

Terms and Conditions of Service

The SCHEDULE for the supply of Hosted Telephony Services including, Hosted PBX, Hosted Call Centre, IP Telephony / SIP Services and Applications for Customer owned External Software.

1.0 Description of the Services

The provision via voice-over-internet protocol (VoIP) of SIP Services and Hosted (Service residing on servers owned and operated and located at the Supplier locations) private branch exchange (PBX) telecommunications Services to which the Customer connects via the internet facilitating telecommunications connections between the Customer premises where Internet Protocol (IP) handsets or other IP capable devices are deployed to allow the Customer to make calls to others via the PSTN (Public Switched Telephone Network) or others within the same Local or Wide Area Network (LAN / WAN). The Service uses session initiation protocol (SIP) trunking services to make external telecommunications connections to the PSTN via the Internet. The Service features are detailed in the Supplier's product literature (which can change from time to time). The Service is normally accessed via IP Handsets and Softphones which are normally supplied by the Supplier as part of the Order and remain the property of the Supplier during the life of the Contract and return to the Supplier at the end of the Contract.

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

2.0 Definitions

Access Charge; means the charge made by the Supplier to the Customer for NGCS call types.

Agreement; means these terms and conditions (including the Master Services Agreement and any other relevant Schedules for the Services provided by the Supplier) together with the Order.

Application; means software supplied by the Supplier to allow interoperability between the Supplier Service and Customer External Software

Availability; means in respect of any month the total time during which the Service is available excluding Planned Maintenance or Planned Outages.

Call; means a call made using or received on a telecommunications service or voice over internet protocol service.

Call Bundle; means a combined number of calls within an agreed package for a set price.

Call Charge; means the Supplier's charges for calls made on the Network by the Customer.

Call Volume; means the number of calls made or received.

Calling Pattern; means the mix of call types, destinations, volumes and durations

Customer Requirements Form; means the form or forms completed by the Customer including but not limited to detailing all the usernames, ring groups, queues, numbers and

contact details and all other Service features to allow the Supplier to build the Hosted PBX Service and Hosted Call Centre Services.

Downtime; means in respect of any month the total time during which the Service is not available (other than as a result of Planned Maintenance or Planned Outages).

External Software; means software used and owned by the Customer for internal business purposes including but not limited CRM (Customer Relationship Management) systems, and other systems that utilise in and outbound caller identifying data to populate the External Software

GMT; means Greenwich Mean Time.

Hosted Call Centre; means the Service supplied to Call Centre Customer as described in the Suppliers documentation that changes from time to time

Hosted PBX; means the Service supplied to Customers for PBX Services as described in the Suppliers documentation that changes from time to time.

IP Telephony; means the ability to make and receive phone calls using VoIP and or SIP Services

NGCS; means Non Geographic Calling Services

NTS; means Number Translation Services

Number Service Provider; means the provider of the NGCS telephone number

PBX; means Private Branch Exchange

PSTN; means Public Switched Telephone Network

RIPE; means (Réseau IP Européens) the organisation that assigns IP addresses to Internet Service providers and their Customers in Europe.

SIP; means Session Initiation Protocol

SIP Trunking; means the use of Voice over IP to enable a PBX or other IP based telephony service to make telephone calls over the PSTN.

Supplier Portal; means an access medium to the Suppliers Service that allows management capability of the Services by the Customer.

Toll Fraud; means the PBX Hacking / unauthorised use of the Customer phone lines, SIP Trunks, Customer Equipment, or Services to make calls that are charged to the Customer.

Total Number of Service Minutes; means the number of minutes available in a month period minus minutes taken out for any Planned Maintenance and Planned Outage periods.

UTC; means Universal Time Coordinated

VoIP; means Voice over Internet Protocol

3.0

Term

- 3.1. This agreement shall subsist for the Minimum Period and will automatically renew for a further term of 12 months (Renewal Period) unless terminated by no less than sixty (60) Business Days' notice in writing by either party to the other before the end of the Minimum Period. In the case of Hosted PBX and Hosted Call Centre this Initial term is 36 months or a period as specified on the Customer Order.
- 3.2. If cancellation is not received in writing within 60 Business Days of renewal, then the Service will automatically renew for a further 12 months (Renewal Period) and the Customer will be liable for the full 12-month renewal fee.

4.0 Customer-Only Traffic

- 4.1. The right to use the Service is limited to the Customer and those members of its staff and others engaged by the Customer to perform work for the Customer.

5.0 Bandwidth

- 5.1. The Customer acknowledges that the Supplier has no direct control over the availability of bandwidth over the entirety of the Internet and that while it will use such endeavours as the Supplier, in its absolute discretion deems appropriate to facilitate the Service at all times. The Supplier shall not be responsible for delays or loss of the Service caused by overuse or lack of such bandwidth.

6.0 Planned outages

- 6.1. All work for the purpose of maintenance as part of Planned Outages will take place outside Business Hours. Planned Outages will be notified to the Customer wherever possible on 5 days' prior notice unless otherwise agreed.

7.0 Integration with 3rd Party Software i.e. CRM systems

- 7.1. Feature requests outside of the standard product may be available (e.g. the use of third-party applications) however the problem-free operation of these features is not guaranteed. Furthermore, the Supplier may, at its sole discretion, refuse to provide support for non-standard hardware and / or charge a support charge in relation to assisting the Customer with configuration of unsupported features or hardware.

8.0 Time control

- 8.1. Time-dependent features for all the Supplier Services are based on UTC.

9.0 Supported Hardware

- 9.1. The Supplier recommends the use of Cisco IP Phones and other handsets from time to time as determined by the Supplier for use with its Services.
- 9.2. The Supplier will supply handsets and / or softphones as part of the Service where identified on the Customer Order and these handsets and / or softphones remain the property of the Supplier.
- 9.3. The Supplier may supply other hardware on to a Customer Site to supply the Service including but not limited to switches, and in such cases the hardware will remain the property of the Supplier.

10.0 Handset Power, Routing and LAN requirements

- 10.1. A business grade Power over Ethernet (POE) switch and Quality of Service (QoS) enabled router are recommended but not a pre-requisite for installation. However, the Supplier will make a recommendation relating to this and if the Customer

proceeds without following the Supplier recommendation, the Supplier will not be responsible for the call quality experienced with the Service.

- 10.2.** If the Supplier is providing Hardware that requires a 13-amp power supply as part of the Service the customer agrees to make available a suitable 13 amp power supply as deemed necessary by the Supplier.
- 10.3.** To enable the Supplier to provide the Service, the Customer agrees to abide by the Supplier's prior agreed recommendations and specifications regarding the existence, configuration and maintenance of equipment used by the Customer (if any), the software used by the Customer and cabling required to integrate the Customer's host or local area network (LAN) into the Supplier's network or into the Internet Service. The Customer's equipment must comply with the relevant portions of such recommendations and specifications.
- 10.4.** Installation of the Suppliers Services is typically completed by a Supplier engineer or representative. It is the responsibility of the Customer to ensure that the Customer LAN is of sufficient quality to enable proper use of the Service. Some complex LAN environments may necessitate re-engineering. The Supplier will advise the Customer of the need for re-engineering if necessary and discuss the options for completing this work with the Customer before proceeding.

11.0 The Supplier Technical Support Service

- 11.1.** The Supplier provides free phone and email based technical Support in respect of standard Services during normal Business Hours. If the Supplier attends site to assist in technical Support of the Service which is deemed to not be a fault of the Service, a charge may be made to the Customer.
- 11.2.** If ordered on the Customer Order Form the Supplier also provides Out of Hours Support .

12.0 Requirements and amendments

- 12.1.** Should the Customer require changes to the Services via its Support Service which necessitates re-engineering, the Supplier may request this in writing before undertaking the changes to the system.
- 12.2.** In the event the Customer requests an amendment to the system configuration during the system provisioning period the Supplier may, at its discretion, reset the provisioning start date, thus delaying the availability of the Service.
- 12.3.** A charge may apply in respect of re-engineering.
- 12.4.** The Customer will co-operate in full with the Supplier in drawing up fully completed Customer Requirements Forms.

13.0 Administrator and related Training

- 13.1.** Prior to the Activation Date of the Service the Customer shall nominate two people to act as administrators in respect of the Services. The Customer shall notify the Supplier promptly in the event that any such administrator is replaced or becomes otherwise unavailable for any prolonged period of time. The Supplier shall liaise

with those administrators. The Customer shall ensure that the administrators attend all training sessions where provided.

- 13.2.** Any successor administrator(s) may be required to attend further training sessions in respect of the Services which will be furnished by the Supplier at an additional cost to the Customer.
- 13.3.** The training is not a Contractual element of the Service and the Supplier accepts no responsibility for failure by the Customer in whatever form as a result of the training.

14.0 Security

- 14.1.** The Customer is required to protect the security of its Internet service and usage. The Customer's security policies and procedures, their implementation and their connection to the Internet are the Customer's responsibility. The Customer will treat its passwords as private and confidential and will not disclose or share them with any third parties.
- 14.2.** The Customer is responsible for securing its own network (LAN, WAN or other) via its own security policies and procedures.
- 14.3.** The Customer is responsible for all call traffic that passes over the Service and all associated charges for that call traffic irrespective of how the calls were generated.
- 14.4.** The Customer is responsible for ensuring access to the Services is only via authorised personnel. The Customer is responsible for ensuring sufficient firewalling and other security measures are put in place to protect the Services from harmful unauthorised access.

15.0 Security of the Service – Prevention of Toll Fraud

- 15.1.** The Supplier does not guarantee the security of the Services against unauthorised or unlawful access or use. The Customer is responsible for and shall pay all Charges incurred by the use of the Services and any calls passed over the Services.
- 15.2.** The Customer and/or its contractors employed in managing security must secure all passwords and other security access information and implement sufficient security safeguards to protect themselves from unlawful use of the Service including but not limited to the use of a firewall to secure the PBX/VoIP gateway.
- 15.3.** Should a breach of the Customer's Service or the Customer's security measures occur, the Customer will notify the Supplier of such breach immediately.
- 15.4.** The Supplier does not warrant that its products or the Services are immune from Toll Fraud or any other form of unauthorised use and access to the Services and any charges, damages, losses of any nature incurred by the Customer will not be the responsibility of the Supplier and the Customer indemnifies the Supplier against all losses of any nature incurred as a result of but not limited to Toll Fraud via the Suppliers Services and Equipment.

16.0 Supplier SIP Portal

- 16.1** It is the responsibility of the Customer to ensure any changes made by the Customer are correct and that the Supplier accepts no responsibility for incorrect changes or changes that result in a Service fault.
- 16.2** The Customer acknowledges that should a number be Ported Away from a telephone line, the line will cease to operate without a telephone number being associated to it.
- 16.3** The Customer accepts that should a line be cancelled it will automatically cancel any number residing on it and once such event has occurred the number may be returned to the central pool of numbers for re-use / allocation to other customers.
- 16.4** The Customer accepts that by ordering additional Services via the Supplier Portal an automatic increase to the Charges to the Customer will occur for any new Services Ordered.

17.0 Network Infrastructure

- 17.1.** From time to time the Supplier may upgrade its network infrastructure. This may require the Customer to upgrade some of its equipment if the Service is to be continued. In that event, the Customer agrees to make within thirty (30) days such reasonable upgrades to its hardware or software as the Supplier's technical staff may from time to time reasonably specify by written notice to the Customer. The Supplier shall not be responsible for degradation of or disruption to the Service if the Customer does not make the required upgrade.

18.0 Domain Name and Network Number – where applicable

- 18.1.** The Supplier shall apply on behalf of the Customer for one domain name only, if requested, for all Services. The Supplier shall cover all the charges incurred from the managing organisation in charge of the domain name for the duration of the Service. If the Customer so requests, the Supplier shall apply for additional domain names at an additional cost per domain name. All costs incurred in applying for such additional domain names shall be charged to the Customer.
- 18.2.** The Supplier has no control over the availability of domain names and accepts no responsibility for the availability of any domain name.
- 18.3.** In respect of any actions taken by the Supplier pursuant to this clause, the Supplier may levy additional charges on the Customer as agreed in advance.

19.0 Service Level Agreement

- 19.1.** The Customer can apply for Service Credits for disruptions or failures in accordance with the Supplier SLA for the Services. This shall be the sole remedy available to the Customer for Service disruptions or failures.
- 19.2.** Higher levels of SLA's can be provided by the Supplier on commercial grounds and where in the opinion of the Supplier the Customer has purchased sufficient

additional network services or Infrastructure designed and installed in a way to provide additional failover and network / Service availability.

19.3. Availability is calculated at the end of each month in accordance with the following:

Availability Calculations and Terms

Subject to the following provisions and where agreed on the Customer Order the Service shall be fully operational (with the ability to make and receive calls) for use at least 99.9% of all hours in each month. Service interruptions that arise as a result of Planned Maintenance, Planned Outages and Customer generated faults are excluded from the calculation of the proportion of operational hours.

If, in any Month the Service availability falls below the levels detailed below the Customer shall be entitled to claim and be paid Service Credits.

The Service Credit payable for the Service is capped at 50% of the total monthly Service charges relating to that Service for the month. The Service charge excludes Call Charges which will always be payable irrespective of Service Availability.

Availability is calculated at the end of each month in accordance with the following formula:

A=T-D Where:

"A": means the Availability of the Service (expressed as a percentage).

"D": means Downtime in the respective month - (expressed in minutes).

"T": means the Total Number of Service Minutes in the respective month.

Downtime Calculation

Downtime is calculated from the time of notification of a fault by either the Customer or the Supplier and ends when the Service is restored to full working order as determined and certified by the Supplier. Downtime is to be disregarded to the extent it is attributable to any abuse, misuse or modification of equipment or software by the Customer, any loss or degradation of Internet Access as a result of a service or equipment or other not being provided by the Supplier. Planned Outages and Planned Maintenance periods on the Service or any other Service provided by the Supplier that may provide support or access to the Customer Service are excluded from downtime calculations. A fault is defined as a loss of the entire Service and not the loss of a single extension. Loss of the entire Service is the inability to make call connections via the Suppliers platforms from all of the Supplier owned telephone extensions or other Supplier owned IP Telephony Services installed at the Customer site that are supported under the terms of the Customer Order for the Service. Other exclusions apply as documented in the Master Services Agreement.

Compensation Calculations

If availability falls below the guaranteed levels in any particular month then the Supplier shall

credit the Customer by reference to the following table.

Monthly Availability Reimbursement of Monthly Service Fee:

97.00 - 99.90%= 5%
90.00- 96.90%= 10%
Under 89.90%= 20%

Example 1

Agreed Service Availability = 99.90%

Total Minutes Downtime in period (excluding any maintenance periods) = 10 minutes

Total Minutes in Period (June) = 43200 minutes

Actual Minutes of Service Availability 43190

Actual Percentage Availability: 99.97%

Example 2

Agreed Service Availability = 99.90%

Total Minutes Downtime in period (excluding any maintenance periods) = 45 minutes

Total Minutes in Period (June) = 43200 minutes

Actual Minutes of Service Availability 43155

Actual Percentage Availability: 99.89%

Customer Monthly Service Charge: £2000

Customer SLA reimbursement rate: 97.00% - 99.95%= 5%

Total amount to be re-imbursed in Service credit: £100

Claims

To receive the credit if any of the guarantees have not been met, the Customer must email support@xcomm.co.uk within 30 days of the end of the month for which the credit is requested.

Exclusions

Network Availability will not include any unavailability resulting from:

- (a) Network maintenance (Planned Maintenance or Planned Outages)
- (b) Internet access circuit failures or disruptions
- (c) Any external Internet Service Provider disruptions
- (d) Acts or omissions of Customer or an unauthorised user
- (e) Behaviour of Customer equipment, facilities, Networks or applications
- (f) Force Majeure or other occurrences beyond the reasonable control of the Supplier.

20.0 EMERGENCY SERVICES**Important information regarding Emergency Services 999 / 112 access**

Specific Conditions on the Provision of the Services and Emergency Calls forming part of the Terms and Conditions for the provision of the Service.

20.1. CUSTOMER OBLIGATIONS

The Customer shall provide to the Supplier or its carriers for the use of carrier operators and Emergency Organisations, a non-mobile telephone contact number, (i) for the provision/confirmation of the Customer's name and address details and (ii) for the tracing of the originated Emergency Call in order to identify the caller's location (where such tracing is technically possible).

20.2. By purchasing the Supplier's Services the Customer confirms that the Customer understands that the Supplier's Services may sometimes be unavailable as a result of things over which the Supplier has no control, for example, the weather, power disruptions and failures of the Customer's Internet Service provider (ISP) or the Customer's Internet connection and the Customer understands that in such circumstances all Services (including 999/112 public emergency call services) will also be unavailable.

20.3. For each of the Supplier Hosted PBX extensions or trunks that the Customer utilises, the Customer must register with the Supplier the physical location where the Customer will be using the Service.

20.4. If there are any changes the Customer must notify the Supplier. If the Customer does not update the Supplier with changes, it may or may not be possible for emergency operators and authorities to identify the Customer location and phone number when the Customer dials 999/112.

20.5. The Customer when dialling 999/112 will need to state location and phone number promptly and clearly, as emergency operators and authorities may not have this information.

- 20.6.** The Customer agrees to inform potential users of the Services of the above limitations and the Customer understands and accepts that there should always be an alternative means of accessing 999/112 emergency Services.
- 20.7.** If the Supplier suspends or terminates the Service the Customer may NOT be able to dial 999/112.
- 20.8.** If the Customer uses the Service outside of England, Wales, Scotland and Northern Ireland and where no additional Supplier Service has been located by the Supplier with local (in Country) SIP channels attached to it, the Customer will not be able to call local emergency services in the local country where the handsets are located. This is because the Hosted PBX is physically sited in the United Kingdom and all call traffic exits the Hosted PBX platforms to the PSTN (irrespective of originating location of the call via the end point device) in the United Kingdom.
- 20.9.** The Supplier Hosted PBX Service is portable, so it is important that the Customer updates the Supplier with the location of the handsets or other devices being used. This information should be visible to the Emergency Services so they can see what location assistance is required. The Customer can make changes to handset location information by contacting the Suppliers Support team.
- 20.10.** Where the Supplier Service is being used in a fully nomadic manner - such as using a soft-phone on a laptop - the Supplier understands it may not be technically feasible to set the address of every location in use. In such cases the Customer should be aware that the emergency operator will **NOT** know the location and the Customer must provide this information to them verbally.
- 20.11.** Where the Supplier Service is being used by a Home Worker the Customer accepts that location details for the Home Worker may have to be provided to allow any emergency directories to be updated and it is accepted by the Customer that this information may be protected data under any relevant Data Protection Laws and the Customer hereby agrees that this data can be stored for the above purposes.
- 20.12.** Unless a Home Worker has a dedicated number associated to their device on the Supplier Service, the Customer accepts that it may not be possible to record the exact location of any calls from that device for the purposes of the above and that the Home Worker should have an alternative method for calling emergency services to ensure a location can be provided.
- 20.13.** Where the Service was originally provided to work from the Customer offices and the Customer changes the requirement for some or all parts of the Service to be home based for its Home Workers or other employees the Customer accepts charges may be applied for the additional works required to be undertaken by the Supplier to facilitate these changes and the time taken to update any relevant directories for emergency services databases. In all cases a minimum charge of £25 per home user will be applied to cover these additional Supplier costs.
- 20.14.** Failure by the Customer to supply the correct equipment / user address location within the 24-Hour period could result in a fine levied against the Supplier by OFCOM and in such an event, the Customer agrees to fully indemnify the Supplier and pay all such fines immediately upon demand from the Supplier in addition to

a £50 administration fee.

21.0 Power & Service Outages Can Prevent Access to 999/112 Emergency Services

- 21.1.** 999 / 112 Emergency Services and the Service WILL NOT function during an electrical power or Internet Access provider outage, or a break in the Customer's dedicated Internet Access Service or if internet access is not allowing calls to pass over it or if the Customer Account has been suspended or terminated.
- 21.2.** It is highly recommended that the Customer ensures an alternative means of contacting the Emergency Services exists such as a mobile phone or a traditional, wired phone plugged into the PSTN.

22.0 SIP Calling, Call Forwarding and Auto Diallers

The Supplier provides a number of Services that are supported by the use of SIP. These services include the use of Hosted Telephony, Hosted PBX, Hosted Call Centres and IP Telephony (SIP) Services. Many of the Supplier Services have Supplier owned handsets or other devices installed at Customer sites. The Suppliers directs SIP or Call Forwarding connections to Customer PBX's or Switches and to Handsets.

22.1 Auto-Dialling

The Service cannot be used for auto-dialling or predictive dialling, or the systematic dialling of telephone numbers for telemarketing or any other purpose without the express permission of the Supplier. In such cases additional network resources may need to be made available to support such requirements. There is also a requirement on the Customer to comply with any relevant legislation or best practice guidelines relating to these types of Services.

- 22.2** It is now mandatory for any call centres using auto-diallers to ensure that no more than 3% of calls made each day are 'abandoned' i.e. where a call is answered but not connected to a live operator within two seconds. Under sections 128-130 of the Communications Act 2003 (the "Act"), OFCOM is empowered to take enforcement action when it has reasonable grounds for believing that a person (either an individual or a legal entity) has persistently misused an electronic communications network or electronic communications service. A person misuses a network or service if the effect or likely effect of their behaviour is to cause unnecessary annoyance, inconvenience or anxiety to another person.

- 22.3** The Supplier works on a 2% calls abandoned rate whereby Customers exceeding this percentage may have their Service suspended.

- 22.4** The use of Auto Diallers is strictly controlled by the Supplier and any such use has to be prior agreed and documented on the Customer Order form with agreed volumes and agreed volume destinations.

- 22.5** All calling patterns are scrutinised and monitored to ensure the volume of failed connections does not exceed any OFCOM regulations governing the use of unsolicited calling to UK telephone numbers.

- 22.6** In all cases the Customer indemnifies the Supplier against all claims relating to the use of such Services.
- 22.7** Credit limits are imposed on the use of high-speed dialling applications to ensure the Supplier retains sufficient Customer monies to cover any forward monthly costs that would be incurred by the Supplier to supply the Service. In some cases, a Personal Guarantee by a Director of the Customer may be sought.
- 22.8** During any given period, a minimum Service charge exists. This is to cover the underlying cost of infrastructure to support the use of the Service. If during a given period, usage charges do not exceed the minimum Service charge then the minimum Service charge will be payable in all cases.
- 22.9** The Customer agrees unused credit will not roll over to the following month or any other period.
- 22.10** The Customer acknowledges and agrees that they are not entitled to any refund in respect of any unused rental purchased during the contract or upon receipt from the Customer a cancellation of the Service.
- 22.11** The Customer agrees that nothing in this Agreement shall relieve the Customer of any liability to pay, and the Customer shall remain responsible to pay, all charges for any calls or rentals made from the Customer account for the SIP Service or any other Service supplied by the Supplier.
- 22.12** The Customer accepts that the quality of the calls is dependent on bandwidth usage and the Supplier cannot accept any responsibility for un-notified usage on the network that results in a degradation of Service levels.
- 22.13** The Customer accepts that not all features that the Customer would expect from a standard phone line will be available as part of a SIP based Service.
- 22.14** The Supplier reserves the right to monitor the call traffic and call profiles to measure the percentage / volume of failed calls including connected, engaged, unknown numbers / abandoned calls (calls connected to the end Customer but where no agent is available to talk).
- 22.15** The Customer hereby indemnifies the Supplier against any and all damages relating to the Customer breaching any OFCOM regulation and any misuse of the Do Not Call Lists managed by the UK Telephone Preference Service and other relevant organisations.
- 23.0** **Fax Broadcasting, Spam over Internet Telephony**
- 23.1.** The Service cannot be used for fax broadcasting, fax blasting or bulk faxing to send fax messages to multiple recipients at one time.
- 23.2.** The Service cannot be used in any way to generate, distribute or otherwise for SPIT (spam over Internet telephony) or VAM (Voice / VoIP spam).
- 24.0** **Call Centres and Contact Centres**
- 24.1.** During the provisioning process the Customer agrees to provide detailed call routing plans for inbound call queues, to advise the Supplier of all Users / Agents

that are to be configured for use of the system, all user / agent access rights to various parts of the system i.e. agent / supervisor / manager.

- 24.2. The Customer accepts it's the sole responsibility of the Customer to notify the Supplier of which access levels are to be set for each system user/ agent
- 24.3. The Customer agrees to notify the Supplier when a change in Agent or user is to be made and to advise which call routing should apply
- 24.4. The Customer agrees that if agents and users share their login details and log in under another users details then the system does not know and will report on the details associated to the login details.
- 24.5. The Customer agrees that the reporting functionality and accuracy of the system is dependent on the information input into the system. The Supplier accepts no responsibility for the accuracy of the reporting of the system where incorrect usage has occurred by agents logging in under other agents' login details.
- 24.6. Additional reporting over and above the standard reporting within the product can be provided however additional charges may apply to the Customer for the time required by the Supplier in developing the required reports.
- 24.7. The Service can be integrated into some (not all) 3rd party software packages (CRM's) and where there is required development work to be performed by the Supplier, this development work is chargeable at the Suppliers "Day Rate" charges.
- 24.8. Post installation Service changes include but not limited to: adding new users, queues, changes to call routing, changes to Auto Attendant routing, changes to reporting. All post installation changes and additions will be chargeable by the Supplier to the Customer.
- 24.9. The Supplier will provide reasonable levels of Support to the Customer during the Contract period but the Customer is required to designate 2 members of staff to learn the Service functionality and how to make certain changes where required.
- 24.10. Unless the Customer specifically requests otherwise on the Customer Order Form the Service will have full Call Recording and the Customer agrees to make themselves and their employees aware of the rules around the recording of calls
- 24.11. The Customer agrees to make themselves fully aware of the **Call Recording Schedule** as part of this Contract which can be found on the Suppliers website.
- 24.12. The Service does not provide for the recording of Payment Card Industry (PCI) content / data. The Payment Card Industry Data Security Standard (PCI DSS) is a set of requirements designed to ensure that ALL companies that process, store or transmit credit card information maintain a secure environment, essentially any merchant that has a Merchant ID (MID). PCI applies to ANY organisation or merchant, regardless of size or number of transactions, that accepts, transmits or stores any cardholder data.
- 24.13. The Suppliers "Standard Service" for cloud storage of Customer data including call records is held in a non-PCI compliant manner. Therefore, the Customer should not store or ask the Supplier to store any data records including voice recordings where PCI compliance is a requirement.

- 24.14.** If the Customer requires PCI compliant Storage additional charges will apply to meet the high levels of security required to protect PCI data.
- 24.15.** Any and all Customer data including Call Recordings remain the sole responsibility of the Customer and any data that is stored on the Suppliers equipment including its Call Recording servers that is Non-Compliant data must be removed immediately.
- 24.16.** The Customer fully Indemnifies the Supplier for the content of the Customers Call Recording and other data stored on the Suppliers equipment by the Customer.
- 24.17.** The Customer accepts that from time to time calls may be recorded by the Supplier for the purposes of fault resolution or diagnostics . This is the case whether or not Call Recording has been ordered as part of the Services on the Customer Order.
- 24.18.** The Customer Agrees to pay special attention to the amount of Call Storage that is being used and to purchase where required additional storage or remove data from the Supplier Servers if required.
- 24.19.** The Customer accepts it is the sole responsibility of the Customer to ensure a back-up of the Call Recording data is taken unless a Back-up Service has been purchased from the Supplier.
- 24.20.** The Supplier agrees to where possible make all change requests by the Customer that the Supplier considers at its sole discretion to be reasonable requests and where required charges to the Customer will apply.
- 24.21.** The Supplier will supply the Service for the life of the Contract with the Customer. At the end of the Contract period the Customer will advise the Supplier what if any call routing and telephone number changes are required if the Customer is moving to a new Service Provider and these changes will be chargeable to the Customer by the Supplier.
- 24.22.** The Customer accepts that much of the Service being provided by the Supplier is unique to the Supplier Service and cannot be replicated to another service being provided by another supplier.

25.0 Service Availability

- 25.1** You agree that, in view of their nature, your use of the Services is at your sole risk. Whilst we will endeavour to ensure that the Services are of a high quality, neither we nor any of our agents, contractors, licensees, employees, or information providers involved in providing the Services, give any guarantee that the Services will be uninterrupted or free from error.
- 25.2** You agree that any interruption to the Service as a result of any Electrical Power Network or Communications Transmission Network Services interruptions or any other interruptions that prevent full or partial access to the Internet be that Public, Private or any other Internet Domain cannot be the responsibility of the Supplier and that this loss of access to the Internet will result in the Service not being available.
- 25.3** You accept that the use of Private or Public Wide Area Networking or Local Area

Networking services not provided by the Supplier that prevent the accurate transmission of data and which results in the failure or degradation of the Service are not the responsibility of the Supplier and that the Supplier has no control and therefore no liability if these or any similar service to the above prevents the Service from functioning correctly. You agree that any such event referred to above will not constitute a breach by us of the Contract. You further agree that we will not be held liable for any costs, expenses, losses, damages or other liabilities (howsoever arising) which you may incur as a result of the above.

25.4 You acknowledge that the Internet is separate from the Services and that use of the Internet is at your own risk and subject to any applicable Laws. The Supplier has no responsibility for any goods, services, information, software, or other materials which you may obtain from a third party when using the Internet.

25.5 Neither we, nor any of our agents, contractors, licensees, employees and information providers, involved in providing the Services, are able to control the content of the Internet. You, therefore, agree that we shall not be held responsible for the publication, transmission, or reception of any defamatory material or information of any kind, other than information which is inserted by us.

25.6 You specifically acknowledge that we have given no warranties as to the quality, content, or accuracy of information received through, or as a result of the use of, the Services. You agree and acknowledge:

(a) that you are in a better position than us to foresee and evaluate any potential damage or loss which you may suffer in connection with the Equipment and/or the Services and/or any other Service provided to you under the Contract, and;

(b) that we cannot adequately insure our potential liability to you; and

(c) that the sums payable by you under the Agreement have been calculated on the basis that we shall exclude liability in accordance with the Contract, and;

(d) that you the Customer have taken all reasonable steps in network design, network resilience / Availability and other communications alternatives to mitigate where possible the effects of the above.

25.7 In no circumstances whatsoever will we be liable to you (whether in contract, or for breach of duty, or negligence or otherwise) for any indirect, incidental or special loss or damage or any loss of business or of contracts, profit, opportunity, goodwill, reputation, or anticipated savings, or for any loss of corruption of data which arises out of or in connection with any use of, or inability to use, the Services and/or the Equipment.

26.0 **Calls, Call Charges and Call Bundles**

- 26.1.** The Supplier provides the Service to the Customer with the ability to make and receive phone calls. These phone calls traverse the Suppliers networks to or from the PSTN or other networks. All calls passed over the Suppliers networks are chargeable. All Non-Geographic inbound and Number Translation Services and any Call Forwarding to the Customer or other locations is also chargeable. The Supplier will also charge Access Charges for all Non-Geographic Calling Service type calls in addition to any Number Service Provider call charges. A full Call Charge price list of all call types and charges is available from the Supplier
- 26.2.** Call charges vary from time to time due to changes incurred by the Supplier in the wholesale buy rates associated to calls.
- 26.3.** The Supplier provides a call charge price list and where possible only increases the charges associated to calls charges on an annual basis or where such a change is required on commercial grounds due to significant changes at the Wholesale rate. All changes to call charges are advertised on the Suppliers web site and the Customer should regularly check the website to see if any changes are proposed. In all cases a maximum of 30 days' notice of a change in call charges will be given by the Supplier.
- 26.4.** The Supplier provides Call Bundles that allow a Customer to have a pre-determined monthly charge for a set number of calls and call types. These bundles are provided on a Commercial basis and take into account the Customer Calling Patterns including call volumes and call types advised by the customer before the bundle is agreed on a Customer Order. Where the Customer calling Patterns including but not limited to call durations, call destinations and volumes change, the Supplier at its sole discretion will review the Customer Call Bundle and terminate it if required giving the Customer a maximum of 30 days' notice of the termination of the bundle unless such changes in the Calling Pattern are deemed at the sole discretion of the Supplier to be in breach of any part of this Agreement or where such breach puts the Suppliers Service at risk.
- 26.5.** The Supplier will provide at its sole discretion alternative commercially attractive Call Bundles that a Customer can if they wish move onto under which the aforementioned terms would still apply.
- 26.6.** Customers that are not on a Call Bundle or any other volume related discounted call charge rate will be charged in all cases at the Suppliers Standard Call charge rates.
- 26.7.** Copies of the Suppliers call charge rates can be requested by Customers at any time by emailing support@xcomm.co.uk

27.0 **Connection and Content**

The Supplier provides the Customer with a Service that is accessed via a connection to the Internet. Information which passes to or from the Customer over the Internet passes through equipment and facilities which the Supplier does not own and has no control over. The Supplier does not provide, exchange or monitor data or information on the Internet. Thus, it follows that:

Other than "packet filtering" at the customer's request on a Supplier provided router or firewall, which will deny entry to unregistered, addressed packets, the Supplier does not check, scan or verify content of information and data transmitted on the Internet.

The Supplier does not make judgments with regard to appropriateness of material for transmission, or guarantee the nature, content, truth, accuracy or reliability of such material.

The Supplier does not warrant or guarantee the security or confidentiality of any such information or data.

The Supplier takes no opinion and expresses no views on the nature or content of any such information or data.

28.0 The Customer acknowledges that the Supplier network has not been designed for use in circumstances where its failure could cause pure economic loss, loss of profit, loss of business or like loss.

29.0 The Supplier shall in no circumstances be liable to the Customer, whether in tort or otherwise, for loss, whether direct or indirect, of business, revenues, profits, anticipated savings or wasted expenditure or for any indirect or consequential loss whatsoever, or for the acts or omissions of other providers of telecommunications services or for faults or failures in their apparatus.

30.0 The Supplier shall in no circumstances (whether before or after termination of this Contract) be liable to the Customer for any loss of or corruption to data or programs held or used by or on behalf of the Customer and the Customer shall at all times keep adequate Backup copies of the data and programs held or used by or on behalf of the Customer.

31.0 Applications

The Supplier has Applications that if used with agreed External Software allows interoperability between the Suppliers Service and the Customer owned External Software. Typically, this is between the Supplier Hosted PBX Services and Customer CRM systems.

The Customer accepts;

- That the Application is owned by the Supplier and the Customer accepts no rights of ownership of the Application
- All intellectual property pertaining to the Application is owned by the Supplier
- The Customer agrees to not copy or attempt to extract the code of the Application.
- The Application when supplied forms part of the Service between the Supplier and the Customer.
- The Customer agrees that data between the Suppliers service will pass through the Application to and from the Customer owned External Software
- The Customer accepts the terms of the Suppliers Privacy policy relating to use of the Supplier Applications that can be found on the Supplier website at <https://xcomm.co.uk/about/terms/>
- The use of the Application is covered under this Schedule and the Master Services Agreement and the Suppliers Privacy Policies.
- It is at the sole discretion of the Supplier as to whether the Application can or should be used as part of the Service between the Supplier and the Customer External Software.
- The Customer accepts the limitations of the Applications capability and agrees that these capabilities are sufficient for the Interoperability requirements between the Supplier Service and the Customer External Software.