

Terms and Conditions of Service

The End User Licence Agreement for Supplier Applications for use with Customer owned external software.

This End User Licence Agreement and the MASTER SERVICES AGREEMENT FOR THE PROVISION OF TELEPHONY, COMMUNICATIONS, INFRASTRUCTURE SERVICES and INFORMATION TECHNOLOGY SERVICES and the Order together form the Contract for the Service(s) to be supplied by the Supplier to the Customer.

This Agreement is made between the Supplier (X.Communications Limited registered in England & Wales under number 02139995) and the Customer, as specified on the Supplier's Order form. The Supplier agrees to provide an End User Licence Agreement for Services as specified under this Schedule.

Where a conflict exists between this Schedule and the Master Services Agreement, the Master Service Agreement will take precedence.

1.0 End User Licence Agreement

- 1.1 Under this End User License Agreement (the "Agreement"), X.Communications Limited (the "Supplier") grants to the user (the "Licensee") a non-exclusive and non-transferable license (the "License") to use the Software

2.0 Definitions

Application means; software supplied by the Supplier to allow interoperability between the Supplier Service and customer external software

Licence means; the granting by the Supplier use of the Software as defined by this Agreement

Service means; the services that the Supplier has agreed to supply to the Customer, as set out in the Order.

Software means; the code created by the Supplier to produce the Application for use with the Service.

3.0 Software (Application)

- 3.1 "Software" includes the executable computer programs and any related printed, electronic and online documentation and any other files that may accompany the product and includes those Applications developed by the Supplier for use with its Services.
- 3.2 Title, copyright, intellectual property rights and distribution rights of the Software remain exclusively with the Supplier. Intellectual property rights include the look and feel of the Software. This Agreement constitutes a license for use only and is not in any way a transfer of ownership rights to the Software.

- 3.3** This Agreement grants a Customer offices location license to the Licensee. The Software may be used only in conjunction with the Service and only at those offices specified on the Customer Order Form.
- 3.4** The rights and obligations of this Agreement are rights granted to the Licensee only. The Licensee may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity. The Licensee may not make available the Software for use by one or more third parties.
- 3.5** The Software may not be modified, reverse-engineered, or de-compiled in any manner through current or future available technologies.
- 3.6** Failure to comply with any of the terms under the License section will be considered a material breach of this Agreement.

4.0 License Fee

- 4.1** The price paid by the Licensee will constitute the entire license fee and is the full consideration for this Agreement and is shown on the Customer Order Form.

5.0 Limitation of Liability

- 5.1** The Software is provided by the Supplier and accepted by the Licensee "as is". Liability of the Supplier will be limited to a maximum of the Software charges as shown on the Customer Order Form for use of the Software. The Supplier will not be liable for any general, special, incidental or consequential damages including, but not limited to, loss of production, loss of profits, loss of revenue, loss of data, or any other business or economic disadvantage suffered by the Licensee arising out of the use or failure to use the Software.
- 5.2** The Supplier makes no warranty expressed or implied regarding the fitness of the Software for a particular purpose or that the Software will be suitable or appropriate for the specific requirements of the Licensee.
- 5.3** The Supplier does not warrant that use of the Software will be uninterrupted or error-free. The Licensee accepts that software in general is prone to bugs and flaws within an acceptable level as determined in the industry.

6.0 Warrants and Representations

- 6.1** The Supplier warrants and represents that it is the copyright holder of the Software. The Supplier warrants and represents that granting the license to use this Software is not in violation of any other agreement, copyright or applicable statute.

7.0 Acceptance

- 7.1** All terms, conditions and obligations of this Agreement will be deemed to be accepted by the Licensee ("Acceptance") on installation of the Software for use with the Service.

8.0 User Support

- 8.1** The Licensee will be entitled to 36 months of support available during normal Business Hours, at no additional cost.
- 8.2** The Licensee will be entitled to maintenance upgrades and bug fixes (where deemed necessary by the Supplier), at no additional cost, for a period as shown on the Customer Order Form for the supply of the Service.

9.0 Term

- 9.1** The term of this Agreement will be the same as the term as specified on the Customer Order Form for provision of the Service and any Renewal Period. At the end of the term of this Agreement the Licensee must destroy all copies of the Software in their possession.

10.0 Termination

- 10.1** This Agreement will be terminated and the License forfeited where the Licensee has failed to comply with any of the terms of this Agreement or is in breach of this Agreement. On termination of this Agreement for any reason, the Licensee will promptly destroy the Software or return the Software to the Supplier.

11.0 Force Majeure

- 11.1** The Supplier will be free of liability to the Licensee where the Supplier is prevented from executing its obligations under this Agreement in whole or in part due to Force Majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable event where the Supplier has taken any and all appropriate action to mitigate such an event.

12.0 Jurisdiction

- 12.1** In the event that any provision of this Agreement is held to be void, illegal or unenforceable the relevant provision shall be deemed not to be or never to have been or formed a part of this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.
- 12.2** This Agreement shall be governed, construed and take effect in all respects in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the English courts for the purpose of hearing and determining any dispute arising out of or in connection with this Agreement save that the Customer shall not object to the Supplier seeking enforcement of any resultant judgment in any court in any territory having jurisdiction over the Customer or its assets

13.0 Miscellaneous

- 13.1** This Agreement can only be modified in writing signed by both the Supplier and the Licensee.
- 13.2** This Agreement does not create or imply any relationship in agency or partnership between the Supplier and the Licensee.
- 13.3** Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.
- 13.4** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.
- 13.5** This Agreement and the terms and conditions contained in this Agreement apply to and are binding upon the Supplier's successors and assigns.



Hollins Business Centre
62 Rowley Street
Stafford
ST16 2RH

03333 447 092
sales@xcomm.co.uk
xcomm.co.uk

14.0 Notices

- 14.1** All notices to the Supplier under this Agreement are to be provided at the following address:
X.Communications Limited: 24 Holborn Viaduct,
London, England EC1A 2BN