter into the Rental Agreement accordingly.
- 2.6 Once You have entered into a Rental Agreement, You will be bound by the provisions of the Rental Agreement and consequently You cannot cancel the rental of the Equipment unless otherwise permitted in accordance with the conditions of the Rental Agreement.
- 2.7 In the event Your application for third party finance with a Funder is unsuccessful within the Credit Application Period and 4COM is unable or unwilling to enter into a Rental Agreement with You, 4COM will notify you accordingly and this order for Equipment will be deemed cancelled without any liability on You or 4COM save that 4COM reserves the right to charge You the Services Fee in the event that your application to the Funder was unsuccessful as a consequence of Your non-cooperation or Your failure to provide all reasonably requested information.
- 2.8 By signing the Order Form you expressly acknowledge and authorise 4COM to immediately commence the Services and to purchase the Equipment and associated licences, and you agree to use all reasonable endeavours to assist 4COM to enable the Services to be carried out (including without limitation providing access to any property reasonably required by 4COM and carrying out Your obligations under condition 2.4) notwithstanding they are carried out prior to the entry into a Rental Agreement. You also expressly acknowledge and agree that you will be liable for payment in respect of such Services in the event condition 2.2, 2.4 or 2.9 applies or 4COM exercises its rights under condition 2.7. The Service Fee is calculated as an amount equal to the costs incurred by 4COM:
- 2.8.1 in purchasing the Equipment and associated licences in respect of which 4COM determines it is unlikely to be able to re-sell; and
- 2.8.2 in carrying out the Services. The costs for such Services will be calculated by reference to the time incurred by 4COM employees or contractors in carrying out the Services multiplied by 4COM standard rates for such services in force at the relevant time.
- 4COM agrees that notwithstanding the above in no circumstances will You be liable for a cancellation fee which exceeds a sum equal to the aggregate of three (3) quarterly rental payments that would have been charged had You entered into the Rental Agreement.
- 2.9 If, after signing the Order Form you fail for any reason to enter into a Rental Agreement (other than where Your application for finance was not successful and you complied with Your obligations hereunder in relation to the making of such application) you will be liable to the Services Fee.
- 2.10 Any cancellation of this order for Equipment by 4COM in accordance with its terms shall be without prejudice to any other services that You have ordered from 4COM which shall remain in full force and effect in accordance with the applicable conditions and conditions for that service. For example, if You have also ordered network services, those services will continue notwithstanding termination of this order and nothing in this order will operate to give 4COM or You any rights to terminate those services beyond what is contained in the conditions and conditions for those services which You have signed up to.
- 2.11 Title to the Equipment shall remain in the ownership of the Funder at all times, unless You have entered into a Rental Agreement with 4COM in respect of the Equipment, in which case title to the Equipment shall remain in the ownership of 4COM at all times.
- 2.12 By signing the Order Form you warrant and represent that you are a body corporate and not an individual for the purposes of the Consumer Credit Act 1974.
- 2.13 **Data Privacy Obligations**
- 2.13.1 Before You provide or arrange for 4COM to provide on your behalf the Equipment to individual users in Your organisation ("User"), You undertake to communicate effectively to every User a copy (either electronically or otherwise) of the latest version of 4COM's Privacy Policy. This Privacy Policy describes 4COM's use of personal data and not your organisation's access and use of User personal data for its own purposes.
- 2.13.2 You undertake to comply with all applicable laws, regulations and codes of practice relating to Your organisation, its Users and the use of the Equipment, including but not limited to data protection and privacy laws, employment laws, surveillance laws, and computer misuse law.
- 2.13.3 You undertake to put in place and to effectively bring to the attention of Users internal policies and documentation which provide clear, intelligible and easily accessible information about the following:
- (a) Your role and responsibilities as an independent data controller in relation to Users' personal data collected and/or processed through the Equipment, including a description of the circumstances where you may access, use and disclose such personal data and for which purposes.
- (b) Clear rules about the circumstances in which Users are allowed to make private use of the Equipment (if any), including details around the extent and the types of private use that are allowed or forbidden.
- (c) Clear information about the nature and the extent to which Users' use of the Equipment is monitored by You and the specific purposes behind such monitoring.
- 2.14 **IP Licence.** You grant 4COM a perpetual, irrevocable, royalty-free, transferable, sub-licensable, non-exclusive, worldwide license to copy, distribute, modify, combine, compile, create any derivative works based on, publicly display, and otherwise use User Data for 4COM's own commercial purposes, including but not limited to marketing conducting research and advertising.
- 2.15 You shall not, without the prior written consent of 4COM, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these conditions.
- 2.16 4COM may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these conditions.
- 2.17 **Notices.**
- 2.17.1 Any notice or other communication given to 4COM by You under or in connection with these conditions shall be in writing, addressed to its registered office or such other address as 4COM may have specified to You in writing in accordance with condition 2.17.2, and shall be delivered by recorded delivery.
- 2.17.2 Any notice or other communication given to You by 4COM shall be given by any of the following methods (at 4COM's discretion):
- (a) in writing, addressed to Your registered office (if You are a Company) or Your principal place of business (in any other case) or such other address as You may have specified to 4COM in writing in accordance with clause 2.17.1;
- (b) by facsimile to the relevant fax number as You may have notified to 4COM; or
- (c) by email to the relevant email address as You may have notified to 4COM.
- 2.17.3 A notice or other communication shall be deemed to have been received if sent by pre paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier or recorded delivery on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email by 4COM, one Business Day after transmission.
- 2.17.4 The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.
- 2.17.5 Subject to condition 2.17.1 and 2.17.2, both 4COM and You can sign notices or other communications via electronic signatures. You shall comply with any direct debit e-signature instructions provided to You by 4COM from time to time.
- 2.18 **Severance.**
- 2.18.1 If any provision or part-provision of these conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of these conditions.
- 2.18.2 If any provision or part-provision of these conditions 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, achieving the commercial result of the original provision.
- 2.19 **Waiver.** A waiver of any right under these conditions or law is only effective if it is in writing (and in the case of 4COM signed by an officer of 4COM) 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 these conditions 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.
- 2.20 **No partnership or agency.** Nothing in these conditions 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.

- 2.21 **Data Protection.** You and 4COM will comply with each party's respective obligations under the Data Protection Act 1998 (DPA). Where one party transfers personal data (as defined in the DPA) to another for processing, the receiving party will process that data only for the period of and to the extent necessary for the performance of these conditions; will take measures to keep it secure; and, where it transfers personal data outside the European Economic Area or to any subcontractor to ensure that it is adequately protected.
- 2.22 **Applications for Finance and Credit Checks.** By signing the Order Form you authorise 4COM to disclose any information or data concerning You (including any personal details) to finance companies (from whom You may be obtaining credit) and licensed credit reference agencies for the purpose of applications for finance and credit checks. 4COM, such finance companies and the credit reference agencies may retain such information or data and a record of the results of any credit check. You acknowledge that performing a credit check may affect Your credit rating.
- 2.23 **Third parties.** 4COM may exercise any of its rights or fulfill any of its obligations hereunder through any company in its Group. Other than a company in 4COM's Group, a person who is not a party to these conditions shall not have any rights to enforce its conditions.
- 2.24 **Variation.** Except as set out in these conditions, no variation of these conditions, including the introduction of any additional conditions shall be effective unless it is agreed in writing and signed by 4COM. Notwithstanding this 4COM may change these conditions at any time. 4COM will publish details of such changes on-line on 4COM's Website at least two weeks before the change is to take effect.
- 2.25 **Governing law.** These conditions and any disputes or claims arising out of or in connection with them or their subject matter or formation are governed by and construed in accordance with the law of England and Wales and 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 these conditions or its subject matter or formation.