

# Xoomtalk - Master Services Agreement

## Business General Terms

v5.1

### *Overview of Master Service Agreement*

**Business customers:** The Services under this Agreement are for business customers only and not for consumers.

**Agreement:** By using any of our Services or the Xoom Equipment you confirm you agree to the terms of this Agreement so you should read them carefully.

**Scope:** This Agreement covers the provision of the Services specified in the Service Schedules and Appendices (and any other services we agree to provide to you under this Agreement) by Xoom to you.

**Equipment:** If you order any equipment from us, Clause 12 (Equipment) of this Agreement will apply to you.

**VoIP Services** - VoIP Services have some limitations explained in Clause 6 of the VoIP Services Schedule (Schedule 5).

**Contract length** - The Initial Term for each Service you order is specified in the Service Order Form that we send to you. You can terminate the Agreement (or any of our Services) at the end of the relevant Initial Term or a Renewal Term (if any) by giving us the notice period specified in the Business General Terms, relevant Service Schedule or if not specified in such Service Schedule at least 30 days written notice.

**Cancellation Fees** - You will be charged a Cancellation Fee if you terminate the Agreement (or a Service) without cause, before the end of any relevant Initial Term or Renewal Term (or if we terminate it due to your breach of the Agreement). Some specific Services will have Cancellation Fees even when terminated in line with the clauses in the relevant Service Schedule, such as Broadband Services. If applicable the relevant Service Schedule will detail this. Other Charges may also apply.

**Payment** - Unless you are a Large Business Customer and we agree an alternative payment method with you, you shall pay our invoices by direct debit. You may be charged an administration fee for any monthly payments tendered by other means. you may incur an administration fee. Other Charges may also apply.

**Price rises** – Fixed Subscription Charges which are subject to an Initial Term of more than 30 days shall remain unchanged during their applicable Initial Term unless Clauses 6.4 and/or 6.6 (Charges & Payment) of this Agreement apply.

**Out of contract price rises** - After the expiry of the Initial Term we may increase the Fixed Subscription Charges payable by you for any Services and/or Equipment by giving you 14 days' notice in writing, as ascribed in clauses 6.5 & 6.6 (Charges & Payment).

**Network and Phone Usage** - To ensure the best experience for our users we may actively manage our network and the traffic that routes over it. More detail on how we safeguard the performance of our Services and your usage of our Services can be found in our Fair & Acceptable Usage Policy.

This Master Service Agreement (“**MSA**”) consists of the following documents

- The Business General Terms
- Schedule 1 – Partner Relations
- Schedule 2 – Phone (PSTN) & Broadband (DSL) Services Schedule
- Schedule 3 – Ethernet Services
- Schedule 4 – Mobile Data Services using a Subscriber Identity Module (“SIM”)
- Schedule 5 – Voice over IP (“VoIP”) Telephony Services
- Schedule 6 – Telephone Numbers and IP Addresses
- Schedule 7 – Managed Network Services
- Schedule 8 – Service Level Agreement
- Schedule 9 – Installation Services
- Schedule 10 - Co-location Services
- Appendix 1 – Definitions and Interpretation
- Appendix 2 – Referral Partner Commission (where relevant)

## 1. Introduction

- 1.1. This Agreement sets out the general terms and conditions of supply upon which Xoom Ltd (a limited company incorporated in England and Wales registered under number 03997742) - who trade as Xoomtalk (“**Xoom**”) supplies any Services and/or Equipment to you.
- 1.2. We subscribe to the industry codes of conduct which can be found at <https://commsCouncil.uk/>
- 1.3. Definitions for the terms used in this Agreement are set out in Appendix 1 at the end of these terms.
- 1.4. The Schedules to this Agreement set out terms and conditions which are specific to particular services we supply to you.
- 1.5. The terms and conditions which are specific to the level of Service we offer is set out in Schedule 8 - Service Level Agreement at the end of these terms.
- 1.6. The following documents comprise our agreement with you and will have the following order of precedence: (i) the Service Order Form; (ii) our Fair & Acceptable Use Policy; (iii) the Schedules; (iv) Specific Offers (v); our Price Guide; (vi) the Business General Terms and (vii) our Privacy Policy (collectively referred to as the "**Agreement**").
- 1.7. You acknowledge and agree that Electronic Signatures may be used to sign and execute this Agreement and any document executed in connection with this Agreement. The Parties agree to treat an Electronic Signature as an original signature for all purposes under this Agreement and any document executed in connection with this Agreement. Both Parties agree that the use of Electronic Signatures is both valid and enforceable, and that Electronic Signatures shall have the same legal effect as Original Signatures. It is also agreed that any Electronic Signatures provided in connection with this Agreement shall be binding on the Parties and admissible as evidence in any legal or administrative proceedings. Both Parties agree to take all reasonable steps necessary to ensure that any Electronic Signatures used in connection with this Agreement are valid and enforceable.
- 1.8. We both agree as follows:

## 2. Placing Your Order

- 2.1. Once you have signed this Agreement you can place an order for Services and/or Equipment by any of these methods (collectively known as “**Order Requests**”):
  - 2.1.1. signing (either by Electronic Signature or Original Signature) a completed Service Order Form sent to you by us via email; or
  - 2.1.2. enabling a Service using an XML service, Application Programming Interface (“**API**”) or Portal provided by us; or
  - 2.1.3. if you are a Partner sending an email to orders@xoomtalk.com confirming the Services and/or Equipment you require; or
  - 2.1.4. if you are a Partner sending a purchase order to orders@xoomtalk.com detailing the Services and/or Equipment you require.
- 2.2. After receiving your Order Request we may send you a Service Specific Information Form which you will need to complete and return before the order process can continue.
- 2.3. We will not send you these terms each time you send an Order Request as any Services and/or Equipment we provide after the Commencement Date will be provided in accordance with this Agreement until it is terminated in accordance with Clause 19 (Suspension and Termination). If you require a copy of your signed Agreement, you can request this during Working Hours by contacting your account manager by calling our Main Telephone Number or by emailing legal@xoomtalk.com.
- 2.4. We (or our suppliers) will then carry out any necessary surveys and then inform you of any Excess Construction Charges (if applicable) or any additional Other Charges identified at this time which we may require you to pay in advance.
- 2.5. We will communicate with you and provide confirmation of your order using the Contact Details provided.
- 2.6. You are responsible for checking that any information provided is correct before you send, submit or confirm it. If you or your Agent has made a mistake, please notify us by calling our Main Telephone Number or by emailing orders@xoomtalk.com.
- 2.7. Placing an Order Request constitutes your automatic acceptance of the terms and conditions of this Agreement.

### **3. Commencement**

- 3.1. This Agreement will commence on the date this Agreement is countersigned using Electronic Signatures by Xoom after being signed by you, the “**Commencement Date**” and a copy will be sent to you electronically for your records.
- 3.2. We shall not be obliged to provide the Services and/or Equipment to you unless and until:
  - 3.2.1. we have sent written notice to you (either by email, or post) of our acceptance of any Order Requests (the “**Service Order Acceptance**”); or
  - 3.2.2. in the case of an XML order, we have returned a successful response, or the relevant Service is enabled on any of our or our Service Provider platforms.
- 3.3. The Agreement will relate only to those Services and/or Equipment we have confirmed in a Service Order Acceptance. We will not be obliged to supply any Services and/or Equipment which may have been part of an Order Request until those Services and/or Equipment have been confirmed by a Service Order Acceptance and you settle any advance payments we request from you.
- 3.4. The Services will be activated at the Premises stated on the relevant Order Request or on the Service Specific Information Form.
- 3.5. You will be sent a confirmation via email (the “**Service Commencement Confirmation**”) specifying the date when each Service on the Service Order Acceptance is first made available to you at a Site or when you first use the Service, whichever the earlier (the “**Service**

**Commencement Date**”). The Service Commencement Confirmation you receive will list the Service and the relevant Service Commencement Date for that Service. Acceptance of the Service will be assumed and billing will commence in accordance with Clause 6 of this agreement unless you report an Incident which is our fault within five (5) working days from the Service Commencement Date. In the event an Incident is reported by you in accordance with Service Schedule 8 of this Agreement we will correct such deficiencies and issue a new Service Commencement Confirmation which will specify a new Service Commencement Date.

- 3.6. Any dates provided to you prior to this regarding our provision of the Services (e.g. installation, delivery of equipment) are estimates and are provided for planning purposes only. To the maximum extent permitted by applicable law, we accept no liability to you if we do not meet any dates requested by you or any other estimated date including without limitation the Service Commencement Date (but we will use reasonable endeavours to start our Services on the relevant Service Commencement Date).
- 3.7. Time is not of the essence, nor shall time be made of the essence against us by notice in connection with any estimated dates we give you, including but not limited to the Service Commencement Date or with any equipment delivery date. If no delivery dates are specified, delivery will be within a reasonable time.
- 3.8. You acknowledge that in order to avoid delays occurring in the ordering process, we will need to be notified by the relevant network providers as applicable of any products or services presently in use by you that are incompatible with our Services. Such relevant network providers are under a strict duty not to disclose information about a customer’s services to a third party unless the customer has consented to such disclosure. In entering into this Agreement you give consent to the relevant network providers, to disclose such information to us. You also give us authority to act as your Agent to arrange your connection to our Services.

#### **4. Duration**

- 4.1. This Agreement commences on the Commencement Date and will continue in force until you or us terminate it in accordance with Clause 19 (Suspension and Termination) of the Business General Terms.
- 4.2. Unless otherwise suspended or terminated in accordance with this Agreement, all Services shall be provided for the Initial Term specified in your Service Order Acceptance. If no Initial Term is specified, then the Initial Term shall be 12 months unless amended in any Schedule to this Agreement or Specific Terms and Conditions for a Service.
- 4.3. The Initial Term will commence on the Service Commencement Date.
- 4.4. If you are a Small Business Customer we will only provide Proposals based on a maximum Initial Term of 24 months unless you request or accept to see Charges based on longer Initial Terms (for example 36 month or 60 months) for consideration as part of the quoting process.
- 4.5. At the end of the Initial Term each Service will automatically enter a Renewal Term. If you are a:
  - 4.5.1. Small Business Customer, each Service will further commit to a Renewal Term of one (1) month on an ongoing rolling basis until you send us notice in accordance with Clause 19.4 or as specified in any relevant Service Schedule; or
  - 4.5.2. Large Business Customer, each Service will further commit to a Renewal Term which will have the same duration as the Initial Term renewed for consecutive Renewal Terms, unless you send us a notice in accordance with Clause 19.4 or as specified in any relevant Service Schedule.

#### **5. Xoom Services**

- 5.1. The Services under this Agreement are designed for business customers only and therefore the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumers Rights Act 2015 do not apply to this Agreement.

- 5.2. We may take instruction from a person if we have a good reason to think that they are acting with your permission as your Agent;.
- 5.3. The provision of and ongoing use of each of the Services will be subject to our Fair & Acceptable Use Policy as applicable.
- 5.4. Where installation is required for a Service (or you request an installation from us), "Schedule 9 – Installation Services" will apply. We will agree with you in advance, a date for the installation of the Services or Equipment and the installation Charges. If you cancel any appointment for the installation of any Service with less than 48 hours' notice, you will be liable to pay a call out Charge.
- 5.5. We may at any time make changes to the Services supplied to you as we reasonably deem necessary provided that if we make any material changes to the Services we shall:
  - 5.5.1. provide you as much notice as practicable prior to any such change taking effect (having due regard to the likely impact on you and the nature of such change);
  - 5.5.2. ensure that the amended Services are similar, and of a similar quality, to the Services you were receiving and have no negative effect on you;
- 5.6. Occasionally we may:
  - 5.6.1. for operational reasons change the technical specification of the Service(s) and/or the codes or numbers used by us for the provision of the Service(s) provided that any change to the technical specification does not materially affect the performance of the Service(s);
  - 5.6.2. give you instructions which we believe are necessary for reasons of health, safety or the quality of any telecommunications service provided by Xoom to you or to any other customer; or
  - 5.6.3. temporarily suspend the Service(s) because of an emergency or to undertake maintenance or to implement improvements as specified in Clause 19 of the Business General Terms. Xoom will use reasonable endeavours to keep the period of temporary suspension to a minimum and will restore the Service(s) as soon as possible.
- 5.7. We will provide you with the Service(s) and where applicable with the Xoom Equipment subject to you complying with the terms of this Agreement.
- 5.8. We will use reasonable endeavours to ensure that the Service is available for use at all times by you but you acknowledge and affirm that, owing to the nature of IP and telecommunications networks, it is impossible to provide an uninterrupted or error-free Service. We will not accept any responsibility or liability to you or any third party in the event of a failure in the IP or telecommunications network outside our control or caused by reasons outside our control.
- 5.9. We will use reasonable endeavours to ensure the security of the Services but you acknowledge and agree that there is always a risk of security being breached for reasons beyond our control, where for instance the Service is provided through a third party network.
- 5.10. We will respond to any Incident Report, Configuration Request or Service Enhancement Request as soon as reasonably practical during Working Hours. We will use reasonable endeavours to correct an Incident within Xoom Network, or within our control, as soon as reasonably practicable or within the Service Levels agreed with you for the relevant Service (if any).

## **6. Charges & Payment**

- 6.1. Except as otherwise provided in the Agreement all Charges and other sums due from you in respect of the Services and/or Equipment shall be set out in the Price Guide and/or the Proposal and confirmed in the Service Order Acceptance or by any other physical or electronic written means provided by us to you and/or the invoice relating to such Services and/or Equipment.
  - 6.1.1. Any Services or Equipment requested on Order Requests received by the means detailed in Paragraph 2.1 above, will be invoiced at the current Charges as specified on our current

Price Guide or invoiced at a Charge agreed with you for a set group of Services on a previous Proposal.

- 6.2. You acknowledge and agree that:
- 6.2.1. save for manifest error, Charges are calculated from data recorded by us and our suppliers and not from your own records;
  - 6.2.2. we may charge you an administration Charge for payments tendered by means other than direct debit;
  - 6.2.3. where a direct debit is unpaid due to insufficient funds or direct debit cancellation, an administration Charge will be included on your next monthly bill;
  - 6.2.4. we may charge you an administration Charge for restricting calls in line with Clause 19;
  - 6.2.5. If you breach the Agreement (including without limitation any breach of your payment obligations under this clause, and as a result we suspend, restrict or disconnect all or part of the Services or terminate the Agreement or any Service, we shall charge you a reasonable Charge:
    - 6.2.5.1. per line or Service we cease, should we terminate the Agreement (or any specific Service);
    - 6.2.5.2. to reinstate Services suspended, restricted or disconnected; or
    - 6.2.5.3. to reinstate any lines that have been ceased.
  - 6.2.6. If we send an engineer to your premises, we may charge you our then current Charges for the visit or pass on to you the fees of any third party providers;
  - 6.2.7. we may charge you a monthly maintenance Charge depending on the care level we agree with you;
  - 6.2.8. if you change address, where technically feasible and commercially practicable:
    - 6.2.8.1. you may transfer the Services to your new address on payment of the moving Charge; and
    - 6.2.8.2. you will be responsible to pay the administration Charges specified in our Price Guide or otherwise notified to you;
  - 6.2.9. you will continue to pay the Charges during any period of Service suspension, Service restriction or disconnection unless we say otherwise in writing;
  - 6.2.10. if applicable all our Charges are subject to VAT at the prevailing rate.
- 6.3. In the event that we have agreed to provide you with a bundle for all or part of the Services and you terminate any of these Services, we will automatically apply to you our then current separate Charges for any Services we continue providing to you.
- 6.4. Fixed Subscription Charges which are subject to an Initial Term of more than 30 days shall remain unchanged during their applicable Initial Term unless:
- 6.4.1. We can reasonably demonstrate that the cost of providing the Service has increased because of a change by a third party supplier. Any such increase in our Charges will not exceed the increased cost incurred by us in providing the Service. We will give a minimum of 1 months' notice or such change; or
  - 6.4.2. The cost of providing the service increases to comply with any legal or regulatory obligation, decision or request. We will give 1 months' notice or such change, save where our compliance with that legal or regulatory obligation requires a shorter period of notice or no notice; or
  - 6.4.3. At the end of the calendar year the RPI rate exceeds 2%. If this is the case then the following will apply:

- 6.4.3.1. If you are a Small Business Customer, we may choose to increase your Fixed Subscription Charges by up to the RPI rate and the adjusted amount will first appear on your March bill. This Paragraph 6.4.3.1 does not apply to increases in call Charges which are covered in clause 6.6 below.
- 6.4.3.2. If you are a Large Business Customer, we may choose to increase your Fixed Subscription Charges by up to the RPI rate plus 5% and the adjusted amount will first appear on your March bill. This Paragraph 6.4.3.2 does not apply to increases in call Charges which are covered in clause 6.6 below.
- 6.5. After the expiry of the Initial Term we may increase the Fixed Subscription Charges payable by you for any Services and/or Equipment by giving you 14 days' notice in writing. This clause 6.5 does not apply to increases in call Charges which are covered in clause 6.6 below.
- 6.6. You acknowledge that the call Charges are imposed by third parties. If those third parties increase/decrease the call Charges, you shall pay us those increased/decreased call Charges unless such call Charges are part of an inclusive minutes package.
- 6.7. We reserve the right to perform a credit check on you with no prior given notice, and to pass your credit history with us on to other credit agencies and/or County Court.
- 6.8. We reserve the right to request at any time a reasonable deposit or a bank guarantee from you, as security to cover the risk of you not paying our bills which you will be obliged to provide within 3 Working Days of our request. For instance we may ask a deposit or a bank guarantee from you should periodical credit checks reveal insufficient credit scoring or County Court Judgments against you for debts or non-payments, if you are late paying any invoice, if unusual usage or call Charges are incurred by you or if we consider we need to request a deposit or a bank guarantee from you to manage our financial risks (the "**Credit Conditions**").
  - 6.8.1. we reserve the right to request a deposit from you paid in advance before we progress an Order Request and;:
    - 6.8.1.1. carry out a survey or any works in your premises,
    - 6.8.1.2. start the installation of our Services; or
    - 6.8.1.3. provide you with Xoom Equipment.
  - 6.8.2. we shall be entitled at any time to use this deposit(s) to pay off any Charges you owe us. No interest is payable on any deposit held by us under the Agreement.
- 6.9. We may, at our sole discretion and at any time, impose a credit limit on your account or amend it if, for instance, you fail to meet our Credit Conditions or if, for business reasons, we need to manage our financial risks. If you exceed any such credit limit we may demand immediate payment of all the Charges incurred by you up to this moment and/or suspend, restrict or disconnect any of the Services we provide to you. We will endeavour to notify you as soon as possible if any of these situations arise. As our billing system is not updated instantly when you use our Services, you may exceed the credit limit, but if this happens, you will still be responsible for all Charges incurred including those exceeding the credit limit. We may reasonably amend your credit limit at any time and without prior notice (to the extent we consider it reasonable in the circumstances).
- 6.10. We shall be entitled to set off any due amounts you owe to us under this Agreement, against any advance payment or any deposit you make under this Agreement. If the liabilities to be set off are expressed in different currencies, we may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by us of our rights under this clause shall be without prejudice to any other rights or remedies available to us under this Agreement or otherwise.
- 6.11. You are responsible for and must pay the Charges for the Services whether the Services are used by you or by someone else.

- 6.12. You shall pay to us all Charges relating to calls made through the Service as are set out in your current Rate Card as in force from time to time (a copy of which is available on request).
- 6.13. All amounts payable by you in accordance with the Agreement will be exclusive of VAT, or any other applicable tax or duty, which if applicable under current governmental guidelines will be payable in addition to all such amounts due from you.
- 6.14. Unless agreed otherwise, you shall pay our invoices in full in pounds sterling and free of any bank, and any other charges:
  - 6.14.1. If you pay our Charges in foreign currency you will be responsible for any currency conversion charges incurred.
  - 6.14.2. You will be responsible for any bank, and any other charges incurred when you pay our invoices (e.g. if you pay our invoices by way of an international bank transfer)
- 6.15. You shall pay your invoices by monthly variable direct debit unless we offer an alternative payment method to you. We reserve the right to refuse any new customer not wishing to pay by direct debit (or by another payment method approved by us).
- 6.16. You will pay the Charges (without any set off or deduction of any kind) on either a monthly, quarterly or annual basis as stated in the Service Order Acceptance and/or the Price Guide and/or the invoice referred to in Clause 6.1 above. Where payment is not made in accordance with these terms you will either pay a late payment Charge as specified in our Price Guide or otherwise notified to you; or to pay interest on any unpaid amounts calculated at 8% APR above Barclays Bank PLC's base rate for the time being in force, calculated on a daily basis; whichever is the greater whether before or after judgement.
- 6.17. You shall pay any Charges incurred through the Services if the Services are used by you, your Users or by any authorised or unauthorised third parties (even in the event of fraud, or other improper use of the Services such as hacking of the Services by third parties). Upon receiving a notice in writing from you, we shall use reasonable endeavours to prevent any unauthorised or fraudulent use of the Services as soon as reasonably practicable and we reserve the right to suspend the affected Services immediately.
- 6.18. If you wish to dispute an invoice you must contact our customer services by calling our Main Telephone Number or by emailing [billing@xoomtalk.com](mailto:billing@xoomtalk.com) within 30 days from the date of the invoice. After such a period, any undisputed invoice will be deemed correct. You must pay the full amount of all undisputed charges in an invoice within normal agreed payment terms.
- 6.19. If you do not pay an invoice before the due date we may instruct a debt collection agency to collect payment from you (including any interest and/or late payment charges) on our behalf. If we engage a debt collection agency to collect your debt you must pay the reasonable costs we have to pay to such agency which will be added to the amount you owe.
- 6.20. If you do not pay an invoice within the payment terms stated on the invoice and the invoice is not in dispute we reserve the right to suspend, restrict, disconnect any of the Services we provide to you or terminate the Agreement or any of the Services we provide to you and to demand full and final outstanding balance settlement with immediate effect;
- 6.21. You agree that you will notify us as soon as possible of any change in your bank account details used for direct debit, standing order or other ongoing payment method purposes under this Agreement. Should you terminate the Services in accordance with this Agreement it is your responsibility to terminate any standing order or direct debit instruction with your bank.
- 6.22. You acknowledge and affirm that, without prejudice to any other rights or remedies available to us under the Agreement, non-payment of any Charges due to us under the Agreement will be regarded as a material breach of the Agreement.
- 6.23. We will send you monthly, quarterly or annual invoices as applicable to the relevant Service. Your monthly, quarterly or yearly invoice will normally include:



- 6.23.1. in advance, your Fixed Subscription Charges (including service rental, inclusive call price plans, call packages and any other recurring service charges), other recurring Charges which are billed one month (quarterly or yearly) in advance or other Charges which we request you to pay in advance; and
- 6.23.2. in arrears, any Charges for your use of our Services which you do not have to pay in advance, included but not limited to, calls outside any inclusive call price plan (e.g. minutes outside your monthly allowance or for additional services, administration Charges) which you incurred previously (normally the last month);
- 6.24. We may also send you a separate invoice for any other Charges not included in your monthly or quarterly invoices, such as installation and maintenance Services and may request that you pay any of these Charges in advance;
- 6.25. We will send you our invoices by email unless you opt-out to e-billing. If you do opt-out to e-billing we reserve the right to apply a reasonable administration Charge for sending you our invoices by post.
- 6.26. Billing for Fixed Subscription Charges will commence from the relevant Service Commencement Dates for each separate Service.

## 7. Variations to this Agreement

- 7.1. We may have to change the terms and conditions of the Agreement. Where this is necessary we will notify you in advance before the changes to the terms and conditions take effect. The reasons we may make changes include but are not limited to:
  - 7.1.1. complying with any legal or regulatory obligation, decision or request;
  - 7.1.2. changing the Price Guide and/or Rate Card in accordance with Clause 6 above;
  - 7.1.3. changing the conditions relating to a Service in order to reflect contractual changes imposed upon us by our Suppliers;
  - 7.1.4. introducing new products, improved Service features, variations that are necessary by virtue of any new law or regulation or as required by any regulator or other competent authority;
  - 7.1.5. introducing process changes (including changes to the Fair and Acceptable Use Policy and Privacy Policy) provided that they are not to your detriment;
  - 7.1.6. maintaining the integrity or security of the Service or any network;
  - 7.1.7. improving clarity or making corrections to typographical errors;
  - 7.1.8. changing to processes and procedures as detailed and provided to you time by time.
- 7.2. We will endeavour to let you know about any change referred to in Clause 7.1, excluding Paragraph 7.1.2, at least 1 month before it happens save where our compliance with that legal or regulatory obligation requires a shorter period of notice or no notice.
- 7.3. Subject to Clause 7.1 above, we shall be entitled to notify you of any updates and/or variations of the terms of this Agreement and our Charges, by email, by post, through a notice in our invoices, through any of our Portals or by posting our updated Agreement or Price Guide on our Website.
- 7.4. In respect of changes to this Agreement made under Clause 7.1 such changes shall not require a new Agreement to be signed by the Parties and shall take effect at the expiration of such notice as is provided by 7.2.
- 7.5. We may from time to time make test or trial services and/or promotional offers (“**Offers**”) available. Such Offers may be subject to specific terms and conditions (“**Promotional Terms and Conditions**”) which we notify to you. Promotional Terms and Conditions may require a variation to this Agreement in which case you will be deemed to have accepted such variation on your acceptance of the Offer. Unless otherwise stated in the Promotional Terms and Conditions, an Offer may be amended or withdrawn by us at any time and without notice. For the avoidance of

doubt we are not obliged to include you in any Offer we make to our other customers. Unless expressly permitted under the terms of a specific promotional offer, current and former customers, under the same or any other identity, are ineligible for any promotional offer reserved for new customers. In the event that any offer does not have additional Promotional Terms and Conditions created, its terms will be part of the Agreement.

- 7.6. Unless we give you our prior consent in writing you shall not be entitled to make any variations to this Agreement.

## 8. Notices

- 8.1. Any legal notices sent by you to us must be sent by email to [legal@xoomtalk.com](mailto:legal@xoomtalk.com), by post or by recorded delivery to our registered address or to our current office address as shown on our Website. These notices must quote your account number and shall not be effective until received by us.
- 8.2. Any notice or other information to be served by us on you in accordance with this Agreement will be validly sent if in writing and sent by either email or first class post to your last known email or postal address. For the avoidance of doubt, by agreeing to these terms and conditions you expressly agree to receive correspondence by email, including notices relating to switching your services. Any notice sent by first class post will be deemed served 2 days after posting. Any notice sent by email will be deemed served on the day that it is sent.
- 8.3. You are responsible for the maintenance of a correct and functioning email address.
- 8.4. You agree to keep the contact details which you have provided to us up to date.

## 9. Software

- 9.1. Where we provide software to you to enable you to use the Services, including softphones, desktop clients, backup and computer security services where applicable ("**Software**"), we grant you a non-exclusive, non-transferable, revocable licence to use the Software solely for the term and the purposes of the Agreement. You acknowledge and affirm that you use this Software at your own risk. You agree to use and ensure the Software is used in accordance with its applicable end user licence agreement, which you will be required to accept in order to install the Software. Where the use of such software by you requires you to enter a separate licence you agree to do so.
- 9.2. Any Software provided to you as part of the Services is provided for your use only. You may resell, rent, transfer, assign or sub-license the Software to your Users but if you do so you must ensure they adhere to both Clause 9.1 and 9.2. You may make one copy of the Software for backup purposes, but are not otherwise allowed to copy, de-compile or modify the Software (in whole or in part) for any purpose unless specifically permitted by law. You undertake and agree that you will access the Services only via use of this software, or in an alternative way permitted by us, and you will not attempt to circumvent any security measures inherent in the Services. You may not adapt, transmit, distribute externally, play or show in public (unless for demonstration or training purposes), broadcast or publish any part of the Software. Except as permitted by applicable law or as expressly permitted under this Agreement you must not copy, de-compile or modify the Software (in whole or in part) or copy the manuals or documentation (in whole or in part).
- 9.3. We may offer updates or modifications to the Software or documentation and we will notify you of any applicable Charges for such updates or modifications at the time we offer them to you.

## 10. Usernames and Passwords

- 10.1. You shall procure that any Users with access to the Services are authenticated and where required are provided with a unique username and secure password in order to access any part of the Services.
- 10.2. You must ensure that usernames and passwords used in connection with the Services are kept confidential and are only used by authorised Users. You shall implement safety measures to

prevent and detect any unauthorised use of usernames and passwords and inform us immediately if you know or suspect that a username or password has been disclosed to an unauthorised user or is being used in an unauthorised way. Unless we say otherwise to you, you will be entitled to change your username and reset your password to access any of our Services.

10.3. We reserve the right (at our sole discretion):

10.3.1. to suspend usernames and password access to the Services if at any time we think that there has been or is likely to be a breach of security;

10.3.2. to ask you to change any or all of the usernames and passwords you or your Users use in connection with the Services; and

10.3.3. restrict access to any Portals.

10.4. You must inform us immediately of any subsequent changes to the information you supply to us when you register for the Services.

10.5. You acknowledge and affirm that the Services, including but not limited to internet related Services, are not secure and we do not guarantee the prevention or detection of any unauthorised attempts to access the Services.

10.6. You shall be liable for any unauthorised use of usernames and passwords by third parties if this use is due to you or your Users failing in keeping them confidential or in implementing reasonable safety measures to prevent and detect any unauthorised use of usernames and passwords.

## 11. Ownership and Title to Goods

11.1. You agree that all static IP addresses are allocated to you on a rental only basis and will remain our property at all times.

11.2. You agree that all telephone numbers are allocated to you on a rental basis only. You do not own any telephone number or have any right to sell the number(s) related to a Service.

11.3. Where we provide managed equipment (Xoom Equipment) to you or your Users it will be our property at all times (or the property of our Subcontractor s as applicable) or, if provided by a Service Provider, that Service Provider unless otherwise agreed in writing.

11.4. You or your Users will not sell the Xoom Equipment nor permit any lien, charge or other like restriction to be placed on the Xoom Equipment.

11.5. We may take possession of the Xoom Equipment from your or your Users premises at any time or take other reasonable steps which we reasonably believe are necessary to protect our, or the Service Provider's, ownership rights in the Xoom Equipment.

11.6. Ownership of any equipment which we have expressly agreed to sell to you will not pass to you until we have received in full (in cleared funds) all sums due to us in respect of the equipment.

## 12. Equipment

12.1. Any Xoom Equipment we provide to you or any other equipment we sell to you is designed for use with the relevant Services in accordance with the Agreement.

12.2. Delivery of the equipment will be made to the delivery address stated on either the Service Order Form, Service Order Acceptance, Service Specific Information Form or alternative address if supplied to us in other written communications.

12.3. We shall bear the risk of loss or damage to the Xoom Equipment, or any other equipment we deliver to you or your Users until the point of delivery or Xoom installation as ascribed in Schedule 9 - Installation Services, at which time you shall bear the risk of loss or damage to the Xoom Equipment from that point onwards.

12.4. You are responsible for making sure that Users are contractually bound to keep Xoom Equipment safe and ensure that it is used properly at all times, and that they agree to follow the manufacturer's instructions and any other reasonable instructions we provide and that it is not

tampered with and that labels are not removed or defaced. Users are responsible for providing mains power protected against power surges and ensuring adequate ventilation and air circulation are available at the installation site. You agree that you are responsible for any loss, theft or damage to such rented equipment regardless of how it happens.

- 12.5. Within 14 calendar days of service termination, any Xoom Equipment must be returned in good working condition to our office at your cost and risk. If you fail to do so, we reserve the right to charge you for replacement of the equipment. Payment for such Charges payable by you in return for the Xoomtalk Equipment in accordance with Clause 6 in this Agreement; must be received within 30 days.
- 12.6. You shall ensure that your Users shall permit Xoom and/or any Service Provider or Subcontractor to modify, change, add or replace the Xoom Equipment or any part of the Xoom Equipment in a timely manner.
- 12.7. Any Xoom Equipment which we supply to you, will be configured by us to meet your basic network and Internet specifications. You are not permitted to make any alterations to the configuration of such equipment and any such alterations will invalidate our support obligation (if any) relating to such equipment unless expressly authorised by us in advance.
- 12.8. You shall not do anything that may damage or affect the operation of the Xoom Network or our Service Provider's network or Xoom Equipment.
- 12.9. You will ensure that any Customer Equipment you connect to the Services is in proper working order and complies with all applicable standards and approvals for connection to the telecommunications network.
- 12.10. Any Customer Equipment you use in connection with the Services must be:
  - 12.10.1. technically compatible with the Services and must not harm our or our Service Provider's network or other user's equipment or our Service Provider's equipment;
  - 12.10.2. connected by you using the applicable network termination point in accordance with standard industry practice and with our instructions; and
  - 12.10.3. adequately protected by you against viruses and other breaches of security.
- 12.11. If you choose to use your Customer Equipment for any of our Services, we will not be liable for any faults or associated costs associated with your Customer Equipment. You acknowledge and agree that we shall not be responsible for the configuration, repair and maintenance of the Customer Equipment unless we are contracted separately to do so.
- 12.12. You will fully indemnify and hold us harmless against all losses, damages and amounts (including legal fees), suffered or incurred by us or arising out of or in connection with any actual or potential claims, legal and regulatory proceedings against us by a third party, resulting from damage to the Xoom Equipment or the Xoom Network or the Service Provider's network which is caused by:
  - 12.12.1. an act or omission of you or any of your or your customers Users;
  - 12.12.2. malfunction or failure of any Customer Equipment adversely affecting the Xoom Equipment, the Xoom Network or any Third Party Network.
- 12.13. We shall notify you of any such claims or proceedings and inform you regularly as to the progress of such claims or proceedings.

### **13. Intellectual Property**

- 13.1. Any patents, design rights, know-how, copyrights, trademarks, the right to use Software and all other similar intellectual property proprietary rights (whether registered or unregistered) worldwide relating to the Services, including but not limited to softphones, desktop clients, backup and computer security Software packages, or arising during the development of the Services ("**Intellectual Property Rights**"), belong to us or to a relevant third party.

- 13.2. You agree that you will not use the Corporate Marks (including photographs of buildings) of us or our suppliers or name or any element thereof either alone or in combination with another word or device mark, nor any other brand, get up or trademark of us or our suppliers, where such use constitutes or would constitute an infringement of our registered trade mark or common law trade mark rights; or
  - 13.2.1. use or register or attempt to register as a trade mark, company name or domain name, anything that is identical to, similar to, or likely to be confused with any of our Service Providers' or other suppliers' corporate marks.
- 13.3. You will not display our corporate marks without our express permission and in any event you will not display our corporate marks after the termination of this Agreement.
- 13.4. However, nothing in this Clause (13) prohibits you from making legitimate use of our name or any trademark of ours whether in the form of factual statements or in accordance with Section 10(6) of the Trade Marks Act 1994, or in any other way which does not constitute an infringement of our registered or common law trade mark rights.
- 13.5. All copyright and other Intellectual Property rights in this Agreement remain with Xoom.
- 13.6. You shall indemnify us against all third party claims for infringement of copyright or other Intellectual Property Rights which may arise in respect of your Content or otherwise. We shall notify you of any such claims or proceedings and inform you regularly as to the progress of such claims or proceedings.

#### **14. Content**

- 14.1. Where the Service allows access to the internet you understand and affirm that the use of the internet is at your own risk.
- 14.2. We do not warrant or guarantee the accuracy or completeness of any information made available, displayed or transmitted in connection with the Services (including without limitation, information made available by means of an HTML hyperlink, third party posting or similar means) including but not limited to all sounds, images, software and any other materials (in whatever form), trademarks, service marks and domain names contained in such information, the contents of any bulletin boards or chat forums, and all upgrades, updates, modifications and other versions of any of the foregoing (the "**Content**"). You acknowledge and affirm that your use of the Content is at your sole risk.
- 14.3. You are entirely responsible for evaluating any goods or services offered by third parties via the Services or on the internet. We will not be a party to or in any way be held responsible to you for any transaction between you and third parties.
- 14.4. You warrant that any information you make available on your website, both yours or that of a third party, is and will remain wholly accurate and will not include any information or material, any part of which, or the accessing of which or use of which, would be a criminal offence or is otherwise unlawful.

#### **15. Conditions of Use (Network and Services)**

- 15.1. We will (in consideration of the Charges) deliver data packets to your network boundary only and will not be held responsible for the transit, routing and delivery of data packets to individual devices on your network unless we provide you with a relevant Managed Network Service which extends our demarcation point beyond our NTE.
- 15.2. We shall be entitled to rely upon the specification of the Services and any advice given by you or your Users (in relation to the suitability of the Services for meeting your requirements) such that to the extent that the Services comply with such specification and or such advice then we shall be deemed to have supplied the same in accordance with this Agreement.
- 15.3. You shall (and shall ensure that your Users):

- 15.3.1. use the Services in accordance with: (i) this Agreement; (ii) any reasonable instructions given by us from time to time (including without limitation regarding health, security, safety or quality of the Services); and (iii) any laws, regulations and licences which apply to the use of the Services by you;
- 15.3.2. not allow an alternative supplier (or any third party) to override or bypass our Services either through the installation of equipment or through any network provider during the Term of the Agreement;
- 15.3.3. be responsible for any engineering reprogramming costs, cessation fee or equipment removal costs that may be required to terminate the Service of your previous supplier(s).
- 15.4. You agree that we may, at any time, scan any IP addresses allocated to you for anything which may affect the security of the Services (including open relays and/or open proxies or equivalent).
- 15.5. Unless we provide you with a relevant Managed Network Service, you agree that the configuration of your or your Users internal network remains your or their responsibility. Any interruption to the Services resulting from such configuration will not be regarded as an interruption in or suspension of the provision of the Services by us.
- 15.6. If we provide you with a Managed Network Service we are only responsible for the elements of your internal network that we have agreed to maintain and support during the sales process and are identified on the Service Order Form, Service Order Acceptance or Service Specific Information Form.
- 15.7. You agree we are not responsible for the support or maintenance of any devices on your Local Area Network be these laptops, servers, desktops, mobile phones or any other such devices that you or your Users own. We are also not responsible for the security of these devices or the data held on them.
- 15.8. If you request and we agree to change all or part of the Services (e.g. you send us a Configuration Request or a Service Enhancement Request) you must complete formalities we may require, giving effect to such change. We shall be entitled to revise the Charges you pay to reflect the changes agreed with you and we may (at our sole discretion) require payment from you prior to effecting such changes and require you to enter into a new Initial Term.
- 15.9. You agree that you are entirely responsible for any form of automated dialling system to place outbound calls which you or your Users have set up (including, but not limited to, the reliability of such a system and any call costs which may be incurred as a result of its use).
- 15.10. You also acknowledge that we may exercise editorial control over the content of our servers, but that we do not have the resources to ensure, nor are we capable of checking, the full content of our servers at all times. 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. 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.
- 15.11. You agree that you will promptly provide us with all information within your possession or control and assistance that we may reasonably require in order to provide the Services and to perform all of our other obligations under this Agreement.
- 15.12. You agree that you will be responsible for all use of the Services and (unless, we have agreed to supply it as part of the Equipment) for providing the necessary equipment and/or services (including, without limitation, a telephone line, if required), and for obtaining any permits and/or licences which are necessary for connecting to, and accessing, the Services. You agree that you are responsible for complying with all terms and conditions (including, without limitation, terms of payment) relating to any telecommunications service which is required by you to access the Services. You agree to comply with the manufacturer's instructions for equipment you provide.

- 15.13. You agree that you will, at all times and for whatever purpose, use the Services and/or the Equipment in compliance with all Laws.
- 15.14. In addition to Clause 15.13, you agree that you, your Users or someone you have knowingly allowed to use the Services we provide to you, will not use, and will take all reasonable precautions to ensure that the Services and/or the Equipment:
  - 15.14.1. fraudulently or in connection with any criminal offence;
  - 15.14.2. in a way that causes us to lose or breach or contravene any legislation or our authorisation to act as a public Communications Provider;
  - 15.14.3. in a way that is false or misleading (including, but not limited to, asking for money under false pretences or impersonating others);
  - 15.14.4. to send, knowingly receive, upload, download, use or re-use any material which is offensive, abusive, indecent, obscene (including, but not limited to, nudity, pornography, bestiality or activity that exploits, harms, or threatens to harm children), defamatory, or menacing (including, but not limited to, stalking, advocating violence against others or hate speech), or in breach of copyright (including, but not limited to, unauthorized sharing of copyrighted maps, music, photographs and other content), in breach of confidence, privacy or any other rights;
  - 15.14.5. to knowingly make available or upload files that contain software or other material, data or information not owned by or licensed to you or your Users;
  - 15.14.6. to falsify the true ownership of software or other material or information contained in a file that Users make available via the Xoom Network;
  - 15.14.7. to propagate computer worms, viruses or any type of malware;
  - 15.14.8. to attempt to gain unauthorised entry to any site or network including but not limited to Xoom's Network; or
  - 15.14.9. to cause alarm, distress, annoyance, inconvenience or anxiety;
  - 15.14.10. to "spam" or to send or provide unsolicited advertising or promotional material or knowingly to receive responses to any spam, unsolicited advertising or promotional material sent or provided by any third party;
  - 15.14.11. to make or attempt to make false or hoax calls to emergency services or to make nuisance calls in general;
  - 15.14.12. in any way which, in our reasonable opinion, is or is likely to be detrimental to the provision of services to you or any of our customers, or to our business and/or reputation;
  - 15.14.13. in contravention of any applicable licences or third party rights, or in contravention of our Fair & Acceptable Use Policy; or
  - 15.14.14. in a way that does not comply with any instructions provided to you.  
(collectively known as the "**Prohibited Activities**".)
- 15.15. If you become aware that any Users are using the Services, the Xoom Network or our Service Provider's network to perform any Prohibited Activities you shall use best endeavours to stop such Users from doing so immediately and will inform us immediately.
- 15.16. You may use the Services to link to other networks world-wide, provided that you comply, at all times, with any policies and/or terms and conditions imposed by the operators of such other networks.
- 15.17. You agree that you will not perform, or allow anyone else to perform, any unauthorised IP or Port multicasting, spoofing, broadcasting, vectoring, filtering, translation or routing.
- 15.18. You acknowledge that Services are provided to other customers and that we owe a duty to these users as a whole to preserve our network integrity and avoid network degradation. If, in our

reasonable opinion, we believe that your use of the Services has or may adversely affect such network integrity or may cause network degradation we may manage your transmission speed, the type of traffic you are passing, and/or suspend your Service.

- 15.19. Where you have ordered an Connectivity Service, you confirm your understanding that, due to packet overheads, the throughput experienced may be slightly less than the bandwidth you ordered.
- 15.20. Each Party shall provide the other with all reasonably necessary cooperation, information and support to prevent and/or stop any misuse of the Xoom Network or a Service Provider's network by any Users.
- 15.21. You shall remain liable for all acts or omissions of your Users and shall procure that each User does not act, or fail to act, in a way which would cause you to breach your obligations under this Agreement.
- 15.22. Your breach of your obligations under this Clause 15, may result in the suspension or termination of the affected Services or in the termination of the Agreement at our sole discretion. If we become aware that you or any of your Users are performing any of the Prohibited Activities, we will notify you of the breach in writing. If we have not received, within one (1) Working Day of dispatch of such notice, a satisfactory response from you confirming that the breach has been cured and detailing the actions that have been taken to stop the Users performing any Prohibited Activities, then we shall have the right to restrict the access to and/or disconnect you and/or you Users in question from the affected Services, and if necessary from the entire Service, from the Xoom Network or Service Provider's products or services. If we disconnect you or any of your Users we will notify you as soon as reasonably practicable in the circumstances. Notwithstanding the foregoing, if the Prohibited Activity is in our reasonable opinion serious or fraudulent (including where it has a direct or indirect impact on the experience of other customers of Xoom or on our Service Providers), we may suspend immediately and without prior notice, the provision of the Services to you or to any of your Users, or restrict the access to and/or disconnect you and/or your Users in question from the affected Services, until such time as the Prohibited Activities have ceased. If this happens will notify you as soon as reasonably practicable in the circumstances.
- 15.23. You will fully indemnify and hold us harmless against all losses, damages and amounts (including legal fees), suffered or incurred by us arising out of or in connection with any actual or potential claims, legal and regulatory proceedings against us by a third party, resulting from your use of the Services in breach of your obligations under this Clause 15. We shall notify you of any such claims or proceedings and inform you regularly as to the progress of such claims or proceedings.
- 15.24. We will also require you to reimburse us for any reasonable and foreseeable losses, costs and expenses which we incur as a direct result of the misuse of the Services either by yourself, by your Users or by someone you have knowingly allowed to use the Services we provide to you.

## **16. Access to premises**

- 16.1. To enable us to carry out our obligations under the Agreement, you are responsible for providing us and any of our suppliers, agents or Subcontractors access to any premises owned, controlled or occupied by you, your customers or Users in respect of a Service at all reasonable times (i.e. 24 hours a day, seven days a week), including without limitation access for the purposes of installation, inspection, maintenance, replacement, upgrade or removal of any of the Services we provide to you or any Equipment associated with it (including but not limited to the Xoom Equipment). You warrant that you have any necessary permissions and authority to allow us to access the premises for the purposes of this Clause 16.1.
  - 16.1.1. You are responsible where required to provide a letter authorising us to access those premises from the owner or occupier (as the case may be) of those premises.
  - 16.1.2. We or our suppliers, agents or Subcontractors will comply with the reasonable policies or regulations applicable in the premises provided that you notify us in writing of such policies and regulations reasonably in advance.



- 16.1.3. You shall ensure a safe and suitable working environment for our employees, agents, suppliers or Subcontractors at the premises at all times. You shall inform them in advance of any health and safety policies or risks applicable to the premises.
  - 16.1.4. You are responsible for providing electrical connections for such Equipment as is necessary to support the operation of the relevant Service.
  - 16.1.5. You are responsible for ensuring compliance with all statutes, regulatory requirements, instructions and health and safety requirements relating to the Equipment and for obtaining all Wayleaves, consents, approvals, servitudes, rights of way and any similar rights in relation to any premises required for the purpose either of installing, maintaining, repairing your Service(s) or, at the end of the Initial Term or Renewal Term, removing the Equipment (including but not limited to the Xoom Equipment) and, if necessary, any cabling installed.
- 16.2. In the event of any conflict between the premises regulations and this Agreement, this Agreement will prevail.

## 17. Repairs to Service and Xoom Equipment

- 17.1. We provide to our customers a service and administration telephone helpdesk facility (the “**Service Desk**”). Xoom will accept emails to [help@xoomtalk.com](mailto:help@xoomtalk.com) and calls to our Main Telephone Number (or other telephone numbers or email addresses as we may notify to you from time to time) for English language telephone support in connection with Incidents during Working Hours. In addition, we may offer enhanced Care Levels (e.g. 24/7):
  - 17.1.1. to you for an extra Charge; or
  - 17.1.2. for specific Services (as described in the relevant Service Schedule, Schedule 8 – Service Level Agreement or in the Proposal).
- 17.2. We will use reasonable endeavours to provide an uninterrupted service, but you acknowledge and agree that faults may occur, including faults (such as intermittent faults) which may recur and have no identifiable cause.
- 17.3. We will try to repair faults quickly when reported to us. If you suspect a fault, please look at and test your Customer Equipment first to see if it is faulty. We are not responsible for faults on, or caused by, Customer Equipment and if we (or our subcontractors, Service Providers or suppliers) are called out and find the fault is with or is caused by your Customer Equipment, you may have to pay the call out Charge at our then current rates.
- 17.4. If you report a fault with a Service, we (or our Subcontractors or suppliers) will repair the fault in accordance with Schedule 8 – Service Level Agreement and the relevant Service Schedule (or any applicable Care Levels) or as we notify you in writing. Additional time related Charges and replacement Equipment costs may also be added.
- 17.5. Unless we say otherwise in writing, if we send an engineer to your premises to check any faulty equipment or Xoom Equipment you will be responsible for the engineer call out Charge at our then current rates whether the equipment or Xoom Equipment is within its warranty period or not. However, if the fault is due to Xoom Equipment failing and this has not been caused by you or the Users failing to comply with Clause 12 then there will be no Charge levied for the call out.

## 18. Moving Address

- 18.1. We will provide the Services at the premises you specify when you send the relevant Service Order Request or Service Specific Information Form to us.
- 18.2. You may request that we move an active Service to a new address, once the request has been received, we will carry out relevant checks and surveys to see if it is possible, but we cannot guarantee that we will be able to provide you with the Services at the new address;
  - 18.2.1. if the move to a new address is required before the end of any applicable Initial Term a Cancellation Fee may apply to you unless you agree to keep receiving our Services at your

previous address or we agree, and are able, to provide these Services in your new address and it is commercially viable.

- 18.2.2. if we agree to provide the Services to your new address, we will give you an estimated date (or dates) to complete the move of your Services. You may have to pay a service transfer Charge specified by us in advance.
- 18.3. The Services we are able to deliver to the new address may vary from the Services that were delivered to the previous address. Where required, we will send a new contract for the Services that we will provide, or we will ask you to enter into a new Initial Term and your Charges will be adjusted accordingly.
- 18.4. You may not be able to keep your phone number(s) if you move to a new address but we will apply reasonable endeavours to assist with this.

## **19. Suspension and Termination**

- 19.1. We will provide the Services for the relevant Service Period. However, we may have to modify, suspend, vary or discontinue the whole or any part of the Services (including, without limitation, any codes or access details or technical specifications associated with the Services) and will endeavour to give you as much notice as is reasonably practicable if we need to do so.
- 19.2. We will endeavour to ensure that the Services are of a high quality. In order to maintain the quality and safety of the Services, and any other services which we provide to our customers, we may:
  - 19.2.1. suspend, close down or restrict the whole or any part of the Services in order to carry out emergency or other repairs, maintenance and/or improvements or to prevent overload of the network or to preserve the safety, security or integrity of the Services and any Internet traffic conveyed (although we will give you as much notice as is reasonably practicable before doing so and will endeavour to carry out such works during the relevant scheduled maintenance periods as published by us); and/or
  - 19.2.2. give you instructions on how to use the Services. You agree to comply with any reasonable instructions we may give you in accordance with this Clause.
- 19.3. In the event that the Agreement or any Service is terminated by you (or is terminated by us due to your breach of the Agreement) before the end of an Initial Term or Renewal Term you shall pay the relevant Cancellation Fee(s) for each Service you terminate, unless Clause 19.6 below applies.
- 19.4. You shall be entitled to terminate:
  - 19.4.1. any Service by giving us at least 30 days' advance written notice before the end of the relevant Initial or Renewal Term applicable to this Service, notice to expire at the end of such Initial or Renewal Term;
  - 19.4.2. the Agreement by giving us at least 60 days' notice to expire at the end of the last Initial or Renewal Term applicable to the Services we provide to you;
  - 19.4.3. if we make any changes to the Agreement that are of detriment to you and have not been explained in clauses 6.4, 6.5, 6.6 or 7.1.
- 19.5. In the event that you terminate the Agreement, all Service Schedules and Appendices will automatically terminate and you may be liable to pay a Cancellation Fee per terminated Service as described in Clause 19.3.
- 19.6. You shall be entitled to terminate the Agreement (or a Service) immediately without being liable to pay the amounts specified in 19.3 above if:
  - 19.6.1. we breach a material term of this Agreement which, after your written notice to us, we have not reasonably rectified within 30 days;

- 19.6.2. we are not able to provide you with the Services (e.g. because we cease to do business), unless a suitable supplier takes over the provision of the Services from us and agrees to keep providing the Services in similar terms as the terms of this Agreement). However, if we are not able to provide you with some Services under the Agreement but we are able to keep providing you other Services you shall be entitled to terminate the Agreement only as it relates to the Service(s) we can no longer provide to you and the Agreement will remain in place for the rest of the Services;
- 19.6.3. we are in breach of a material term of the Agreement and we have: (i) bankruptcy or insolvency proceedings brought against us; or (ii) make an arrangement with our creditors (other than where solely for solvent amalgamation or solvent reconstruction); or (iii) a receiver, administrative receiver or administrator is appointed over any of our assets; or (iv) we go into liquidation; or (v) a notice is given, a petition is issued, a resolution is passed or any other step is taken to commence any of the foregoing procedures; or (vi) there is a corresponding event under Scottish law. For the avoidance of doubt, you shall not be entitled to terminate the Agreement under this Clause 19.6.3, if we keep providing the Services to you in accordance with the Agreement: or
- 19.7. We shall be entitled to terminate this Agreement (or any of the Service Schedules) at any time for convenience by giving you at least 30 days' written notice.
- 19.8. We shall be entitled to terminate the Agreement immediately (and Clause 19.3 above shall apply) if:
- 19.8.1. you do anything (or allow a third party to do anything) which we reasonably believe could damage or affect the operation of our network (or our suppliers', Service Providers' or other third party networks);
- 19.8.2. you breach any of your obligations under Clause 6 (Charges & Payment), Clause 12 (Equipment), Clause 13 (Intellectual Property) and Clause 15 (Conditions of Use (Network and Services)) of the Agreement.
- 19.8.3. you have: (i) bankruptcy or insolvency proceedings brought against you; or (ii) make an arrangement with your creditors (other than where solely for solvent amalgamation or solvent reconstruction); or (iii) a receiver, administrative receiver or administrator is appointed over any of your assets; or (iv) you go into liquidation; or (v) a notice is given, a petition is issued, a resolution is passed or any other step is taken to commence any of the foregoing procedures; or (vi) there is a corresponding event under the laws of Scotland; or (vii) there is a corresponding event under the laws of the country your company is registered in.
- 19.9. In the event that we or you terminate a Service, Clause 20 below shall apply as it relates to the terminated Service Schedule and the rest of the Agreement will remain in force as it relates to the Services not affected by this termination.

## **20. Effects of Termination**

- 20.1. On termination of the Agreement:
- 20.1.1. all the Services shall be terminated;
- 20.1.2. any licence granted to you by us or by our licensors shall immediately cease, and you must immediately stop using the Services;
- 20.1.3. you will immediately pay any outstanding invoices and interests. In respect of Services supplied for which no invoice has been submitted, we may submit an invoice which shall be payable by you immediately on receipt.
- 20.1.4. where a Service is terminated by us, as a result of your breach of this Agreement, or by you for convenience, Charges (or any portion thereof) that are invoiced in advance will not be refunded. Subject to the foregoing, we will refund any money owed to you, and return to you the balance of any amounts held on deposit on behalf of you, after first

deducting any amounts you owe to us under this Agreement or under any other agreement that we have with you;

20.1.5. we may charge you a Cancellation Fee as described in Clause 19.3 above.

20.1.6. you shall, at our sole discretion:

20.1.6.1. promptly after termination of this Agreement (and in any event within 3 Working Days of receiving our request), give us and/or the relevant Service Providers access to and all reasonable assistance to remove the Xoom Equipment from your premises; or

20.1.6.2. return the relevant Xoom Equipment to us at your own cost. If you do not return the Xoom Equipment in good working condition (fair wear and tear excepted) or do not return the Xoom Equipment at all, then you may be charged for the Xoom Equipment at our then current Charges (or if these Charges are not specified, you shall pay to us an amount equal to the full market replacement value of the Xoom Equipment); and

20.1.6.3. unless the Agreement or a relevant Service Schedule states otherwise, we may delete all your Content and Customer data (including any email addresses stored on the relevant Services). You are responsible for arranging a back-up of such Content and data.

20.2. Save as expressly set out in this Agreement, termination of this Agreement shall be without prejudice to any other rights or remedies a Party may be entitled to under this Agreement or at law and shall not affect any statutory or accrued rights or liabilities of either Party.

20.3. The termination of this Agreement for whatever cause shall not affect any provision of this Agreement which is expressed or by implication intended to survive or operate in the event of termination of this Agreement including but not limited to Clause 6 (Charges & Payment), Clause 21 (Liability) and Clause 27 (Warranties and Representations) of the Agreement.

## 21. Liability

21.1. 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 suppliers, Service Providers, 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. Where necessary for commercial, technical or other reasons:

21.1.1. a network or Service Provider connected to the Services may suspend or terminate its network connection to the Services; or

21.1.2. we may suspend or terminate the connection of the Services to another network or Service Provider.

21.2. Although we will try to ensure the accuracy and quality of the Services, the Services are provided on an "as is" basis and:

21.2.1. we do not accept responsibility for any use of or reliance on the Services or for any disruptions to or delay in the Services; and

21.2.2. we do not make any representations as to the accuracy, comprehensiveness, completeness, quality, currency, error-free nature, compatibility, security or fitness for the purpose of the Services.

21.3. No warranty, term or condition, express or implied, is offered by us and our third party suppliers in relation to the Services, except as expressly provided in this Agreement. You agree that any such suspension or termination referred to in Clause 21.1 above will not constitute a breach by us of the Agreement.

- 21.4. 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 a suspension of the Services in accordance with Clause 19.2.1 above.
- 21.5. You agree and acknowledge:
  - 21.5.1. 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 Agreement;
  - 21.5.2. that we cannot adequately insure our potential liability to you; and
  - 21.5.3. that the sums payable by you under the Agreement have been calculated on the basis that we shall exclude liability in accordance with the Agreement.
- 21.6. In no circumstances whatsoever will we be liable to you (whether in contract, for breach of duty, negligence or otherwise) for:
  - 21.6.1. Any losses below:
    - 21.6.1.1. loss of revenue;
    - 21.6.1.2. loss of actual or anticipated profits (including loss of profits on contracts);
    - 21.6.1.3. loss of the use of money;
    - 21.6.1.4. loss of anticipated savings;
    - 21.6.1.5. loss of business;
    - 21.6.1.6. loss of opportunity;
    - 21.6.1.7. loss of goodwill;
    - 21.6.1.8. loss of reputation;
    - 21.6.1.9. loss or corruption of, or damage to, data, systems or programs; or
    - 21.6.1.10. any indirect or consequential loss or damage howsoever caused, which arises out of or in connection with any use of, or inability to use, the Services and/or the Equipment.
  - 21.6.2. You acknowledge that any firewall we supply is not designed, manufactured, authorised or warranted to be suitable for use in any system where a failure of such a system could result in a situation that threatens the safety of human life, including without limitation any medical, life support, aviation or nuclear applications. Any such use and subsequent liabilities that may arise from such use are totally the responsibility of the End User, and all liability, whether in contract, tort or otherwise in relation to the same is excluded subject to Clause 21.8.
- 21.7. In any event:
  - 21.7.1. Our liability to you for any failure of the Services or other event in any minimum period of notice that you must give to us to terminate a specific Service or this Agreement shall not exceed the Charges payable in respect of a notice period of 30 days.
  - 21.7.2. Our aggregate liability to you of any sort (including for breach of contract and negligence) in connection with this Agreement shall not exceed the amount of Charges payable by you to us in accordance with this Agreement.
  - 21.7.3. Our entire liability to you in contract, tort (including negligence) or otherwise arising out of or in connection with the Services provided under this Service Schedule shall be limited to the lesser of the contracted total revenue for the Service or £4,000 for any one event or series of connected events and to £7,000 for all events (connected or unconnected) in any period of 12 (twelve) consecutive calendar months.

- 21.8. Nothing in this Agreement will limit our liability under Part I of the Consumer Protection Act 1987 or for death or personal injury caused by our negligence, or:
- 21.8.1. for liability under any breach of the obligations implied by s.12 Sale of Goods Act 1979 or s.2 Supply of Goods and Services Act 1982;
  - 21.8.2. for fraud or fraudulent misrepresentation; or
  - 21.8.3. any other liability which cannot be excluded or limited by applicable law.
- 21.9. You agree that you will be responsible for and hold us and our suppliers, agents, contractors, licensees, employees and information providers, involved in providing the Services and/or Equipment, harmless from and against any and all losses, claims, damages, costs, demands, expenses and other liabilities which we suffer as a result of any breach by you of the terms of this Agreement, and from and against any claim brought by a third party alleging that the unauthorised use by you or modification by you of the Services and/or the Equipment, by you or under your Account, has infringed any Intellectual Property or other right of any kind, or any applicable legislation or regulation (whether international or domestic) but excluding any liability which we face as a result of criminal prosecution.
- 21.10. You agree to pay all costs, damages, awards, fees (including legal fees), judgments and other sums awarded against, or agreed to be paid by, us in relation to such claims referred to in Clause 21.9 above. You further agree that you will, as soon as possible, notify us of, and forward to us all correspondence received by you in relation to such claims.
- 21.11. You also agree that we shall have full authority to defend, compromise or settle such claims referred to in Clause 21.9 above, and that you will, at your expense, provide us with all reasonable assistance necessary to defend such claims.
- 21.12. Subject to clause 21.13, the only remedy available to you for a breach by us of the Agreement shall be for breach of contract under the terms of the Agreement.
- 21.13. Nothing in the Agreement shall exclude or limit our liability for fraudulent misrepresentation.

## **22. Passing Off**

- 22.1. You agree that you will not:
- 22.1.1. represent yourself as us or our suppliers;
  - 22.1.2. misrepresent your relationship with us or our suppliers;
  - 22.1.3. misrepresent the nature and/or effect of your contracts with Users;
  - 22.1.4. in any other way pass off your business as being ours or represent that you are in any joint venture with us in the absence of explicit prior written consent from us.

## **23. Complaints**

- 23.1. We make every effort to ensure that our customers are happy with the level of service they receive from us. If you have a complaint about any part of our Services, please refer to our Complaints Code posted on our Website. You can also request a copy of our Complaints Code from our team by calling our Main Telephone Number or emailing [complaints@xoomtalk.com](mailto:complaints@xoomtalk.com).

## **24. Force Majeure**

- 24.1. You agree that we shall not be liable for any and all losses (including loss of data), damages, costs, claims and other liabilities which arise as a result of any delay or interruption in, or any non-delivery, or missed delivery or failure of the Equipment and/or Services due to circumstances beyond our or any of our suppliers' reasonable control (including, but not limited to, fire, lightning, explosion, war, military operations, disorder, flood, drought, subsidence, industrial dispute, sabotage, terrorism, weather conditions, riot, failure of power supplies, civil commotion, epidemics, pressure waves caused by devices travelling at supersonic speeds, nuclear accident, acts of God, mandatory network change freezes over the festive season or acts or omissions of local or central Government or other competent authorities including but not limited to highways

authorities and Public Communications Providers) and acts or omissions or insolvency of our suppliers or strikes, slowdowns, lockouts or other labour stoppages affecting third parties, difficulty, delay or failure in supply by third parties, failure (having used reasonable endeavours) to obtain or maintain wayleaves or other necessary consents or permissions) (a "**Force Majeure Event**"). In such circumstances, the time for performing our obligations (including any delivery date stipulated in an order form) shall be extended by a period equal to any delay caused to us as a result of a Force Majeure Event, whether or not we have given notice to you of the occurrence of such Force Majeure Event.

- 24.2. Should any event, referred to in Clause 24.1 above, affecting delivery of the Services continue for more than 60 days, then either we or you may terminate the Agreement forthwith. Where you terminate the Agreement you agree to reimburse any costs which we are liable for as a result of the termination.

## 25. Data Protection

- 25.1. In this Clause, the "**DPA**" means the Data Protection Act 2018, the European Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and any replacement or supplemental legislation; and the terms "process" (and its derivatives), "data controller", "personal data", "data processor", "data breach" and "data subject" shall have the meanings given to them in the DPA.
- 25.2. Both parties will comply with all applicable requirements of the DPA. This clause 25 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the DPA.
- 25.3. Details of the Processing operations conducted by us are as set out in this Clause and may be updated from time to time as agreed in writing between the parties.
- 25.4. We will comply with the Data Protection Act 2018 (the "Act") and any replacement or supplemental legislation, in order to safeguard any Relevant Personal Data (as defined by such Act) which you pass to us, in accordance with our Privacy Policy. We will Process Relevant Personal Data in accordance with applicable Data Protection Laws and as set out in our Privacy Policy, a copy of which can be found on our Website.
- 25.5. In order for us (or our suppliers or Subcontractors) to provide the Service(s), you may need to supply certain information or data to us. Where such information or data constitutes personal data we shall only undertake processing of that personal data (referred to in this Agreement as the "**Relevant Personal Data**") for the purposes of, and to the extent reasonably required, to enable us to perform our obligations under this Agreement or to deliver Service(s) as set out in our Privacy Policy.
- 25.6. You acknowledge that, in respect of all User personal data that you provide to us, Xoom is the data controller.
- 25.7. You understand that we will collect and Process Relevant Personal Data from you or your Users in the course of becoming a Customer (which will include Relevant Personal Data) under lawful basis (your consent, performance of this Agreement with you and/or necessary for our legitimate interests) for the purposes of (including but not limited to):
- 25.7.1. to provision the Service(s) and deliver Equipment;
  - 25.7.2. to establish and manage your account, including providing notifications to you regarding your account;
  - 25.7.3. to provide you with information or support which you request;
  - 25.7.4. to inform you about new services;
  - 25.7.5. to improve the Service(s)
  - 25.7.6. for statistical analysis and marketing;
  - 25.7.7. submission to a credit reference agency and

- 25.7.8. to bill and collect for Service(s).
- 25.8. The information we request may include Relevant Personal Data such as your:
  - 25.8.1. name and address;
  - 25.8.2. e-mail address;
  - 25.8.3. username and password;
  - 25.8.4. your phone number;
  - 25.8.5. your IP address and
  - 25.8.6. payment/financial information
- 25.9. You can raise objections related to our collection of the Relevant Personal Data. However, should you choose not to provide such information, we may be unable to process an order, or fulfil a Service in accordance with this Agreement.
- 25.10. The data Processed may concern the following categories of Data Subjects, the extent of which is determined and controlled by you in its sole discretion, and which may include, but is not limited to Relevant Personal Data relating to the following categories of Data Subjects:
  - 25.10.1. your Users (employees, directors and contractors);
  - 25.10.2. your customers or third parties authorised by you
- 25.11. You acknowledge and accept that we will share Relevant Personal Data with our suppliers, Subcontractors or third party Service Providers to enable us to supply Service(s) and Equipment to you in accordance with this Agreement. These appointed Processors and/or Sub-processors operate within written agreements incorporating terms substantially similar to those set out in this Clause with respect to the protection of Personal Data applicable to the nature of the Services provided by such Processor or Sub-processor. We will maintain an up-to-date list of Processors and/or Sub-processors which will be available on request.
- 25.12. We will only retain your Relevant Personal Data for as long as you have consented (the duration of this Agreement), unless otherwise agreed upon in writing between the parties or for the purposes of satisfying Clause 25.17.3, any Data Protection Laws or other legal, accounting, reporting or regulatory requirements.
- 25.13. Xoom shall bring into effect and maintain appropriate technical and organisational measures to
  - 25.13.1. maintain security of the Relevant Personal Data;
  - 25.13.2. to prevent unauthorised or unlawful access to or processing of Relevant Personal Data and accidental loss or destruction of, or damage to, Relevant Personal Data; and
  - 25.13.3. to ensure a level of security and prevention appropriate to the risk; including but not limited to:
    - 25.13.3.1. pseudonymising and encrypting Relevant Personal Data, as appropriate;
    - 25.13.3.2. ensuring the ongoing confidentiality, integrity, availability and resilience of our processing systems and Services;
    - 25.13.3.3. enabling the restoration, availability and access to Personal Data in a timely manner in the event of a physical or technical incident and, without prejudice to the foregoing, in accordance with this Agreement;
    - 25.13.3.4. regularly testing, assessing and evaluating the effectiveness of the technical and organisational measures for ensuring the security of the processing; and
  - 25.13.4. taking steps to ensure that any of our employees who have access to Personal Data does so in accordance with our rights and obligations as expressly detailed in this Clause or otherwise on your express written instructions unless otherwise required by legislation or other applicable regulation;



- 25.14. We may not transfer any Relevant Personal Data to a country or territory outside the UK which is not deemed by the applicable data protection regulator(s) to provide an adequate level of protection other than in compliance with your instructions, provided that those instructions shall be deemed to include any transfers which are necessary in connection with the provision of the Services where subject to adequate safeguards including those prescribed by clause 25.4 above.
- 25.15. We do not sell or rent Relevant Personal Data to third parties.
- 25.16. You acknowledge that we may, from time to time, be required under regulations and/or legislation to co-operate with and/or disclose and provide your or your Users Relevant Personal Data, communications content and/or traffic data to an appropriate judicial, law enforcement or government authority lawfully requesting such information. This includes but is not limited to:
- 25.16.1. to disclose all or part of your Relevant Personal Data to a regulator (e.g. Ofcom or, the Information Commissioner Office), a court, or to a public body to comply with any regulatory, government or legal requirement (including but not limited for prevention and detection of crime and terrorism); and
  - 25.16.2. to communicate information that describes the habits or usage patterns and/or demographics of the whole or a part of our customer base (including you) but which is anonymous and does not describe or reveal the identity of any particular customer to any third party.
- 25.17. Without prejudice to the generality of clause 25.4 we will, in relation to any Relevant Personal Data Processed in connection with our obligations under this Agreement;
- 25.17.1. assist you, at your cost, in responding to any Data Subject access requests and in ensuring compliance with obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators taking into account the nature of the Processing, including by appropriate technical and organisational measures, insofar as this is possible;
  - 25.17.2. notify you without undue delay on becoming aware of a Personal Data Breach, if required to do so under Data Protection Laws and/or the Privacy and Electronic Communications Regulations (PECR);
  - 25.17.3. on your written instruction, delete or return Personal Data and copies thereof to you on termination of this Agreement unless required by Data Protection Laws to store or retain the Relevant Personal Data;
  - 25.17.4. maintain complete and accurate information and, upon your prior written request, where reasonable, make available to you all information necessary to demonstrate our compliance with this Clause 25 and allow for and contribute to your audits and/or inspections, provided that:
    - 25.17.4.1. you provide reasonable prior written notice, in any event being not less than 30 Working Days, of such audit and/or inspection being required by the Customer;
    - 25.17.4.2. both parties mutually agree upon the scope, timing and duration of the audit and/or inspection;
    - 25.17.4.3. such audit and/or inspection is conducted during Working Days and Working Hours with minimal disruption to our business, the Processors' and/or Sub-processors' business and the business and interests of our other Customers;
    - 25.17.4.4. the scope of such audit and/or inspection does not causes us to breach our confidentiality obligations with other customers, Suppliers or any other organisation; and
    - 25.17.4.5. you will reimburse us reasonable charges associated with the audit and/or inspection.

- 25.18. Without prejudice to the generality of clause 25.4, you will ensure you have all necessary appropriate consents and notices in place to enable lawful transfer of the Relevant Personal Data to us for the duration and purposes of this Agreement and you will only disclose to us the Relevant Personal Data required to perform the obligations of this Agreement.
- 25.19. It shall be your responsibility to keep any Relevant Personal Data up to date and you warrant and undertake to us that you have used reasonable endeavours to ensure that all of your personal data and contact details are accurate and complete.
- 25.20. Where you are a Partner, if the data subject of any Relevant Personal Data who is a User of yours makes a written request to Xoom for access to Relevant Personal Data, Xoom shall notify you and refer the data subject to you (as joint data controller) to respond to the request.
- 25.21. Where you are a Partner, we shall promptly notify you, if we become aware that any User personal data provided to us by you has been the subject of a Data Breach and we shall consult with you (both Parties acting reasonably) regarding what measures and actions are necessary to mitigate or remedy the effects of the Data Breach.
- 25.22. You agree that in order to improve training and the service we provide to you that we may monitor and record calls relating to the provision of our Services (including but not limited to our customer support services) and telesales. We and/or our suppliers may also record calls to emergency services (inc. 999,111 and 112 calls).
- 25.23. We shall be entitled to make your and your Users name, address and telephone number available to the emergency services.

## **26. Confidentiality**

- 26.1. A party (receiving party) shall keep in strict confidence all Customer, technical or commercial know-how, specifications, information or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or suppliers or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party may disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 26.2. You acknowledge that a breach of clause 26.1 may cause harm for which monetary damages would not be an adequate remedy and that you or we may seek injunctive relief against such a breach.
- 26.3. This Clause (26) shall survive termination of the Agreement.

## **27. Warranties and Representations**

- 27.1. Other than as expressly set out in this Agreement and to the greatest extent permitted by law, we make no representations or warranties with respect to the Services, or the performance of our obligations hereunder, and expressly exclude such representations and warranties, whether implied, statutory or otherwise to the maximum extent permitted by law.
- 27.2. In particular, but without prejudice to the generality of this Clause 27, you acknowledge and accept that:
  - 27.2.1. we do not warrant the Services against unauthorised interruption or interception by third parties or that the Services will be available to you error-free, at any particular time or continuously; and
  - 27.2.2. the quality and coverage of the Services depends on both the telecommunications network to which you are connected and also on other telecommunications networks to which the person you are calling is connected; and
  - 27.2.3. the services might be adversely affected by circumstances beyond our control. We are not responsible for any loss of or disruption to the Services due to failure of a carrier network, broadband provider or internet service provider, to the maximum extent permitted by law.

- 27.3. While certain precautions have been taken to detect computer viruses and ensure security, we do not warrant that our Services are virus-free and secure. To the maximum extent permitted by law, we shall not be liable for any loss or damage which occurs as a result of any virus or breach of security.
- 27.4. We do not warrant that our Services will be compatible with your computer systems, software and/or hardware.
- 27.5. You warrant to us that:
  - 27.5.1. you have the authority to enter into this Agreement; and
  - 27.5.2. you will comply with any applicable legislation, regulations, instructions or guidelines issued by regulatory authorities and hold any required licences.

## **28. Severability**

- 28.1. If any provision, clause or sub-clause of the Agreement is held by any competent authority to be void, voidable, illegal, invalid or otherwise unenforceable, but would be valid and/or enforceable if any part of such provision, clause or sub-clause were deleted or modified, then that provision, clause or sub-clause shall apply with such deletion or modification as may be necessary to make it valid and/or enforceable.
- 28.2. If any part of the Agreement or the application of it to any person shall, for any reason, be adjudged by a competent authority to be invalid, void, voidable, illegal or unenforceable such judgement shall not affect the remainder of the Agreement which shall continue in full force and effect.

## **29. General Provisions**

- 29.1. The Parties acknowledge and agree that:
  - 29.1.1. Subject to clauses 21.9 and 15.13, this Agreement represents the entire Agreement and understanding between the Parties with regard to the supply of the Equipment and/or Services, to the exclusion of all prior agreements, arrangements and understandings. The Agreement contains express promises and obligations on our part. You agree that any other term which might be implied or incorporated into the Agreement by statute, at common law or otherwise, is excluded to the fullest extent permitted by Law.
  - 29.1.2. Subject to clause 15.13, you acknowledge and agree that in entering into this Agreement you have not relied upon any oral or written representation, statement or understanding (whether negligently or innocently made) by any of our employees, agents, Subcontractors or representatives other than as expressly set out in this Agreement.
  - 29.1.3. The Parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Agreement or for any breach of any representation not contained in the Agreement unless such misrepresentation or representation was made fraudulently.
  - 29.1.4. You further acknowledge and agree that you will have no remedy in respect of any untrue representation innocently or negligently made by us or any of our employees, agents, Su-contractors or representatives prior to entering into this Agreement upon which you may claim to have relied in entering into this Agreement, whether such representation was made orally or in writing.
  - 29.1.5. We shall be entitled to promote our Services by identifying you (and using your or your Users company name(s), trade name and logo to this effect only) as a Customer of our Services in print, web, or any other promotional media.
- 29.2. The Parties do not intend that this Agreement be enforceable by any person not a Party to this Agreement including under the General Terms (Rights of Third Parties) Act 1999 with the exceptions that: (i) any Affiliate of Xoom shall each have the right to enforce the terms of this Agreement; and (ii) Clause 21 (Liability) and Clause 27 (Warranties and Representations) above

which will also be enforceable by our directors, employees, members of staff, agents, Subcontractors, licensors, and suppliers (which includes without limitation our Service Providers). The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

- 29.3. This Agreement is personal to you and you shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of your rights and obligations under this Agreement without our prior written consent which shall not unreasonably be withheld. Breach of this restriction in any way (whether successful or not), may result in your Account and this Agreement being terminated.
- 29.4. We may at any time assign, transfer, novate, mortgage, charge or deal in any other manner with any or all of our rights and obligations under this Agreement, including but not limited partial assignment. We may subcontract any of our obligations under this Agreement.
- 29.5. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable to give effect to the commercial intention of the Parties. Notwithstanding the foregoing, if any part, term or provision of this Agreement is held to be illegal or unenforceable the validity or enforceability of the remainder of this Agreement will not be affected.
- 29.6. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.
- 29.7. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England. The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 29.8. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of the other Party, or authorise any Party to make or enter into any commitments for or on behalf of the other Party.
- 29.9. Each Party affirms and represents that it is acting on its own behalf and not for the benefit of any other person.

### **30. Interpretation of Clauses**

- 30.1. References to the singular include the plural and vice versa. References to one gender include all other genders and vice versa.
- 30.2. The headings in this Agreement are for ease of reference only and shall not affect the interpretation of the Agreement.
- 30.3. Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time and include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder.
- 30.4. All periods expressed in days shall mean calendar days unless specifically stated otherwise.
- 30.5. The term "includes" is not a word of limitation.

**Authorisation**

By signing and submitting the Master Services Agreement to us via either by Electronic Signature or Original Signature, the Customer confirms its acceptance of the Agreement, the Business General Terms, Schedules, Appendixes and any other documents that form part of the entire Agreement. The signatory below represents and warrants that it is duly authorised to execute this Master Services Agreement and accept the Agreement on behalf of the Customer.

**For and on behalf of the Customer:**

Signed on behalf of:

Who trade as:

And registered address is:

Name:

Job Title:

Signature:

Date:

**For and on behalf of Xoomtalk:**

Signed on behalf of: Xoom Ltd

Name:

Job Title:

Signature:

Date:

## Xoomtalk - Schedule 1 - Partner Relations

If you are a Partner then this Schedule is made by and between Xoom and you and is part of your Agreement with us. It details how, in addition to the main Agreement, our working relationship differs from that of our Direct Customers. This Service Schedule comes into force on the date that the main Agreement is signed by both parties in accordance with the Business General Terms, and will continue in force until you or us terminate it in accordance with Clause 19 of the Business General Terms.

In the event of any conflict or ambiguity between this Service Schedule and the Business General Terms, this Service Schedule will take precedence. Capitalised terms not defined herein shall have the meaning ascribed to them in Appendix 1 (Definitions and Interpretation).

### 1. Definitions

**“1st and 2nd Line Technical Support”** means the logging of any technical issues as the first point of contact for customers and users and the resolution of technical issues that do not require escalating for more detailed technical investigation..

### 2. Referral Partners

This Clause 2 and its subclauses relate only to Referral Partners:

- 2.1. Partners acting as Referral Partners shall be responsible for introducing potential Customers to us by either providing business contact name and details or arranging a meeting to introduce the contacts at the business.
- 2.2. We will only accept referrals of businesses who are not currently one of our Customers and with whom we have not had any previous contact or been already referred by another Referral Partner or Wholesale Partner.
- 2.3. We will be responsible for all elements of the sales process and the creation and delivery of a Proposal.
- 2.4. We may require the Referral Partner to provide additional knowledge or input for us to complete the Proposal and also for the duration of our relationship with the Customer which, when requested, shall not be unreasonably withheld and provided in a time efficient manner.
- 2.5. If the business which has been referred chooses to order any of our Services, they will become a Direct Customer or Wholesale Partner as defined in Appendix 1. We will contract directly with the Customer to provide the Services.
- 2.6. We will be responsible for delivering and maintaining Services to the Customer as per the terms of our Agreement with them.
- 2.7. The commission rates or fees due on any Services will be shown in Appendix 2 of this Agreement (if relevant). The amount or percentages of commission we pay for each Service may be varied by us and we may also offer upfront commission instead of or in addition to ongoing commission.
- 2.8. We will only pay commission on each Service for a maximum of 36 months from the Service Commencement Date.
- 2.9. Each month we will generate and send to you a statement referred to as the **“Commission Statement”** which will provide you with the following detail:
  - 2.9.1. the company names of all the Customers with live commissionable Services who you have referred to us;
  - 2.9.2. the total amount we have invoiced the Customers in the billing period;
  - 2.9.3. the commission you are due for that billing period.
- 2.10. We will send Commission Statements only by email to your provided email address.
- 2.11. To receive payment you will need to send us an invoice for the total amount shown on each relevant Commission Statement. We will pay invoices on 30 day terms unless we have agreed otherwise with you.

- 2.12. Each invoice must be submitted for payment within 2 months of the date each relevant Commission Statement is sent to you by us, or we will deem the commission as unclaimed.
- 2.13. We will only pay you commission on Services that are live and reserve the right to recall any commission paid on those Services if the referred Customer does not pay for any of the Services we provide to them.

### 3. Wholesale Partners

This Clause 3 and its subclauses relate only to Wholesale Partners:

- 3.1. If you are a Wholesale Partner, Customers of yours that sign up to our Services will remain your customers, unless we both agree otherwise or an event that invokes Clause 3.7 occurs.
- 3.2. You may also refer businesses to us on a case by case basis, if you do then under this Agreement you will be considered a Referral Partner and Clause 2 of this Schedule will also apply to you for that specific Customer.
- 3.3. You shall be responsible for all elements of Customer contact and management, from the initial contact as well as for the lifetime that we provide any Services to their Users. This includes but is not limited to:
  - 3.3.1. the sales process, including the provision of any quotes or proposals and handling any objections;
  - 3.3.2. the provision of, as well as managing the signing of your own terms and conditions that comply with current regulatory requirements;
  - 3.3.3. ensuring that you contract each Service with the Customer for the correct length of term;
  - 3.3.4. providing updates to and from the Customer on all orders during the delivery process in a timely manner;
  - 3.3.5. providing onsite assistance for the delivery of new Services as and when required;
  - 3.3.6. providing ongoing account management to your Customers;
  - 3.3.7. providing 1<sup>st</sup> and 2<sup>nd</sup> Line Technical Support on all Services to your Customers and Users;
  - 3.3.8. escalating any technical support issues (in accordance with Schedule 8 of this Agreement) to us if you are unable to solve them after the provision of 1<sup>st</sup> and 2<sup>nd</sup> Line Technical Support to your Customers and Users;
  - 3.3.9. managing your Customers and Users and providing any requested information we require to investigate any escalations in a timely manner;
  - 3.3.10. billing of the Services to your Customer, handling any payment queries and collecting any revenue due;
- 3.4. In addition to the two methods an Order Request can be placed as detailed in Clause 2.1 of our Business General Terms, Wholesale Partners can also place Order Requests by
  - 3.4.1. sending an email to [orders@xoomtalk.com](mailto:orders@xoomtalk.com) confirming the Services and/or Equipment you require;
  - 3.4.2. sending a purchase order to [orders@xoomtalk.com](mailto:orders@xoomtalk.com) detailing the Services and/or Equipment you require;
- 3.5. All your Customers' details will be held on our systems for provisioning, monitoring and support purposes only. We will have no direct contact with your Customers for the duration of the Agreement unless:
  - 3.5.1. granted permission to do so in writing by an employee, director or owner of your company; or
  - 3.5.2. if you default on any payments due to us without good reason; or
  - 3.5.3. if you have been issued with a termination notice but cannot, or refuse, to cease, migrate or novate any or all services away from us within the allotted notice period; or
  - 3.5.4. if you go into liquidation/administration and cannot or refuse to cease, migrate or novate the services away.
- 3.6. We will need to provide some of your Customers' details to third parties for the provision of some or all of the Services. You must make clear to your Customer that their data may be held by third parties for these legitimate interests. You will be the data controller and we will be the data processor in relation to any processing of Customer Personal Data.

- 3.7. You acknowledge that we may be required under regulations and/or legislation to co-operate with and/or disclose/provide personal data, communications content and/or traffic data to an appropriate judicial, law enforcement or government authority lawfully requesting such information.
- 3.8. You will pay our invoices within our agreed payment terms even if your Customer(s) does not make payment to you and will be liable for any contracted amounts for the full term.
  - 3.8.1. In the event of an act of Insolvency on your part we reserve the right to transfer Customer relationships from you to us directly, thus making your Customer User a Direct Customer.
  - 3.8.2. In the event that two (2) consecutive outstanding invoices relating to a single service remain unpaid then we reserve the right to transfer Customer relationships from you to us directly, thus making the User a Direct Customer.
  - 3.8.3. In the event that three (3) or more invoices relating to a single service are paid greater than 30 days late in any 12 month rolling period then we reserve the right to transfer Customer relationships from you to us directly, thus making the User a Direct Customer.
  - 3.8.4. In all cases you will remain liable for all debts incurred should any of Clauses 3.8.1, 3.8.2 or 3.8.3 be invoked.
- 3.9. Xoomtalk remains a Partner-focused organisation and will only apply the remedies in Clauses 3.8.1, 3.8.2 and 3.8.3 if no other options are available after using reasonable endeavours to discuss potential options with you.
- 3.10. Any public announcement regarding this Agreement or its subject matter shall be agreed in advance by both you and us before being released unless we are unable to contact you after making reasonable efforts to do so.

### **3.11. VoIP Services**

Where you are a Wholesale Partner reselling our VoIP Service(s);

- 3.11.1. you undertake to include and maintain in your contracts with your Users conditions equivalent to:
  - 3.11.1.1. Clause 7 of Schedule 5 regarding the usage of VoIP Services; and
  - 3.11.1.2. Clause 8 of Schedule 5 regarding emergency calls and the 999 database;
  - 3.11.1.3. Clause 9 of the Business General Terms regarding the usage of any Software provided to be used in conjunction with any VoIP Services;
  - 3.11.1.4. you agreed that we shall have no liability to you or to any User for your failure to comply with this term 3.10 or any of its subclauses.
- 3.11.2. In consideration of you paying our Fixed Subscription Charges and any other applicable Charges we will grant you a non-exclusive, non-transferable, revocable licence for you and any Users you re-sell the Service too to use the VoIP Services or any Software under the terms of the Agreement during the Term.
- 3.11.3. If you wish to cease a Service you will need to email [cease@xoomtalk.com](mailto:cease@xoomtalk.com) and state the Service(s) you wish to cease and the date for it to be ceased. If you disable or delete VoIP Service(s) on the Xoomtalk Platform it will not automatically cease the billing of the Service(s).



## Xoomtalk - Schedule 2 – Phone (PSTN) & Broadband (DSL & FTTP) Services Schedule

This Service Schedule for Phone and Broadband Services is made by and between Xoom and you and is part of your Agreement with us. This Service Schedule comes into force on the date that a Service Order Form which includes a Phone and/or Broadband Service and is signed by both parties in accordance with Clause 2 of the Business General Terms or as otherwise specified in the Service Order Form, and will continue in force until you or us terminate it in accordance with Clause 19 of the Business General Terms.

In the event of any conflict or ambiguity between this Service Schedule and the Business General Terms, this Service Schedule will take precedence. Capitalised terms not defined herein shall have the meaning ascribed to them in Appendix 1 (Definitions and Interpretation).

### 1. Definitions

**“ADSL Services”** means broadband services delivered over the copper wire telephone network to your Premises from the telephone exchange. ADSL Services cover both Asymmetric Digital Subscriber Line (ADSL) and ADSL2+ (the newer variant which offers increased speeds. ADSL services are distinct from our FTTC Services and FTTP Services;

**“Bandwidth”** means the maximum achievable download and upload speeds of the Broadband Service which is limited by the type of Broadband Service technology available and the exact location the Broadband Service will serve or is live at;

**“FTTC Services”** means the Fibre to the Cabinet (FTTC) services which uses vDSL technology. FTTC provides contended connectivity to the Internet using a fibre optic connection from the telephone exchange to your local street cabinet and a copper cable connection from the cabinet to your Premises;

**“FTTP Services”** means the Fibre to the Premises (FTTP) service which provides a connectivity to the Internet using a fibre optic connection from the telephone exchange to your local fibre distribution point (“DP”) and then a fibre optic connection from the DP to your Premises;

**“Openreach Access Network”** or **“KCOM Access Network”** means the Electronic Communications Network which runs from a local access node to a network termination point on an end-user’s premises and which supports the provision of copper-based access services and fibre-based access services to end-users. In the case of KCOM, this means the Access Network in the Hull Area;

**“Wireless P2P Services”** means a service where we use point to point technology to create a wireless link from your Premises to one of our points of presence (“PoP”) from which we can route traffic to the internet and provide access to the internet;

**“Service Commencement Date”** means the date we have confirmed your Internet connection (as applicable) is ready for use if the NTE NTE were in place or your Phone and/or Broadband Service is live and ready for you to start making and/or receiving calls.

**“Service Schedule”** means this Service Schedule, its Annexes, and the Service Specific Information Form, which in the case of conflict rank in the order of precedence above;

### 2. Description of the Phone Services

- 2.1. Our Phone Services are provided over the Openreach Access Network or KCOM Access Network and exclude any Broadband Services or VoIP Services.
- 2.2. The Phone Services include the following services:
  - 2.2.1. the installation or takeover and rental of a fixed copper telephone line;
  - 2.2.2. the facility to make or receive telephone calls over this line;
  - 2.2.3. any one of a range of call price plans that enable you to make telephone calls;
  - 2.2.4. any other facilities such as caller ID display or call barring that we agree to give you;
  - 2.2.5. access to the emergency services and provision of caller location information from your telephone line; and
  - 2.2.6. any other fixed line phone related services that we agree to provide to you under this Service Schedule.

- 2.3. The terms regarding the allocation and porting of Telephone Numbers in relation to Phone Service are provided in Schedule 6 - Telephone Numbers and Number Porting

**3. Description of the Broadband Services**

- 3.1. The Broadband Service consists of the provision of a DSL, FTTC, FTTP or Wireless P2P Service with:
- 3.1.1. a physical connection if supplying DSL, FTTC or FTTP or a wireless connection if supplying a Wireless P2P using the access methods as defined in Clause 1;
  - 3.1.2. a static routed IP Address;
  - 3.1.3. transit and routing for email and general Internet access.
- 3.2. The maximum upload and download speed for type of connection technology is shown in the table below:

Broadband Service	Upload Speed (Maximum Speed)	Download Speed (Maximum Speed)
ADSL	0.8 Mbps	8 Mbps
ADSL2+	1.4 Mbps	24 Mbps
ADSL2+ Annex-M	2.5 Mbps	20 Mbps
FTTC	20 Mbps	80 Mbps
FTTC G.fast	50 Mbps	330 Mbps
FTTP	1000 Mbps	1000 Mbps
Wireless P2P	500 Mbps	500 Mbps

**4. Ordering and Provisioning the Service**

- 4.1. As part of the quoting process we will provide you with the indicative speeds of the requested Broadband Service in your Proposal. You acknowledge that these indicative speeds provide you with an indication of the download and upload speeds you should expect to be able to achieve but that these are not exact and the actual speeds may vary from these estimates.
- 4.2. The Service order process will be the same as in Clause 2 of the Business General Terms but will include the additional Clauses as shown below:
- 4.2.1. During the installation of Phone and/or Broadband Service(s) we may, or our suppliers may identify that Excess Construction Charges (ECCs) are required before the installation of the Service(s) can be completed. If they are identified the Installation Service will not proceed until they have been accepted. Following the identification of any ECCs we shall notify you of such ECCs and all work relative to providing your Service shall be suspended until you provide us with written acceptance via email of the Charges. In such circumstances, you may within 28 days of the date of our notice cancel the order for the specific Phone and/or Broadband Service without penalty by written notice to us. If you have not provided us with written acceptance of such ECCs within 28 days, we shall be entitled to immediately cancel the Service Order without penalty to you and we shall no longer be obligated to provide the Service.
- 4.3. The estimated delivery times for each Phone and/or Broadband Service are provided in “Schedule 8 – Service Level Agreement” which are subject to variation and not guaranteed.
- 4.4. For new provides we will agree a date with you for installation. If you cancel any appointment for the installation of your service two (2) Working Days (48 hours) or less before the appointment time and date, you will be liable to pay a missed appointment charge at our then current Charges which are available on our Price Guide or as otherwise notified, or made available to you.

- 4.5. You acknowledge that:
  - 4.5.1. we can only provide services in areas of the world in which we, or our suppliers, are technically able to offer Phone and/or Broadband Services from; and
  - 4.5.2. that time is not of the essence for the Phone Services and the Broadband Services. We will try to provide the Phone Services and the Broadband Service by any date agreed with you, but any suggested date is an estimate as per clauses 3.6 and 3.7 in the Business General Terms.
- 4.6. We will provide the Phone and/or Broadband Service with the reasonable skill and care of a competent telecommunications service provider.

## **5. Installation of the Service**

- 5.1. This Clause (5) shall apply in addition to the terms in “Schedule 9 – Installation Services” for the installation of Phone and/or Broadband Services.
- 5.2. The Phone and/or Broadband Service is deemed to be installed when we complete the deployment of the following elements of the Service to you:
  - 5.2.1. a configured NTE (if applicable);
  - 5.2.2. for all Services excluding Wireless P2P;
    - 5.2.2.1. an active copper or fibre line (whichever applies) with a live Broadband Service between the Site(s), the Xoom PoP and the Xoom Network.
  - 5.2.3. for Wireless P2P Services:
    - 5.2.3.1. a point to point link with a live Broadband Service between the Site(s), the Xoom PoP and the Xoom Network.
- 5.3. For the avoidance of doubt, the Xoom Equipment will be configured to act as a basic access router only. Any specific routing policies e.g. access control lists, must be raised at the design stage or during the completion of the scope of works, otherwise, any changes may necessitate a re-design and delay the installation due to testing and bespoke development and may incur additional Charges. Any ongoing support of any bespoke changes must be covered by a Managed Network Service.
- 5.4. If an Installation Service is not required, then the NTE will be shipped directly to the installation address or other provided address. You must connect the NTE within 48 hours of:
  - 5.4.1. you being notified that the Service is active and ready for remote testing; and
  - 5.4.2. the NTE being delivered to the installation address or provided address.
  - 5.4.3. If the NTE is not connected within this timeframe we reserve the right to start charging for the Service from the Carrier activation date.
  - 5.4.4. If we complete an Installation Service we will take a backup and store a copy of the Xoom Equipment configuration at the time of Service Sign Off.

## **6. Duration**

- 6.1. In addition to the Clause 4 specified in the Business General Terms, if you are a Small Business Customer, and you are transferring to us Phone Services and/or Broadband Services from other provider within Openreach or KCOM Access Network, you will be entitled cancel such Service free of charge without having to pay a Cancellation Fee at any time up to 10 Working Days from our Service Order Acceptance.

## **7. Usage**

- 7.1. Your use of any Phone or Broadband Service is;
  - 7.1.1. subject to Clause 15 of the Business General Terms; and
  - 7.1.2. subject to our Fair & Acceptable Use Policy which is available on our Website; and
  - 7.1.3. entirely at your own risk. We will not be liable for any loss or damage arising from any virus, Trojan horse, spam or other malicious content that you may receive while using the service.

## **8. Service Levels**

- 8.1. In respect of Broadband Services or Phone Services no Service Level Agreement applies, nor are any Service Level Guarantee payments made:
  - 8.1.1. when the service(s) is not activated on the date confirmed; or
  - 8.1.2. in the event of a loss of service; or
  - 8.1.3. where a pre-agreed appointment to attend any premises is not kept.

## **9. Charges**

- 9.1. We will charge you for using the Phone and/or Broadband Services provided under this Service Schedule as described in this Service Schedule and as in Clause 6 of our Business General Terms.
- 9.2. Charges for the Phone and/or Broadband Services will be incorporated into your periodic Xoom invoice.
- 9.3. You agree to pay and are responsible for paying all the Charges for Phone and/or Broadband Services you use.
- 9.4. Where a cease (termination) arises either as a cease request or as a consequence of a notice of transfer not being obtained and/or used in moving the service away from Xoomtalk or where we receive an unsolicited cease, a cease charge at the rate published in our Price Guide or as otherwise notified, or made available to you, will be applied, and any usage Charges incurred up to the actual termination date remain payable.

## **10. Upgrading or ceasing your Phone and Broadband Service**

- 10.1. You are able to request an upgrade of your Phone and Broadband Service providing that:
  - 10.1.1. the new Phone and Broadband Service provides you with an increase in Bandwidth; and
  - 10.1.2. your premises are technically able to be served by the Broadband Service you are requesting; and
  - 10.1.3. you agree to a new Initial Term and updated Charges; and
  - 10.1.4. the new Initial Term is equal to or exceeds the existing Initial Term.
- 10.2. The total updated Charges for the upgraded Service provided under this Service Schedule must exceed any early termination charges for the existing Service;
- 10.3. if you wish to upgrade or migrate within the Initial Term, you may also have to pay the standard one year connection Charge or upgrade charge applicable to the new Phone and/or Broadband Service.
- 10.4. If you wish to cease a Service(s) you will need to email [cease@xoomtalk.com](mailto:cease@xoomtalk.com) and state the Service(s) you wish to cease and the date for it to be ceased.

## **11. IP Addresses and LAN Access**

- 11.1. If you access the Service via a LAN, then unless agreed in writing that we provide a Managed Network Service for your LAN then you are responsible for:
  - 11.1.1. providing and maintaining a suitable LAN and Internet protocol ("IP") router capable of interfacing satisfactorily with the Broadband Service;
  - 11.1.2. configuration of the IP router; and
  - 11.1.3. configuration of any DHCP scope;
  - 11.1.4. the appointment of a Technical Contact.
- 11.2. You acknowledge that, unless we agree otherwise in writing, we are not responsible for providing any support whether technical or otherwise, to your LAN or any devices beyond our NTE.
- 11.3. Where IP Addresses are allocated to you Clause 4 Schedule 6 – Telephone Numbers and IP Addresses will apply to you.

## Xoomtalk - Schedule 3 - Ethernet Services

This Service Schedule for Ethernet Services is made by and between Xoom and you and is part of your Agreement with us. This Service Schedule comes into force on the date that a Service Order Form which includes an Ethernet Service and is signed by both parties in accordance with Clause 2 of the Business General Terms or as otherwise specified in the Service Order Form, and will continue in force until you or us terminate it in accordance with Clause 19 of the Business General Terms.

In the event of any conflict or ambiguity between this Service Schedule and the Business General Terms, this Service Schedule will take precedence. Capitalised terms not defined herein shall have the meaning ascribed to them in Appendix 1 (Definitions & Interpretation).

### 1. Definitions

- “Bandwidth”** means the allocated speed of the Ethernet Service provided over the Ethernet Bearer;
- “Bandwidth Upgrade”** means an upgrade to the allocated speed of the Ethernet Service, the maximum of which is limited by the capacity of the Ethernet Bearer;
- “Estimated Commencement Date”** means the date provided during the order process by which Xoom estimate the Service will commence;
- “Ethernet Bearer”** means the fibre optic cable over which the Ethernet Service is delivered to the Customer available in capacities of 100Mbps, 1Gbps or 10Gbps;
- “Ethernet Bearer Upgrade”** means an upgrade of the fibre optic cable to allow for increased capacity;
- “Ethernet Service”** means the delivery of Internet connections or point to point links over high bandwidth fibre optic cable;
- “Fully Managed Connection”** means when we deliver an Ethernet Service to provide dedicated Internet access with a Xoom NTE (Router) at the customer’s Site;
- “IP Address”** means a numerical label connected to a computer network that uses the Internet Protocol for communication to enable network interface identification and location addressing;
- “Network Terminating Equipment (NTE)”** means the device at the point where the Customer's Equipment, LAN or existing data service is connected to the Entire Network;
- “Point of Presence” (“PoP”)** means the equipment within the Entire Network connected by a dedicated circuit from the Customer Site;
- “Service Schedule”** means this Service Schedule, its Annexes, and the Service Specific Information Form, which in the case of conflict rank in the order of precedence above;
- “Technical Contact”** means a person named by you on the Service Specific Information Form who will be the point of contact with us for matters relating to the installation and configuration of the Service. They will also be the point of contact to report any Issues;
- “Wires Only Connection”** means when we deliver an Ethernet Service to provide dedicated Internet access without a managed NTE (Router) at the customer’s Site.

### 2. Description of the Ethernet Services:

- 2.1. Our Ethernet Services offer data services that allow the Customer to connect either to the Internet or link two geographically independent locations using various access methods at a variety of speeds over the Entire Network.
- 2.2. The access methods are either:
  - 2.2.1. a Fully Managed Connection where the Ethernet Service is delivered via fibre and terminated on a Xoom NTE at the Site enabling Xoom to monitor and manage the Service up to and including the Xoom NTE; or
  - 2.2.2. a Wires Only Connection where the Ethernet Service is delivered via digital fixed links and terminated on one of our Service Provider’s NTE at the Site enabling us to manage the Service up to and including the Service Provider’s NTE but not be able to monitor the service; or

- 2.2.3. a point to point link (“**Point to Point**”); where two geographically independent locations will be connected via digital fixed links and terminated at both ends on a Xoom NTE enabling Xoom to manage up to and including both NTE devices, but not be able to monitor the service.
- 2.3. Where the Ethernet Service provides for dedicated Internet access, the Service includes the following components;
  - 2.3.1. an Ethernet Bearer with the capacity as specified on the Service Order Acceptance;
  - 2.3.2. 10Mbps to 40Gbps of Bandwidth as specified on the Service Order Acceptance;
  - 2.3.3. transit and routing for general Internet access;
  - 2.3.4. uncontended Bandwidth;
  - 2.3.5. 1, 2, and 3 year Initial Term fixed price options (other terms available on request);
  - 2.3.6. a static routed IP Address;
  - 2.3.7. a Service Level Agreement.
- 2.4. The following options are available on dedicated Internet access at an additional charge:
  - 2.4.1. mail (mail relay including store and forward);
  - 2.4.2. resilience and disaster recovery options;
  - 2.4.3. various Class of Service (CoS) options to support different traffic profiles (Voice, Video, VLANs, tagging options);
  - 2.4.4. additional IP Addresses in set allocation sizes;
  - 2.4.5. set dedicated routing to other subnets and cloud providers.
- 2.5. Where the Service provides for Point to Point links, the Service includes the following components:
  - 2.5.1. A single or multiple Ethernet Bearer (as required) with the capacity as specified on the Service Order Acceptance;
  - 2.5.2. 10Mbps to 40Gbps of Bandwidth as specified on the Service Order Acceptance;
  - 2.5.3. uncontended Bandwidth;
  - 2.5.4. 1, 2, 3 and 5 year Initial Term fixed price options (other terms available on request);
  - 2.5.5. a Service Level Agreement.

### **3. Ordering and Provisioning the Service**

- 3.1. The Service order process will be the same as in Clause 2 of the Business General Terms but will include the additional clauses as shown below:
  - 3.1.1. Prior to the installation of the Ethernet Service(s) we may, or our suppliers may identify that Excess Construction Charges (ECCs) are required before the installation of the Service(s) can be completed. If they are identified the Installation Service will not proceed until they have been accepted. Following the identification of any ECCs we shall notify you of such ECCs and all work relative to providing your Service shall be suspended until you provide us with written acceptance via email of the Charges. In such circumstances, you may within 28 days of the date of our notice cancel the order for the specific Phone and/or Broadband Service without penalty by written notice to us. If you have not provided us with written acceptance of such ECCs within 28 days, we shall be entitled to immediately cancel the Service Order without penalty to you and we shall no longer be obligated to provide the Service.
- 3.2. We will:
  - 3.2.1. provide you with the Ethernet Service on the terms of the Agreement; and
  - 3.2.2. use reasonable endeavours to provide the Service by the Estimated Lead Time as detailed in “Schedule 8 - Service Level Agreement” but you acknowledge that all dates are estimates and we have no liability for any failure to meet any date, unless “Schedule 8 - Service Level Agreement” says otherwise; and
  - 3.2.3. provide the Service with the reasonable skill and care of a competent telecommunications service provider; and
  - 3.2.4. aim to repair faults in accordance with the fault repair service detailed in “Schedule 8 - Service Level Agreement” and with Clause 17 of the Business General Term or as otherwise notified to you; and

- 3.2.5. use reasonable endeavours without undue delay to escalate if required and correct any reported fault or delivery delay with the Service.
- 3.3. You acknowledge that:
  - we can only provide services in areas of the world in which we, or our suppliers, are technically able to offer Ethernet Services; and
  - we do not undertake to provide a fault free service; and
  - with the exception of the Xoom Equipment and the Software, you are responsible for providing suitable computer hardware, software and telecommunications equipment and any other services necessary to access and use the Ethernet Service.
- 3.4. You must:
  - ensure that any equipment connected to or used with the Ethernet Service is connected and used in accordance with any applicable instructions, safety or security procedures including but not limited to the interface, specifications and routing protocols specified by us; and
  - ensure that any equipment, which is attached (directly or indirectly) to the Ethernet Service, is technically compatible with the Ethernet Service and approved for that purpose under any relevant legislation.

#### **4. Installation of the Service**

This Clause (4) shall apply in addition to the terms in “Schedule 9 – Installation Services” for the installation of Ethernet Services.

- 4.1. The Ethernet Service is deemed to be installed when we complete the deployment of the following elements of the Service to you, enabling you to use the Ethernet Service:
  - 4.1.1. a configured NTE (if applicable); and
  - 4.1.2. the dedicated circuits between the Site(s), the Xoom PoP and the Xoom Network.
- 4.2. For the avoidance of doubt, the Xoom Equipment will be configured to act as a basic access router only. Any specific routing policies e.g. access control lists, must be raised at the design stage or during the completion of the scope of works, otherwise, any changes may necessitate a re-design and delay the installation due to testing and bespoke development and may incur additional Charges. Any ongoing support of any bespoke changes must be covered by a Managed Network Service.
- 4.3. If an Installation Service is not required and the Ethernet Service is not Wires Only, then the Xoom NTE will be shipped directly to the installation address or other provided address. You must connect the Xoom NTE within 48 hours of;
  - 4.3.1. you being notified that the Service is ready for remote testing; and
  - 4.3.2. the Xoom NTE being delivered to the installation address or provided address.
- 4.4. If the Xoom NTE is not connected within this timeframe we reserve the right to start charging for the Service from the Carrier activation/handover date.
- 4.5. If we complete an Installation Service we will take a backup and store a copy of the Xoom Equipment configuration at the time of Service Sign Off.

#### **5. Usage**

- 5.1. Your use of any Ethernet Service is;
  - 5.1.1. subject to Clause 15 of the Business General Terms; and
  - 5.1.2. subject to our Fair & Acceptable Use Policy which is available on our Website; and
  - 5.1.3. entirely at your own risk. We will not be liable for any loss or damage arising from any virus, Trojan horse, spam or other malicious content that you may receive while using the service.

#### **6. Service Levels**

- 6.1. The Service Levels that we aim to provide for Ethernet Services are provided in “Schedule 8 - Service Level Agreement”.

#### **7. Charges**

- 7.1. We will charge you for the Ethernet Service(s) provided under this Service Schedule as described in this Service Schedule and as in Clause 6 of our Business General Terms.
- 7.2. Charges for the Ethernet Services will be incorporated into your periodic Xoom invoice.
- 7.3. You agree to pay and are responsible for paying all the Charges for Ethernet Services you use.

## **8. Upgrading or ceasing your Ethernet Service**

- 8.1. You are able to request an upgrade to the capacity of the Ethernet Bearer or committed Bandwidth providing that:
  - 8.1.1. you agree to a new Initial Term and updated Charges;
  - 8.1.2. the total updated Charges for the upgraded Service provided under this Service Schedule exceed the early termination charges for the existing Service;
  - 8.1.3. the new Initial Term is equal to or exceeds the existing Initial Term;
  - 8.1.4. if the Bandwidth Upgrade request exceeds the current capacity of the Ethernet Bearer a new Ethernet Bearer will need to be installed;
  - 8.1.5. the Ethernet Bearer and Bandwidth for the upgraded Service is equal to or greater than the Ethernet Bearer and Bandwidth being supplied to the Customer under the existing Services; and
  - 8.1.6. if you wish to upgrade or migrate within the Initial Term, you must also pay the standard one year connection Charge or upgrade charge applicable to the new Ethernet Bearer or increased Bandwidth size (i.e. the upgraded Service).
  - 8.1.7. If you wish to cease a Service(s) you will need to email [cease@xoomtalk.com](mailto:cease@xoomtalk.com) and state the Service(s) you wish to cease and the date for it to be ceased.

## **9. LAN Access**

- 9.1. If you access the Service via a LAN, then unless agreed in writing that we provide a Managed Network Service for your LAN then you are responsible for:
  - providing and maintaining a suitable LAN and Internet protocol ("IP") router capable of interfacing satisfactorily with the Ethernet Service;
  - configuration of the IP router; and
  - configuration of any DHCP scope;
  - the appointment of a Technical Contact.
- 9.2. You acknowledge that, unless we agree otherwise in writing, we are not responsible for providing any support whether technical or otherwise, to your LAN or any devices beyond our NTE.
- 9.3. Where IP Addresses are allocated to you Clause 4 Schedule 6 – Telephone Numbers and IP Addresses will apply to you.



## Xoomtalk - Schedule 4 - Mobile Data Services

This Service Schedule for Mobile Data Services (using a subscriber identity module “**SIM**”) is made by and between Xoom and you and is part of your Agreement with us. This Service Schedule comes into force on the date that a Service Order Form which includes a Mobile Data Service and is signed by both parties in accordance with Clause 2 of the Business General Terms or as otherwise specified in the Service Order Form, and will continue in force until you or us terminate it in accordance with Clause 19 of the Business General Terms.

In the event of any conflict or ambiguity between this Service Schedule and the Business General Terms, this Service Schedule will take precedence. Capitalised terms not defined herein shall have the meaning ascribed to them in Appendix 1 (Definitions & Interpretation).

### 1. Definitions

- “**Approved Equipment**” means any device that supports the transmission of packets over a mobile data network which we have verified to work with our Mobile Data Service(s);
- “**Data Package**” means the amount of data which has been allocated for use against a single SIM Card or a group of SIM Cards;
- “**Mobile Data Services**” is as described in Clause 2 of this Schedule;
- “**SIM Card**” means the subscriber identity module in the form of a small plastic card or chip as part of the circuit board;

### 2. Description of Mobile Data Services

- 2.1. means the borderless and/or single or multi-network mobile data-specific circuit switched service offered and marketed by us from time to time as our Mobile Data Services. This service may be provided by us directly or indirectly through other carriers and enables you or your Users with pre-purchased data plan(s) to access data services whilst roaming on either single or multiple carrier networks.
- 11.4. The Mobile Data Service consists of;
  - 11.4.1. the provision of a SIM Card which is able to authenticate to our network via;
    - 11.4.1.1. a designated single Carrier network; or
    - 11.4.1.2. one carrier network from a selection of multiple carriers.
  - 11.4.2. the authentication of the SIM Card to our network and the ability to send and receive data;
  - 11.4.3. the allocation of an IP address in the form of:
    - 11.4.3.1. a single static IP address which is addressable directly from the internet and will not change; or
    - 11.4.3.2. a dynamic IP address which is addressable directly from the internet but may change each time the SIM Card reconnects; or
    - 11.4.3.3. a private IP address which is not addressable directly from the internet and will only send and receive data within its own private IP space.
- 11.5. The maximum upload and download speed for any Mobile Data Service is dependent on the mast and carrier infrastructure in the area that the SIM card is located in or travelling through and can not be guaranteed or defined.

### 3. Ordering and Provisioning the Service

- 3.1. The Service order process will be the same as in Clause 2 of the Business General Terms but will include the additional Clauses as shown below:
  - 3.1.1. The SIM Card is supplied by us and allows you to use the Services. Each SIM Card supplied by us remains our property and/or the property of us or our chosen carriers.
  - 3.1.2. You will be sent a confirmation via email of the activation date of each SIM Card. The Service Commencement Confirmation you receive will list the Service and the relevant Service Commencement Date for that Service.

- 3.1.3. We may choose to make available to you a portal via which you can activate, deactivate, block and control all your allocated SIM Card(s). If we do so then you accept that any actions taken by you or any of your users on this portal or via any integrated APIs are out of our control and we accept no responsibility for them.
- 3.1.4. In the event any SIM Cards are activated by you via a portal, the activation date of the SIM Card on the portal will be the Service Commencement Date for that Service.

#### **4. Installation of the Service**

- 4.1. Unless you purchase an Installation Service, we will send you any ordered SIM Cards and any required authentication details for these SIM Cards to the address and contact as provided by you to us during the ordering process. You will then be responsible for installing these into and configuring any Approved Equipment.

#### **5. Usage**

- 5.1. We may at any time set a limit on the amount of Service and Service charges you incur during each billing period. Initially, the limits shall be as stated on the Service Order Acceptance.
- 5.2. You must:
  - 5.2.1. comply with any conditions we set regarding the use of the SIM card(s) or Approved Equipment and; and
  - 5.2.2. tell us immediately if your SIM Card(s) or Approved Equipment is lost or stolen. You will be responsible for all charges incurred beforehand and remain responsible for all charges after you have notified us of that fact, either by emailing [cease@xoomtalk.com](mailto:cease@xoomtalk.com) calling our Main Telephone Number;
  - 5.2.3. not use the SIM card or Approved Equipment (or allow it to be used) for any illegal purpose. We may report such incidents to our third party supplier, police or any other relevant official organisation; and
  - 5.2.4. not use any Equipment that has not been approved by us for use on our telecommunications provider's network.
- 5.3. You agree:
  - 5.3.1. that your data SIM Card is only for use for the transmission of data and you will not use the SIM card to make telephone calls or to send text messages over the cellular network.
  - 5.3.2. You agree to indemnify and hold us harmless for any costs, expenses and charges which we may incur as a result of your using the SIM card (including any call charges and roaming charges which we may incur).
- 5.4. The Parties agree that the Telecommunications General Condition C.1(f)(ii) of the Communications Act 2003 shall not apply to this agreement. The Customer hereby waives its right to rely on this general condition and any similar provision of law that would require us to provide notifications when any inclusive data packages have been exhausted and the costs to continue to use these Services. Any additional data consumed will be charged as described in Clause 2 of this schedule.

#### **6. Service Levels**

- 6.1. We will use our reasonable endeavours to provide the Services to you, but our ability to do so may be affected by circumstances beyond our reasonable control. These include but are not limited to the capability of the Approved Equipment, the number of people using the mobile network, geographic or atmospheric conditions, maintenance requirements or equipment failures.
- 6.2. You accept we can only provide services in areas of the world in which we, or our suppliers, are technically able to offer Mobile Data Services.

#### **7. Charges**

- 7.1. We will charge you for using the Mobile Data Services provided under this Service Schedule as described in this Service Schedule and as in Clause 6 of our Business General Terms.
- 7.2. Charges for the Mobile Data Services will be incorporated into your periodic Xoom invoice.

- 7.3. You agree to pay and are responsible for paying all the Charges for Mobile Data Services you use.
- 7.4. You shall pay to us the Fixed Subscription Charge in advance. You shall also pay to us any other non-inclusive Charges not included in your Fixed Subscription Charge at the prices specified in our Price Guide or as otherwise notified, or made available to you.
- 7.5. We may agree with you monthly data packages or aggregated data pool(s) with inclusive data allowances as part of your Fixed Subscription Charge.
- 7.6. Any data allowance included in any of our data packages will expire at the end of the monthly billing period (i.e. will not roll-over to the next month).
- 7.7. We will invoice you for any additional data charges outside of any data package or aggregated pool (per MB, KB or GB as is relevant) as stated on the Service Order Acceptance or, if not so stated, then in accordance with our current Price Guide or as otherwise notified, or made available to you.

## **8. Upgrading or ceasing your Mobile Data Service**

- 8.1. You may request an upgrade to the Data Package associated with a Mobile Data Service at any time by contacting us via email on [hello@xoomtalk.com](mailto:hello@xoomtalk.com) or by ringing our Main Telephone Number during Working Hours.
- 8.2. Depending on the type of initial service taken;
  - 8.2.1. the new Data Package may only take effect from the end of the next billing period;
  - 8.2.2. you may be able to add data using one of our Portals.
- 8.3. All Data Package upgrades can take up to 24 hours to take effect
- 8.4. You can not lower the Data Package associated with a Mobile Data Service during the Initial Term of the Service.
- 8.5. If you wish to cease a Service(s) you will need to email [cease@xoomtalk.com](mailto:cease@xoomtalk.com) and state the Service(s) you wish to cease and the date for the Service(s) to be ceased. If you block or deactivate SIM Card(s) via a portal it will not automatically cease the billing of the Service(s).

## **9. IP Addresses and LAN Access**

- 9.1. Our SIM Cards will be provided with either a dynamic IP, a single static IP or with a private IP depending on the Service ordered. This will be defined in the Proposal and specified on the relevant Service Order Form.
- 9.2. If you access the Service via a LAN, then unless agreed in writing that we provide a Managed Network Service for your LAN then you are responsible for:
  - 9.2.1. providing and maintaining a suitable LAN and Internet protocol ("IP") router capable of interfacing satisfactorily with the Broadband Service;
  - 9.2.2. configuration of the IP router; and
  - 9.2.3. configuration of any DHCP scope;
  - 9.2.4. the appointment of a Technical Contact.
10. You acknowledge that, unless we agree otherwise in writing, we are not responsible for providing any support whether technical or otherwise, to your LAN or any devices beyond the SIM Card.
11. Where IP Addresses are allocated to you Clause 4 Schedule 6 – Telephone Numbers and IP Addresses will apply to you.
12. If we are to provide any other Managed Network Service including any secure private IP space then this will be covered by Schedule 7.

## Xoomtalk - Schedule 5 - VoIP Services

This Service Schedule for VoIP Services is made by and between Xoom and you and is part of your Agreement with us. This Service Schedule comes into force on the date that a Service Order Form which includes a VoIP Service and is signed by both parties in accordance with Clause 2 of the Business General Terms or as otherwise specified in the Service Order Form, and will continue in force until you or us terminate it in accordance with Clause 19 of the Business General Terms.

In the event of any conflict or ambiguity between this Service Schedule and the Business General Terms, this Service Schedule will take precedence. Capitalised terms not defined herein shall have the meaning ascribed to them in Appendix 1 (Definitions & Interpretation).

### 1. Definitions

**“Allowance Cap”** means the maximum number of minutes of calls that can be made using a single VoIP Service per month before additional Charges may be applied - as detailed in our Fair & Acceptable Use Policy;

**“Artificial Inflation of Traffic”** means where the flow of telephone calls to a Revenue Share Service is disproportionate to the flow of calls which would be expected from good faith usage or an acceptable and reasonable commercial practice relating to the operation or use of such service or of telecommunication systems and any other situation where calls are made and/or prolonged fraudulently;

**“Nuisance Call”** means an unwanted signal, message or communication which can be silent, visual (including text or data) or spoken, which causes annoyance to the recipient, and/or is a hoax call, and/or is of either an offensive, threatening, abusive, obscene or menacing nature;

**“Revenue Share Service”** means a telephone number or CLI which when called creates a revenue income for the person or company that owns the telephone number;

**“Telephone Preference Service”** maintains a register of people and businesses who do not want to receive unsolicited live sales and marketing calls;

**“Top Five Mobile Carriers”** means the following carriers or any combination of these - EE, Hutchinson 3G, O2, TalkTalk and Vodafone;

**“Xoomtalk Platform”** means both the physical hardware and the software that together enable us to operate and provide VoIP Services.

### 2. Description of VoIP Services

#### 2.1. Description of Xoomtalk Platform

2.1.1. The Xoomtalk Platform is located across data centre hubs within the UK and also in Amazon Web Services.

2.1.2. The data centres offer redundant power supply systems and operate adequate levels of security and access.

2.1.3. The Xoomtalk Platform consists of a number of fully redundant physical and/or virtual servers configured to provide high availability of the VoIP Services in the event of any system hardware failure (i.e. a failure in the system servers) or a failure in the Xoom Network.

#### 2.2. The Xoomtalk Platform is:

2.2.1. connected to the UK public network via multiple interconnects and IP transit links to ensure a high degree of redundancy;

2.2.2. automatically monitored on a 24/7/365 basis. Any Xoom Network Infrastructure incidents detected are automatically reported to the Service Desk;

2.2.3. designed to provide a target VoIP Service Availability of 99.9% as specified in Schedule 8 – Service Level Agreement and;

2.2.4. fully backed up on a daily basis to an external location.

#### 2.3. We will provide the VoIP Service with the reasonable skill and care of a competent telecommunications service provider.

### 3. Ordering and Provisioning the Service

- 3.1. As part of the quoting process we may choose to provide you pricing for VoIP Services that are bundled together.
- 3.2. The Service order process will be the same as in Clause 2 of the Business General Terms.
- 3.3. You acknowledge that that time is not of the essence for delivery of VoIP Services. The estimated delivery times for VoIP Services are provided in “Schedule 8 – Service Level Agreement” which are subject to variation and not guaranteed. We will try to provide the VoIP Services by any date agreed with you, but any suggested date is an estimate as per clauses 3.6 and 3.7 in the Business General Terms.
- 3.4. Any order for VoIP telephony services which is accepted by us is conditional on you acknowledging:
  - 3.4.1. that in order to use the VoIP Services, it is your obligation to procure at your own cost an Internet connection, either through us or through a supplier approved by us; and
  - 3.4.2. that call quality depends on both the specification and availability of the Internet connection service to which you are connected and also on the IP or telecommunications network to which the person being called is connected; and
  - 3.4.3. where the Internet connection is supplied by a third party, we do not assume any liability or responsibility for the third party Internet connection service or a third party router, and you acknowledge that in such circumstances, we cannot be held responsible for any degradation in voice quality, which may result in broken speech, echo, delay or call failure; and
  - 3.4.4. the VoIP service may not offer all the features or resilience you may expect from a Public Switched Telephone Network fixed phone line; and
  - 3.4.5. you are solely responsible for providing, updating and maintaining Customer and User details as well as accurate location details on our VoIP Portal; and
  - 3.4.6. if you use the service outside the United Kingdom you may not be connected to United Kingdom emergency services when dialling 999 or 112;
- 3.5. In consideration of you paying our Fixed Subscription Charges and any other applicable Charges we will grant you a non-exclusive, non-transferable, revocable licence for you to use the VoIP Services under the terms of the Agreement during the Term

#### **4. Installation of the Service**

- 4.1. The VoIP Service will be deemed to be operational when we complete the provision of the Service on the Xoomtalk Platform and it is available for use and/or calls are made using the VoIP Service which will also be the Service Commencement Date.
- 4.2. The terms in “Schedule 9 – Installation Services” for the installation of VoIP Services will also apply if an Installation Service has been ordered.

#### **5. Usage of VoIP Services**

- 5.1. Your use of any VoIP Service is;
  - 5.1.1. subject to Clause 15 of the Business General Terms; and
  - 5.1.2. subject to our Fair & Acceptable Use Policy which is available on our Website; and
  - 5.1.3. subject to this Clause 5.
- 5.2. You agree that you will not use the services in a manner that is in any way unlawful, fraudulent or in bad faith or for dishonest gain (including but not limited to Nuisance Calls or Artificial Inflation of Traffic) or, to your knowledge, has any unlawful, fraudulent or bad faith purpose or effect (including Artificial Inflation of Traffic); or in a manner that could materially affect the quality of any telecommunications service provided by us or our suppliers.
  - 5.2.1. any fraud, Artificial Inflation of Traffic or other unauthorised or improper use of our VoIP services shall not relieve you of your payment obligations to us.
  - 5.2.2. unsolicited calls to any telephone numbers registered with the Telephone Preference Service are prohibited by law under all circumstances. It is your sole responsibility to comply with this.
  - 5.2.3. the use of any system capable of dialling a telephone number prior to a live individual being able to handle the call directly (“automated/predictive diallers”) or the making of “voice

broadcast” calls or contact centre automated dialling software which pushes transactional information messages to customers is expressly prohibited on our network.

- 5.3. You agree that all apparatus connected to our network will conform to the relevant standard or approval designated under the Communications Act 2003.
- 5.4. You agree to comply with the Calling Line Identification Guidelines published by Ofcom and provide accurate and relevant caller identification (“CLI”) on all calls. This CLI may be withheld from the called party User using standard SIP facilities.
- 5.5. You consent under the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 and any other relevant, replacement or supplemental legislation to our providing our supplier with your name and address information for the purposes of recording in a database emergency services location information and supplying directory information in accordance with our obligations to Ofcom or where required by law.
- 5.6. Where you use our call recording service you accept that it is your responsibility to obtain legal advice to ensure you are fully compliant before recording any calls and that you will comply with all legal requirements when using any call recording product and agree that we have no liability for any costs or claims which may be incurred as a result of any failure by you to comply with any legal requirements.
- 5.7. Where you use our service to upload audio files for music on hold you agree to obtain any necessary licences and consents as may be required and agree to indemnify us from any direct or indirect claims arising from your failure to do so.

## **6. 999 and the Emergency Numbers Database**

You acknowledge and agree that:

- 6.1.1. our VoIP Services are a voice over data network service, and as such, they are dependent on your connection to the data network and the data network itself. Your service may therefore cease to function if there is a power failure or a failure in the underlying data network. This failure may be caused by reasons outside our control;
- 6.1.2. emergency operators may not be able to identify your telephone number and hence location in order to call you back if the call either cannot be completed, is dropped or disconnected, or if you are unable to speak to tell them your phone number and/or if the service is not operational for any reason, and emergency operators may also not be able to hold your line open in the event that you hang up;
- 6.1.3. that you should always have an alternative means of accessing 999 or 112 emergency services as your ability to make 999 or 112 emergency calls cannot be guaranteed and emergency calls will fail if, for example, there is a power cut or your broadband connection fails. These failures may be caused by reasons outside our control;
- 6.1.4. where technically feasible, we have an obligation under Ofcom's General Conditions of Entitlement to ensure that accurate caller location information is available to the emergency services database and that this is maintained. We will regularly update the emergency services database with the details stored against each User defined as the User Information;
- 6.1.5. that you are solely responsible for providing to us and maintaining the Customer Information and the User Information on the VoIP Portal. Due to the migratory capability available on VoIP telephony products, it is imperative that where a number has permanently changed address details, you promptly update the User Information through the VoIP Service Portal (or inform us promptly via email to [help@xoomtalk.com](mailto:help@xoomtalk.com));
- 6.1.6. if an emergency call is made from a number on the Xoomtalk Platform and the address information is found to be incorrect, we will be notified of this by our Service Providers and we will inform you. Ofcom requires an amended record to be submitted within two days from notification, and where this is consistently not met, fines may be levied against us by Ofcom. You shall fully cooperate with us to ensure we are able to comply with this obligation;
- 6.1.7. any costs incurred by us due to you not accurately maintaining the Customer Information and User Information as specified in this Clause will be passed on to you with an additional

administration fee as per our current Price Guide or as otherwise notified, or made available to you;

- 6.1.8. that the emergency call may not receive the same network priority as an emergency call made on a mobile network or on a circuit-switched fixed line;
- 6.1.9. that if we suspend or terminate the service you may not be able to dial 999 or 112;
- 6.1.10. by ordering the VoIP Services, you also confirm that it shall be your sole responsibility to make available to your Users, alternative means of accessing emergency calls services, and to inform or otherwise make aware to your Users of the possible limitations of this Service (as set out above).

## **7. Service Levels**

- 7.1. The Service Levels that we aim to provide for VoIP Services are provided in “Schedule 8 - Service Level Agreement”.

## **8. Charges**

- 8.1. All charges will be calculated by reference to data recorded or logged by us.
  - 8.1.1. Where a call begins in one time band (e.g. peak or off peak) and ends in another, the charges will be determined from the rate applied at the start of the call.
  - 8.1.2. We may make backdated claims for amounts owed which were not previously invoiced for technical or other reasons.
- 8.2. We shall not be held responsible for any situation where a call is generated in error and you shall remain liable for the charges associated with such a call.
- 8.3. In some cases, our standard VoIP Service may not be compatible for analogue lines that are being utilised for facsimile machines. This may result in loss of service. In these instances, an alternative efax service will be offered to you on request.
- 8.4. You shall pay to us the Fixed Subscription Charge in advance. You shall also pay to us any other non-inclusive Charges not included in your Fixed Subscription Charge at the prices specified in our Price Guide or as otherwise notified, or made available to you.
- 8.5. We may agree with you monthly/quarterly call price plans with inclusive minute allowances as part of your Fixed Subscription Charge.
- 8.6. Unless we say otherwise to you in writing:
  - 8.6.1. the inclusive minute allowances specified in any VoIP monthly call price plans will be deducted in one minute increments (with any part minutes rounded up to the nearest minute);
  - 8.6.2. The Parties agree that the Telecommunications General Condition C.1(f)(ii) of the Communications Act 2003 shall not apply to this agreement. The Customer hereby waives its right to rely on this General Condition and any similar provision of law that would require us to provide notifications when any inclusive call minute packages have been exhausted and the costs to continue to use these Services. Any additional calls made will be charged as described in clause 8.6.3 of this Schedule.
  - 8.6.3. call Charges for VoIP calls outside of any inclusive minute allowances (both UK and international) will be calculated on a per second basis (excluding calls to Mexico and the United States of America which will be calculated on a per minute basis) at our then current Charges specified in our Price Guide or as otherwise notified, or made available to you. In addition, a per call connection Charge may apply.
- 8.7. Any voice minutes allowance included in any of our VoIP call price plans will expire at the end of the monthly billing period (i.e. will not roll-over to the next month).
- 8.8. If a call price plan has a minimum monthly spend, the minimum monthly spend Charge will be charged even if the usage Charges are below the minimum monthly spend.
- 8.9. You will be liable for all calls made using the VoIP Services.

## **9. Upgrading or ceasing your VoIP Service**

- 9.1. If you require an Upgrade a new Order Request will need to be submitted as described in Clause 2 in the Business General Terms.
- 9.2. If you wish to cease a Service(s) you will need to email [cease@xoomtalk.com](mailto:cease@xoomtalk.com) and state the Service(s) you wish to cease and the date for the Service(s) to be ceased. If you disable or delete a Service(s) on the Xoomtalk Platform it will not automatically cease the billing of the Service(s).



## Xoomtalk - Schedule 6 - Telephone Numbers and IP Addresses

This Service Schedule covers the allocation of Telephone Numbers and/or IP Addresses to you and is made by and between Xoom and you and is part of your Agreement with us. This Service Schedule comes into force on the date that a Telephone Number and/or IP address is allocated to you or to one of our other Services that you use and will continue in force until you or us terminate it in accordance with Clause 19 of the Business General Terms.

In the event of any conflict or ambiguity between this Service Schedule and the Business General Terms, this Service Schedule will take precedence. Capitalised terms not defined herein shall have the meaning ascribed to them in Appendix 1 (Definitions & Interpretation).

### 1. Definitions

**“IP Address”** means a numerical label connected to a computer network that uses the Internet Protocol for communication to enable network interface identification and location addressing;

**“Losing Provider”** means the current Service Provider that provides the number that is to be ported.

**“Number Conservation Area”** defined by Ofcom in their National Telephone Numbering Plan as an area where geographic numbers are in short supply; Ofcom means the Office of Communications or its successor body or authority;

**“Number Porting”** means the process of moving a telephone number from one Communications or Service Provider to another.

**“Range Holder”** means the communications provider (CP) who was originally allocated the range of Telephone Numbers by Ofcom that includes the number to be ported.

**“Telephone Number”** means a set of certain numbers which when dialled from a telephone device will alert the handset or device it is allocated to. The number of digits assigned to a telephone or mobile might vary from country to country.

### Telephone Numbers

- 1.1. You acknowledge that Telephone Numbers always remain the possession of and belong to the Range Holder who Ofcom originally allocated them to. You will not acquire any rights in such numbers and will have no right to keep that number nor to sell, dispose or transfer that number at any time.
- 1.2. We will use reasonable endeavours to ensure that you are able to keep the number during the time we provide the relevant VoIP Service to you under the Agreement, but we reserve the right to change the telephone number on reasonable notice at our sole discretion.
- 1.3. Where we allocate Telephone Numbers to you;
  - 1.3.1. you will make no attempt to apply for registration of the same as a trade or service mark whether on its own or in conjunction with some other words or trading style; and
  - 1.3.2. we cannot guarantee that these numbers are fully allocated to you until you have placed calls across them. We will not be responsible for any costs you may incur as a result of a change in these numbers prior to this; and
  - 1.3.3. we may for operational or other reasons change the numbers allocated to you, but we will not do so unreasonably.
- 1.4. If required, we will use reasonable endeavours to ensure your name, address and the telephone number allocated to you appear in a local telephone directory and that they are available on the national directory service. There will be a Charge to do this as per prices specified in our Price Guide or as otherwise notified, or made available to you. We cannot however accept any liability for errors or omissions in this directory listing by third parties.
- 1.5. In the event that a telephone number or range of numbers is withdrawn by Ofcom, Range Holders or any of our suppliers we reserve the right to recover the number or range of numbers from you immediately where we are required to do so. We will use reasonable endeavours to supply you with

a replacement number or range of numbers. We will not be responsible for any costs you may incur as a result of a change in numbering.

- 1.6. Where you take a premium rate number service you agree that your use of such a service must comply with all relevant legislation, regulations, guidelines and codes of practice (including but not limited to the Phone-paid Services Authority Code of Conduct) and you agree to indemnify us from any failure of yours to so comply.
- 1.7. You are responsible for complying with all regulatory and legal provisions governing the telephone numbers allocated by us to you.

## **2. Number Porting**

- 2.1. We will provide number portability, when our suppliers allow such capability, in accordance with this Clause 2 and with Schedule 5 (which will apply in connection with number allocation and portability connected to the VoIP services).
- 2.2. To initiate a request to port a number from another provider you will need to complete a Xoom number port form. We will send you a Xoom number port form or a link to a port form via email which you will need to complete, sign and submit to us for verification. Xoom number port forms can be requested by email at [orders@xoomtalk.com](mailto:orders@xoomtalk.com) or via our main telephone number.
- 2.3. Once we receive the Xoom number port form signed by you, we will review and validate the data provided. If additional information is required for us to be able to place the order we will contact you for this. Once we have received all the required information from you and are able to validate this we will start to place the order.
- 2.4. Where you agree to transfer to us the call services or VoIP services you receive from another supplier, and your transfer request includes a request for number porting, you authorise us to:
  - 2.4.1. include the telephone numbers to be ported on the relevant number porting request form; and
  - 2.4.2. to forward appropriate details of your porting application for the VoIP Service you order to the Losing Provider and/or to our Service Providers as applicable.
- 2.5. You will receive advance notification of the transfer of service from the Losing Provider to us detailing the transfer date and any liabilities or charges related to the number(s) port or any services that are still live with them..
- 2.6. You acknowledge and agree that:
  - 2.6.1. the information provided by you on any number porting request form will be used by us when requesting the number port. You acknowledge and agree that any inaccuracies in this information (e.g. inaccurate or incorrect information) may lead to the number port being rejected by the Losing Provider or Range Holder. We reserve the right to charge you a reasonable extra Charge for any rejection or extra work we need to carry out arising from such inaccuracies and subsequent rejections; at the rate published in our Price Guide or as otherwise notified, or made available to you.
  - 2.6.2. our ability to provide access to the VoIP Service from the requested ported numbers is subject to the losing provider and our underlying Service Providers being able and agreeing to port the numbers; and
  - 2.6.3. the time taken to port numbers from other networks varies and sometimes it may not be possible or reasonably practicable. If this happens we will provide you with a new number(s).
  - 2.6.4. where a number is to be ported away from a losing provider, this may also result in termination of the line or service on which the number was previously allocated.
- 2.7. We will use all reasonable efforts to ensure that you are able to retain your existing numbers in the event that you change suppliers of telephony service or addresses. There will be some instances in which this will not be possible, and you are responsible for ensuring that porting is available in your circumstances. During the porting process, some outages are likely, but we will use our reasonable endeavours to minimise these.

## **3. Telephone Number Charges**

- 3.1. The national numbering scheme is controlled by Ofcom. Telephone numbers are a finite resource and we may charge when numbers are allocated to you and also an ongoing rental charge if we decide to do so.
- 3.2. in some cases availability is further constrained where Ofcom designates a Number Conservation Area. We reserve the right to pass on the charges which Ofcom levies on us for numbers in Conservation Areas, inclusive of any cost of administration or otherwise.

#### **4. IP Addresses**

- 4.1. All rights to any IP Addresses allocated to you by us belong to Xoom. You shall not sell them or agree to transfer them to anyone else and must not try to do so.
- 4.2. You agree that all IP Addresses are allocated to you on a rental basis only.
- 4.3. You acknowledge that any IP Addresses we allocate to you are for use in connection only with Xoom Connectivity Services.
- 4.4. We may offer you additional IP Addresses to be used on a single Connectivity Service but we cannot guarantee the exact number or quantity of IPs that you request will be available.
- 4.5. We may need to move you to a new IP address(es), if we do, we will provide as much notice as possible but will always provide a minimum of 30 days notice.
- 4.6. It is not possible to port or move IP Addresses.
- 4.7. If a Connectivity Service is ceased then any IP Addresses allocated to you for use with the Service will immediately revert to Xoom.
- 4.8. If this Agreement is terminated for any reason then any IP Addresses allocated to you will immediately revert to Xoom.

### **Schedule 7 - Removed from Agreement**

## Xoomtalk - Schedule 8 - Service Level Agreement

This Schedule describes the Target Resolution Times, Estimated Lead Times and Service Credits we offer to you for the Services specified below. This SLA Schedule is made by and between Xoom and you and is part of your Agreement with us.

In the event of any conflict or ambiguity between this Schedule and the Business General Terms, this SLA Schedule will take precedence. If a Service does not have any SLA detail in this Schedule then it will be bound at first by the SLA in the relevant Service Schedule and then Business General Terms. Capitalised terms not defined herein shall have the meaning ascribed to them in Appendix 1 - Definitions and Interpretation.

### 1. Definitions

**“Circuit Reference”** means the unique circuit identifier (CID) as detailed on your Service Commencement Confirmation and/or periodic invoice.

**“Delay”** as ascribed in Appendix 1 – Definitions and Interpretation.

**“Fibre Break”** means when a fibre optic cable is damaged, severed or broken. The specific impact depends on the location of the break, however can cause complete loss of connectivity services being delivered over this fibre optic cable.

**“Line Break”** means when a copper cable is damaged, severed or broken. The specific impact depends on the location of the break, however can cause complete loss of telephony or connectivity services being delivered over this cable.

**“Out-Of-Scope Incidents”** means any issues that occur that are specified in Clause 7 of this Schedule;

**“Service Credit Period”** means once we verify the Incident, you must send your claim for a Service Credit within 14 calendar days of the Incident being resolved.

**“Service Level Agreement (SLA)”** means what Service(s) a Service Provider will provide and the required level or standard for those Service(s), including details of the Service(s), the standards the Provider must adhere to, and the metrics to measure the performance.

**“Target Resolution Time Failure”** means if we fail to meet the Target Resolution Time for an Incident related to a Connectivity Service and this is not caused by you or by your Users’ actions or omissions which prevent or delay installation, by Customer Equipment or by any Delay.

**“Working Hours”** means 08:30 to 18:00 GMT or BST Monday to Friday with the exception of Bank Holidays;

### 2. General SLA Terms

- 2.1. For the purposes of this SLA you acknowledge that, save for manifest error, only those performance measures reasonably produced by us will be used as the basis for assessing our performance.

### 3. Estimated Lead Times

- 3.1. Once a request to supply a Service has been submitted, we will perform internal validation and either reject your Service order or accept the Service order by sending you a Service Order Acceptance. Once accepted we will aim to deliver the relevant Services in the lead times below:
- 3.2. The date when we send you the Service Order Acceptance will mark the start of the period for the Estimated Lead Times for the Services specified on them.
- 3.3. We will aim to provide you with new Services to a Site within the Estimated Lead Time from our Service Order Acceptance (and where possible will attempt to reduce this delivery time) but you acknowledge and agree that this is only an estimate. All Estimated Lead Times are indicative and dependent, amongst other things, on resource constraints and third party supplier processes.
- 3.4. We or our suppliers may need to complete certain works for some Services, such as Site, network or equipment surveys. You acknowledge and agree that the outcome of these works can alter the Estimated Lead Time of the Service you have ordered. We will notify you if this happens or will update the Estimated Lead Time via email or via our helpdesk Portal as applicable

- 3.5. We reserve the right to update the Estimated Lead Time in the event there is a Delay. If any Delay occurs, then the order process for the relevant Service will be placed on hold until the Delay has been rectified and the Estimated Lead Time will be paused. We reserve the right to reset the Estimated Lead Time if the Delay lasts for longer than three (3) days. Once the Delay has been rectified we will notify you of the new Estimated Lead Time as soon as reasonably possible.
- 3.6. In particular, but without limitation, the following events will cause a Delay, which may affect the Estimated Lead Time of the Service you have ordered:
- 3.6.1. awaiting Customer visit appointment: a visit to any of your Sites is required by us or our suppliers and you, a representative or agent is not available for this appointment. You must advise us of this as soon as possible so we can then, if relevant, liaise with our suppliers to find a more suitable time. Customer Delay will apply and the order process for the relevant Service will be placed on hold you confirm availability for a new visit;
- 3.6.2. appointment rejected by Customer: Customer Delay will apply until a new suitable appointment has been made;
- 3.6.3. no access to a Site at appointment slot: Customer Delay will apply until a new appointment has been made.
- 3.7. If ECCs have been identified the Estimated Lead Time will be placed on hold until the Charges have been accepted by you. Upon acceptance of ECCs, any required permissions will be applied for and once received work will commence; all work undertaken (including a site survey) under ECCs will qualify as a Delay and Clause 3.5 above shall apply.
- 3.8. If you request a change to the specification of the Service before we send you a Service Commencement Confirmation for such Service the Estimated Lead Time will be reset and we will provide you with a new Estimated Lead Time to provide the relevant Service to the new specification.
- 3.9. Wayleave may be required to permit the installation of any Service. A Wayleave is required at the request of the property owner/free holder/grantor when installation of telecommunication apparatus is required into a third party property. Wayleave may not be required if you own the property or when an agreement already exists between the interested parties. If you are a tenant in a building, it is important you check if a wayleave is required for your installation. A Wayleave must be obtained for any apparatus that is to be installed in common areas i.e. frame rooms, risers etc. As well as the property owner/grantor the telecommunications provider can also request a wayleave application for the installation of new apparatus, which is not covered by an existing wayleave agreement in place for the property.
- If Wayleaves need to be obtained before we are able to install the Services or provide you with the Services, the Estimated Lead Times will be paused in accordance with Clause 3.5 above until the relevant Wayleave permission is obtained.

#### 4. Connectivity Services - Estimated Lead Times and Maximum Speeds

- 4.1. The table below specifies:
- 4.1.1. the Estimated Lead Times for the Broadband and Ethernet Services specified in the table; and
- 4.1.2. the maximum upload and the download Internet connection speeds available per Service (the "Maximum Speeds").
- 4.1.3. Estimated Lead Times shown in the Tables below assume delivery to a standard building or premises. Any more complex sites will add more time.
- 4.1.4. the count is in Business Days and they do not account for any Delays.

Service	Upload Speed (Maximum Speed)	Download Speed (Maximum Speed)	Estimated Lead Time - Working Days
ADSL2+	1.4 Mbps	24 Mbps	15
ADSL2+ Annex-M	2.5 Mbps	20 Mbps	15

ADSL2+ or ADSL2+ Annex-M migration	1.4 or 2.5 Mbps	24 or 20 Mbps	25
FTTC	20 Mbps	80 Mbps	15
FTTC migration	20 Mbps	80 Mbps	25
FTTP	900 Mbps	115 Mbps	25
Ethernet	Up to 1 Gbps	Up to 1 Gbps	60-90
Ethernet Bearer upgrade	Up to 1 Gbps	Up to 1 Gbps	60-90
Ethernet Bandwidth regrade	Up to 1 Gbps	Up to 1 Gbps	30
Ethernet	1 - 40Gbps	1- 40Gbps	Location dependant

## 5. Incident Reporting

- 5.1. In the event that there is an Incident associated with a Service, you will need to report it to our Service Desk.
- 5.2. You shall use reasonable endeavours to report an Incident within 24 hours of experiencing the Incident in accordance with the procedure specified in this Clause.
- 5.3. Incidents are to be reported:
  - 5.3.1. during Working Hours to the Xoom Service Desk either by emailing [help@xoomtalk.com](mailto:help@xoomtalk.com) or calling our Main Telephone Number or 0333 110 3000 (if calling from an international destination please dial +44(0)1273 900090); or
  - 5.3.2. outside of Working Hours by telephone to the Xoom Service Desk either by emailing [help@xoomtalk.com](mailto:help@xoomtalk.com) or on our Main Telephone Number or 0333 110 3000 (if calling from an international destination please dial +44(0)1273 900090). Incidents for some Services will only be worked on and target times will only be counted during Working Hours as outlined in this Schedule or unless you have an extended care package which covers these Services on a 24/7/365 basis. To access the Service Desk outside of Working Hours you will be prompted to enter a PIN number. If applicable for your Services or you have an extended care package, the PIN number is shown on your Service Commencement Confirmation for the relevant Service or provided to the Technical Contact.
- 5.4. You will be allocated a Ticket Number which will be used to track the progress of the Incident resolution.
- 5.5. You shall provide us with a minimum level of information when you report an Incident to us (to enable us to timely and efficiently diagnose and resolve the Incident). This includes, but is not limited to:
  - 5.5.1. contact name and details of the person reporting the Incident;
  - 5.5.2. Incident description;
  - 5.5.3. affected Service(s) and/or Circuit Reference and Site details
  - 5.5.4. how long the Incident has been active;
  - 5.5.5. details of any tests/diagnosis you carried out in attempting to localise the problem before reporting to us;
  - 5.5.6. availability of access and access information to the affected Site for engineering staff; and
  - 5.5.7. impact of the incident to business operation.

(Collectively referred to as the "Incident Report").

- 5.6. You must exhaust all reasonable investigative analysis prior to sending Incident Reports to us. It is your obligation to prove that Incidents reported to us are within our control and responsibility.
- 5.7. We will not be able to progress with the resolution of an Incident if you are unable to provide the necessary Incident Report information to us or if the information you send is incorrect. If this happens, the Incident will be placed in Paused Resolution Time and the Target Resolution Time will be paused until the Delay is resolved. We reserve the right to reset the Target Resolution Time if your delay in providing suitable information lasts for longer than three (3) days.
- 5.8. A provisional Incident priority will be assigned by us to the Incident when registering the Incident (e.g. P1, P2 and P3, where P1 is the highest priority). Once the Incident has been assigned to a member of our Service Desk, we will confirm to you the Incident Priority Level assigned to the Incident.
- 5.9. Subject to Clause 5.4 above, the time at which an Incident Report has a Ticket Number allocated will mark the start of the Target Resolution Time.
- 5.10. Until all of the Incident Report information as detailed in Clause 5.5 has been provided, the Target Resolution Time will be paused and will enter into Paused Resolution Time.

## **6. Incident Resolution**

- 6.1. If you report an Incident with a Service(s) we will respond by carrying out one or more of the following actions:
  - 6.1.1. providing advice by email or telephone, including advice, where appropriate, as to tests and checks to be carried out by you;
  - 6.1.2. where possible, carrying out diagnostic checks from our premises; or
  - 6.1.3. visit the relevant Site if our action under Paragraph 6.1.1 and 6.1.2 does not result in the fault being diagnosed or cleared and where such a visit is considered necessary by us.
- 6.2. In providing the Services, we will use reasonable endeavours to comply with the Response Targets and Target Resolution Times set out below.
- 6.3. For the purposes of this SLA Schedule you acknowledge and agree that, save for manifest error, only those performance measures produced by us will be used as the basis for assessing our SLA performance.
- 6.4. If a Delay occurs during the Incident resolution, the Target Resolution Time will be paused and will enter into Paused Resolution Time until the Delay causing the Paused Resolution Time is resolved. In the event that a Paused Resolution Time lasts for longer than three (3) days we reserve the right to reset the Target Resolution Time affected by the Delay. In this event the Target Resolution Time will start running again from the beginning, once the Delay is fully resolved.
- 6.5. In particular, but without limitation, the following events will cause a Target Resolution Time to be paused and will enter into Paused Resolution Time:
  - 6.5.1. fault passed back for retest: we believe that the Incident has been resolved and require confirmation from you after a retest. Paused Resolution Time will apply until you confirm to us if the Incident has been resolved or not.
  - 6.5.2. further diagnostics required: we require further diagnostics from you in order to progress with the Incident Resolution (e.g. we request you to change your login details to allow us or our agents to perform more in-depth analysis). Paused Resolution Time will apply until you complete the require action and inform us;
  - 6.5.3. awaiting Customer visit appointment: a visit to any of your Sites is required by us or our suppliers and you, a representative or agent is not available 24 hours a day, 7 days a week for this appointment. You must advise us of this as soon as possible so we can then, if relevant, liaise with our suppliers to find a more suitable time. Paused Resolution Time will apply while we determine and you confirm availability for a new visit;
  - 6.5.4. appointment rejected by Customer: Paused Resolution Time will apply until a new suitable appointment has been made;
  - 6.5.5. no access to a Site at appointment slot: Paused Resolution Time will apply until a new appointment has been made; and

- 6.5.6. Incident resolved: Paused Resolution Time will apply while awaiting confirmation from you that the Incident has been resolved.
- 6.6. The suspension of all or part of the Services by us in accordance with Clause 19 of the Business General Terms will not be regarded as an Incident for the purposes of this Schedule. Allowable Downtime will not be regarded as an Incident and shall be excluded from the measurement of the SLAs.
- 6.7. The Response Targets and Target Resolution Times specified in the tables below will be dealt with by us on a remote, off-site basis (such as over the telephone or by e-mail). We reserve the right to charge you at our then current Charges for any support provided to you in relation to Incidents caused by Out-Of-Scope Incidents or when the resolution of an Incident requires us or our suppliers to send an engineer to any of your Sites.

**7. What the Service Level Agreement does not cover**

- 7.1. We shall not be liable to you, and you shall not be entitled to receive any applicable Service Credits under this Service Level Agreement if failure to meet the Service Level Agreement is due to:
  - 7.1.1. any Incident and or loss or failure of Service resulting from a Force Majeure event;
  - 7.1.2. a suspension of a Service in accordance with the provisions of this Agreement;
  - 7.1.3. a fault on your network, the Customer Equipment or your own equipment configuration;
  - 7.1.4. faults caused by a malicious act or you or your user’s actions or omissions in breach of the Agreement (including but not limited to misuse or interference with the Connectivity Services caused by you or by your Users’ breaches of our Fair & Acceptable Use Policy);
  - 7.1.5. you or your Users giving us incorrect, incomplete or inaccurate instructions or information;
  - 7.1.6. Incidents and or loss or failure of service resulting from scheduled maintenance or emergency maintenance that may affect availability of all or any part of the Connectivity Service;
  - 7.1.7. faults which are the result of data transmission originating from Customer Equipment;
  - 7.1.8. any Incident and or loss or failure of service resulting from the severance or break in a circuit by you or any third party outside of our control (e.g. a Fibre Break);
    - 7.1.8.1. a Delay; or
    - 7.1.8.2. any equipment failure where we are not providing to you 24/7/365 maintenance cover. (Collectively referred to as "**Out-Of-Scope Incidents**").

**8. Response Targets and Target Resolution Times**

- 8.1. The tables below specify the Incident Priority Level classification, Response Targets and the Target Resolution Times for the Services specified in them:

**Ethernet Services**

<b>Incident Priority Levels</b>	
<b>Level</b>	<b>Description</b>
P1	Circuit is fully down
P2	Circuit is intermittently down
P3	Circuit degraded - packet loss/slow speed etc.
General enquiry	Question relating to a circuit - IP addressing, configuration etc.

<b>Ethernet Incident Reporting and Target Resolution Times</b>
<b>Incident Reporting 24/7/365, Target Resolution Times and Response Target in Clock Hours (24/7/365)</b>



Priority Level	Response Target	Target Resolution Time
P1	2	8
P2	4	12
P3	6	48
General enquiry	8 <sup>1</sup>	N/A

<sup>1</sup>General enquiries for Ethernet Services will only be dealt with during normal Working Hours and will be counted in Working Hours

### VoIP Services

VoIP Services Incident Priority Levels	
Level	Description
P1	Service is fully down across all users on a single site <sup>2</sup>
P2	Service is experiencing bad call quality or dropping calls on a regular basis (once every 5 minutes) - Business operations are being significantly impacted on an ongoing basis <sup>2</sup>
P3	Service is degraded - Intermittent bad voice quality or drops - Business operations are not being significantly impacted <sup>2</sup>
General enquiry	Question relating to VoIP Service - Configuration and name changes etc.

VoIP Services Incident Reporting and Target Resolution Times		
Incident Reporting, Target Resolution Times and Response Target in Working Hours		
Priority Level	Response Target <sup>3</sup>	Target Resolution Time <sup>3</sup>
P1	2	8
P2	4	12
P3	6	80
General enquiry	16	N/A

<sup>2</sup>When Incident is not related to a connection fault (i.e. connectivity failure)

<sup>3</sup>Incidents for VoIP Services will only be worked on and target times will only be counted during Working Hours unless you have an extended care package which covers these services on a 24/7/365 basis - All General enquiries will only ever be worked on within Working Hours and will be counted in Working Hours.

### PSTN Services

PSTN Incident Reporting and Target Resolution Times
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Incident Reporting in Working Hours and Target Resolution Times		
Care Level	Response Target	Target Resolution Time
Two	2	Clear by 23:59 next Business Day
Three	2	Reported before 11:00 - Clear by 23:59 same Business Day Reported after 11:00 - Clear by 12:59 next Business Day

### Broadband Services

Broadband Services Incident Priority Levels	
Level	Description
P1	Circuit is fully down
P2	Circuit is intermittently down
P3	Circuit degraded - packet loss/slow speed etc.
General enquiry	Question relating to a circuit - IP addressing, configuration etc.

Broadband Services Incident Reporting and Target Resolution Times		
Incident Reporting and Target Resolution Times in Working Hours		
Priority Level	Response Target <sup>4</sup>	Target Resolution Time <sup>4</sup>
P1	2	50
P2	4	100
P3	6	150
General enquiry	20 <sup>4</sup>	N/A

<sup>4</sup>Incidents for Broadband Services will only be worked on and target times will only be counted during Working Hours unless you have an extended care package which covers these services on a 24/7/365 basis - All General enquiries will only ever be worked on within Working Hours and will be counted in Working Hours.

### 9. Service Credits for Target Resolution Time Failures

- 9.1. An Ethernet Service Incident categorised as Priority Level P1 or P2 has the Target Resolution Times specified in this Schedule 8 above, except where the Incident is caused by a Fibre Break or Line Break where the Target Resolution Time is twenty four (24) hours.
- 9.2. If we fail to meet the Target Resolution Time for an Incident related to a Connectivity Service and this is not caused by you or by your Users' actions or omissions which prevent or delay installation, by Customer Equipment or by any Delay ("**Target Resolution Time Failure**"), we will apply the following Service Credit for a Target Resolution Time Failure: a deduction of the Circuit Rental of the Connectivity Service affected by the Target Resolution Time Failure provided you report the Incident and claim for a reduction to the applicable Service Charge in accordance with Clause 9.3 below.

- 9.3. where the Incident Period is greater than the Target Resolution Time we will apply a Service Credit calculated as follows:
  - 9.3.1. P1 Incidents: deduction of 1 day Charge for the Service affected by the Target Resolution Time Failure for every 4 full hours past the Target Resolution Time;
  - 9.3.2. P2 Incidents: deduction of 1 day Charge for the Service affected by the Target Resolution Time Failure for every 8 full hours past the Target Resolution Time; and
  - 9.3.3. P3 Incidents: deduction of 1 day Charge for the Service affected by the Target Resolution Time Failure for every 4 full hours past the Target Resolution Time.
  - 9.3.4. the maximum Service Credit applied to a Service per quarter (i.e. three months) for Target Resolution Time Failures will be capped at the equivalent of ten (10) days' Service Charge within such quarter for the affected Service;
  - 9.3.5. you will only be entitled to make one claim to us under this Service Level Agreement in respect of a single Target Resolution Time Failure;
  - 9.3.6. the deductions arising from any applicable Service Credits for Target Resolution Time Failures shall not exceed the amounts specified in Clause 9.3.4; and
  - 9.3.7. where you have taken a Xoom resilient option and experience an Incident, Xoom will only apply a Service Credit to the Fixed Subscription Charge of the Service that experienced the Incident.
- 9.4. Once we verify the Incident, you must send your claim for a Service Credit within 14 calendar days of the Incident being resolved (the "**Service Credit Period**"), quoting the relevant Ticket Number by:
  - 9.4.1. e-mailing :billing@xoomtalk.com; or
  - 9.4.2. your right to claim Service Credit under this Clause will expire after the Service Credit Period.
- 9.5. How Xoom will pay the Service Credits
  - 9.5.1. We will apply the Service Credits approved by us in accordance with this Schedule by applying a credit to your next invoice for the relevant Service.
  - 9.5.2. You must notify us in writing within one month of the date of our invoice if you dispute a Service Credit we apply to our invoice, because you consider that such Service Credit has not been applied in accordance with this Schedule 8. After this period the Service Credit we applied to our invoice will be deemed correct.

## 10. Monitoring and Service Availability

- 10.1. The Xoom Network is monitored 24 hours a day, 7 days per week including Public/Bank Holidays.
- 10.2. VoIP Service Availability
  - 10.2.1. The overall VoIP Service Availability shall mean the Xoomtalk Platform is running and able to provide:
    - 10.2.1.1. a monthly average overall VoIP Service availability where you and your Users are able to access the VoIP Service Portal and register Session Internet Protocol "**SIP**" Sessions of not less than 99.9% for at least 80% of all Users of the Xoomtalk Platform. This excludes periods of scheduled Maintenance Events, any issues caused by you and your Users, any third party outages or disruptions and outages or disruptions attributable in whole or in part to Force Majeure events as defined in the Agreement.

## **Xoomtalk - Schedule 9 - Installation Services**

When you order an Installation Service from us this Service Schedule shall come into effect and is made by and between Xoom and you and is part of your Agreement with us.

In the event of any conflict or ambiguity between this Service Schedule and the Business General Terms, this Service Schedule will take precedence. Capitalised terms not defined herein shall have the meaning ascribed to them in Appendix 1 (Definitions & Interpretation).

### **1. The Installation Process**

- 1.1. We will arrange with you a date for when the Installation Service will take place.
- 1.2. We may request that you complete some reasonable pre-installation checks to avoid any unnecessary delay or costs.
- 1.3. Before any work is undertaken any reasonably requested pre-installation checks shall be undertaken by you or your Users at least five (5) Working Days in advance of the agreed date for the Installation Service.
- 1.4. On the agreed date you will provide access to the premises as detailed in Clause 16 of the Business General Terms and we will then visit your Site to:
  - 1.4.1. install the Xoom Equipment and configure this if required;
  - 1.4.2. if pre-agreed, install and configure the Customer Equipment;
  - 1.4.3. connect the Xoom Equipment to the relevant Service(s);
  - 1.4.4. if pre-agreed, connect the Customer Equipment to the relevant Service(s);
  - 1.4.5. complete operational and performance tests on the Service(s) as required;
  - 1.4.6. complete any other pre agreed bespoke requests on a project by project basis such as User training or LAN configuration.
- 1.5. We shall use reasonable endeavours to ensure that the Xoom Equipment, relevant Customer Equipment and Service(s) is operational prior to leaving the premises, however, in the event that we are unable to connect the Xoom Equipment or Customer Equipment or unable to sign off the Service(s) due to a fault with any equipment we have provided or a fault with any of our Services, we may leave site and will contact you once the fault has been resolved.
- 1.6. Before leaving Site we will request that both Parties sign a Service Sign Off:
  - 1.6.1. If the Installation Service has been completed and the Services are tested and operational then once signed by both Parties, this document shall certify that the Installation Services have been carried out to your reasonable satisfaction;
  - 1.6.2. If we have been unable to complete the Installation Service for any reason this will be noted on the Service Sign Off before a signature is requested. We will then either rectify the issues remotely or arrange to visit the Site again when we are able to rectify these. We may Charge for this unless Clause 1.5 applies;
  - 1.6.3. If a Service Sign Off is not signed then the use of the relevant Service(s) within a live environment shall be deemed to be acceptance that the Installation Service has been carried out to your reasonable satisfaction.

### **2. Xoom Equipment**

- 2.1. Where we or one of our Engineers or Subcontractors need to install Xoom Equipment at a Site to enable us to provide the Service you will prior to installation and in accordance with our reasonable instructions:
  - 2.1.1. prepare the part of the Site where Xoom Equipment will be located;
  - 2.1.2. make available a suitable place and conditions for the Xoom Equipment (i.e. suitable accommodation, assistance, facilities and environmental conditions for the Equipment); and
  - 2.1.3. provide at no charge to us with sufficient electricity to power the Xoom Equipment.
- 2.2. After installation is completed it is your responsibility to restore the condition of the Site, including the removal of any packaging/rubbish and any re-decorating that may be required.

- 2.3. In addition to clauses 11 and 12 in the Business General Terms you must not add to, modify, adjust, or in any way interfere with the Xoom Equipment or the configuration of the Xoom Equipment, nor allow anyone else (other than someone authorised by Xoom) to do so. You will be liable to us for any loss of or damage to the Xoom Equipment, except where such loss or damage is due to fair wear and tear or is caused by us, or anyone acting on our behalf.

### **3. Charges**

- 3.1. The Charges for the Installation Service are subject to the following assumptions:
- 3.1.1. the Site at which the Installation Service will be performed has no redundant hardware on-site to decommission, remove from site and/or dispose of (unless agreed in writing prior to the Installation Service);
  - 3.1.2. the Site at which the Installation Service will be performed is within mainland UK with no impediment to road travel;
  - 3.1.3. the Installation Service shall take a maximum of 3 hours unless agreed in advance (commencing from the time of the scheduled appointment, and the Engineer arrival to the Site regardless of the time that the Engineer actually commences the installation); and
  - 3.1.4. that the Installation Service shall be performed on Working Days between the hours of 09:00 to 17:30. The Installation Service can be completed outside of these hours but additional Charges will apply at our current rates as detailed in our current Price Guide or as otherwise notified, or made available to you.
- 3.2. Where the assumptions set out at Clause 3.1 are not met, we reserve the right to reasonably increase the Charges payable for the Installation Services.
- 3.3. We reserve the right to Charge you for any additional visits required due to the installation not being completed due to a direct result of either (verbally or in writing) prerequisites agreed with you not being met by you and/or any pre-configuration documents not being completed correctly or on time.
- 3.4. In the event that we are unable to proceed with the installation of the Xoom or Customer Equipment or the Services due to you or your User's acts or omissions which prevent or delay installation beyond agreed date, we shall have the right to invoice you for all reasonable costs incurred in provisioning the Xoom and/or Customer Equipment and the Installation Services for such date. We will also have the right to charge the Fixed Subscription Charge(s) from the date the Installation Service would have taken place.
- 3.5. If we are unable to complete the installation due to a fault as defined in Clause 1.5 you will not be liable for the Charges or the Fixed Subscription Charge(s) until the Service is confirmed as operational.
- 3.6. Upon termination of the Installation Services for any reason, all sums due to us shall become immediately payable by you without set-off or deduction.
- 3.7. If you cancel an Installation giving less than 48 hours notice then Clause 5.4 of the Business General Terms will apply.

### **Schedule 10 - Removed from Agreement**

# Xoomtalk - Appendix 1 - Definitions & Interpretation

## 1 Interpretation Provisions:

In this Agreement (except where the context otherwise requires):

- (a) the Clause headings are included for convenience only and shall not affect the interpretation of this Agreement;
- (b) use of the singular includes the plural and vice versa;
- (c) use of any gender includes the other genders;
- (d) any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
- (e) any reference to an enactment, statute, statutory provision or subordinate legislation ("legislation") shall (except where the context otherwise requires) be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation;

## 2. Definitions

In these Business General Terms the following words and phrases shall have the following meanings:

**"Access Network"** means the Electronic Communications Network which runs from a local access node to a Network Termination Point on an End User's premises and which supports the provision of copper-based access services and fibre based access services to Users;

**"Account"** means your account with us for the provision of the Services;

**"Agent"** means individual or individuals employed by and/or working on behalf of you;

**"Agreement"** the following documents comprise our agreement with you and will have the following order of precedence: (i) the Service Order Form; (ii) our Fair & Acceptable Use Policy; (iii) the Schedules; (iv) Specific Offers (v); our Price Guide; (vi) the Business General Terms and (vii) our Privacy Policy all of which taken together, constitute the agreement between us and you for the supply of the Equipment and/or Services;

**"Allowable Downtime"** is defined as the periods when we will require, from time to time, to perform necessary maintenance of any of the Services;

**"Availability Targets"** means the amount of time that we aim to ensure the Services are available for use;

**"Broadband or Broadband Services"** means all Digital Subscriber Line (DSL) services including ADSL Services and FTTC Services as well as FTTP Services as defined in Schedule 2;

**"Cancellation Fee"** means (i) a cancellation charge equal to the Charges which would have been payable for each cancelled Service from the date of cancellation to the end of the relevant Initial or Renewal Term had they run their full term; and (ii) all the administrative costs and expenses incurred by us as a result of your cancellation;

**"Charges"** means the charges payable by you in return for the Services, Equipment and/or Xoomtalk Equipment in accordance with Clause 6 in the Business General Terms;

**"Clock Hours"** means time calculated on a 24/7/365 basis;

**"Commencement Date"** has the meaning as described in Clause 3.1 and is the date this Agreement commences on;

**"Commission Statement"** as defined in Clause 1.9 in Service Schedule 1 - Partner Relations;

**"Communications Provider"** means and as is defined in section 405 of the Communications Act 2003, someone who provides an electronic communications network or electronic communications service;

**"Configuration Request"** means a request to configure or change the configuration of a Service;

**"Connectivity Services"** means all Services that provide access to the Internet including but not limited to Broadband (DSL & FTTP), Ethernet and Mobile Data Services;

**“Contact Details”** means the contact information (Agent name(s), Agent email(s) and Agent telephone number(s)) supplied by you, the Customer, for communication purposes;

**“Content”** has the meaning as described in Clause 14.2 of the Business General Terms;

**“Corporate Marks”** means the registered or unregistered trademarks and service marks, house marks and marks of ownership, trading names, brand names, distinctive colour schemes, devices, styles, emblems and other manifestations associated with Xoom and/or any of our suppliers;

**“Credit Conditions”** has the meaning as defined in Clause 6.8 of the Business General Terms;

**“Customer”** means the person, group of persons or other entity whose name and address is or are set out in the Service Order Acceptance, and references to "your" shall be construed accordingly. A Customer can be a Direct Customer or a customer of a Wholesale Partner;

**“Customer Equipment”** means any apparatus situated at any premises owned, controlled or occupied by the Customer or User in respect of a Service used by the Customer or its customers in conjunction with our Xoom Equipment necessary for a Customer or User to utilise the Services, including the router;

**“Delay”** means any delay outside our reasonable control affecting our ability to perform our obligations under the Agreement or to comply with any SLA terms, including but not limited to;

- I. Wayleave applications or other legal issues outside of our control;
- II. any Service Specific Information Form (or any other information form) sent to you by us not being returned by you;
- III. any information reasonably requested by us not provided by you;
- IV. requests from you for out of hours work or appointments;
- V. Customer missed appointments or delays due to Xoom staff or Service Providers staff not being able to gain access to a Site or relevant location;
- VI. Site specific risk assessment method statements ("RAMS");
- VII. the relevant Site not being ready or incorrect termination details having been supplied;
- VIII. Service amend requests or in-flight order change requests;
- IX. time related Charges notices issued by us and awaiting your acceptance to such Charges;
- X. unpaid Excess Construction Charges or any other Charges due but not paid by you;
- XI. incorrect Site details (e.g. wrong address) or installation details supplied by you;
- XII. need for a construction survey;
- XIII. issues connected with the national grid or with any other utilities;
- XIV. any issues connected to local authorities' permissions, licences or certificates;
- XV. any issues connected to the traffic Management Act;
- XVI. any traffic for London restrictions;
- XVII. government Security restrictions;
- XVIII. events/festivals prohibiting work;
- XIX. third party Wayleaves;
- XX. your data centre restrictions or notice periods to access your servers;
- XXI. any necessary Updates, maintenance or extensions in Xoom Network core network;
- XXII. network outages outside Xoom Network;
- XXIII. network damages (unless caused by Xoom or its subcontractors);
- XXIV. any Site or network material risks we identify (unless caused by Xoom or its subcontractors)
- XXV. courier delivery delays;
- XXVI. our Equipment distributor stock availability; and
- XXVII. any other matters beyond our reasonable control.

**“Direct Customer”** means a person or entity to whom we provide Services directly and are billed directly by us;

**“Electronic Communications Network”** means a transmission system for the conveyance, by the use of electrical, magnetic or electromagnetic energy, of signals of any description;

**“Electronic Signature”** means any electronic means of indicating acceptance of this Agreement or any other documents and forms between us and you including by typing a name or other identifier, using a secure electronic signature solution (for example AdobeSign or Pandadocs), or any other means as may be agreed between both Parties;

**“Entire Network”** means both the Xoom Network and any Third Party Networks;

**“Equipment”** means the communications equipment and/or any other hardware you purchase from us;

**“Estimated Lead Time”** means the time we estimate it will take us to deliver a Service to you calculated in full Working Days;

**“Excess Construction Charges”** or **“(ECCs)”** means any charges levied by us or by our suppliers for infrastructure construction works that are required in order to deliver your Service(s), which our considered outside the threshold (in excess) of the standard construction scope of works;

**“Fair & Acceptable Use Policy”** means such policy or policies set out on our Website relating to the use of the Services, as modified or amended from time to time and “Fair and Acceptable Use Policy” shall be construed accordingly;

**“Fixed Subscription Charge”** means the fixed amount you pay to us for ongoing provision of the Services on a periodic basis;

**“Force Majeure Event”** has the meaning as defined in Clause 24.1 of the Business General Terms;

**“Incident”** means a service affecting issue or request to modify or configure the service;

**“Incident Period”** means the time it takes us to resolve an Incident from the moment we issue a Ticket Number but excludes any Paused Resolution Time;

**“Incident Priority Level”** means the urgency level of an Incident reasonably determined by us;

**“Incident Report”** means notification of an incident which is submitted by you to us in the way specified in the Agreement or in the relevant Service Schedule or in accordance with our instructions;

**“Initial Term”** means the minimum Service Period as set out in Clauses 4.2, 4.3 or 4.4 of the Business General Terms, or, if longer, the minimum Service Period identified in the Specific Terms and Conditions for each Service;

**“Insolvency”** means in relation to the Customer any of the following (as relevant): the appointment of any nominee, trustee, supervisor, administrator, administrative receiver, receiver or liquidator pursuant to the Insolvency Act 1986 (as modified, amended or replaced from time to time); or the entry into any compromise or arrangement with its creditors or, being a consumer, commits any act of bankruptcy, becomes bankrupt or enters into an individual voluntary arrangement; or if an order is made or effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction of a solvent company); or the occurrence or sufferance of anything equivalent under any jurisdiction other than England or Wales and “Insolvent” shall be construed accordingly;

**“Installation Address”** means the address to which the Services and/or Equipment will be delivered to as supplied by you or your Agents;

**“Installation Service”** means the service purchased by you for either the remote or on-site installation, configuration and testing of a Service;

**“Intellectual Property”** means all intellectual property of any kind whatsoever including without limitation any patent, trademark, trade name, service mark, copyright, moral right, rights in design, rights to inventions, utility models, copyright and related rights, database right, design right, community design right, semiconductor topography right, 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 confidential information and know-how and any other intellectual or industrial property whether or not registered or capable of registration together with all or any goodwill relating to such intellectual property or any similar right in any part of the world and shall include any applications for the registration of any such rights capable of registration in any part of the world and include 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;

**“Internet”** means the global data network comprising interconnected networks using the TCP/IP protocol suite;



**“LAN”** means Local Area Network;

**“Large Business Customer”** means a Customer which is an undertaking for which greater than ten (10) individuals work (whether as employees or volunteers or otherwise);

**“Law”** means the law of England and Wales, in force from time to time, and shall include (without prejudice to generality of the foregoing) all criminal law, laws relating to Intellectual Property and all laws, rules and/or regulations relating to the publication or transmission of information or data in electronic form. References to “Law” and “Laws” shall be construed accordingly;

**“Loss of Service”** means where a Customer is unable to access the public Internet and/or unable to make an outgoing call or receive an incoming call;

**“Main Telephone Number”** means 0333 110 3000 or +44(0)1273 900090 if calling from an international destination or such other number as we display on our Website;

**“Managed Network Service”** means where we provide maintenance and support of all or parts of the Customer network as covered in Schedule 7;

**“Network Connection”** means an Internet access service for use by multiple machines;

**“Network Terminating Equipment” or “NTE”** means the device connecting the Customer Equipment to the Entire Network;

**“Network Termination Point”** means the physical point at which an User is provided with access to an Electronic Communications Network;

**“Ofcom”** is the communications regulator in the UK;

**“Order Request”** has the meaning as defined in Clause 2.1 of the Business General Terms;

**“Original Signatures”** means a signature that isn't mechanically or electronically reproduced. Often meaning a written signature, in person and by their own hand;

**“Partner”** means a customer who has been granted Partner status and either acts as a Referral Partner or Wholesale Partner. For the avoidance of doubt (1) the term “Partner” shall not be seen as the creation of a legal entity and liability and assets remain distinct between the two parties; and (2) nothing contained in this Agreement, and no action taken by the parties pursuant to this Agreement, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee;

**“Party” or “Parties”** means Xoom and you, our Customer;

**“Password”** means a password issued to the Partner or Customer access to the Services, the Xoomtalk Platform, our Website or any other portal we may provide;

**“Paused Resolution Time”** means a period of time after the Incident has been logged and a Ticket Number has been allocated where we cannot progress the Incident repair process because of a Delay until the issue causing the Delay is resolved. The Paused Resolution Time will be excluded from the calculation of the Target Resolution Time;

**“Personal Data”** is as defined under the UK Data Protection Act 2018;

**“Phone Services”** means narrowband calls and Public Switched Telephone Network (PSTN) lines services provided to you that allow for the transfer of speech communications, and other forms of communications such as facsimile and data;

**“Portal”** means any HTML portal, API link or such other URL as we shall provide to our Customers and Partners to manage and order services from us, and other URLs we provide from time to time advise;

**“Premises” or “Site”** means the building(s) or location(s) (addresses of which as notified by your Agents to us) to which we agree to deliver and provide the Services and/or Equipment to you;

**“Price Guide”** means our price list relating to the Equipment and/or Services which can be accessed on our Website, as amended from time to time or in the case of Whole Partners either provided to them directly on

request or via one of our portals and amended from time to time;

**“Privacy Policy”** means our policy or notice regarding privacy, set out on our Website, as amended from time to time;

**“Prohibited Activities”** means those activities as detailed in clause 15 of the Business General Terms;

**“Proposal”** means an electronic document provided by us to you (also known as a quote), describing the Services and/or Solutions and/or Equipment, the Charge(s) for these and the associated initial Term(s) that we are offering to supply the Services to you;

**“PSTN Services”** means the public switched telephone network Services we provide to you;

**“Rate Card”** means the document detailing Charges that will be levied for calls made to different destinations and telephone numbers both in the UK and throughout the world as amended from time to time and made available on request;

**“Referral Partner”** means a business or person who introduces other businesses to us so we can engage directly with them and contract with as a Direct Customer as obligated by the terms in Schedule 1;

**“Relevant Personal Data”** means Personal Data in respect of which we are the Controller. It expressly does not include Personal Data of which we are not the Controller;

**“Renewal Term”** means the period of time that Services are contracted for when the Initial Term has ended. The length of term entered will depend on the size of the business and the length of the Initial Term as detailed in Clause 4.5 of the Business General Terms;

**“Response Target”** means the target time after you receive a Ticket within which you will receive a human response from Xoom calculated in full hours or days;

**“Service”** means a service provided by us to enable the Customer to gain access to the Internet and/or VoIP Services and any other services and facilities provided by us in connection with that service as described on our Website, as specified on the Service Order Acceptance together with all services and/or facilities referred to in any Schedule or Specific Terms and Conditions; all references to "Services" shall be construed accordingly;

**“Service Credits”** means a reduction to the Charges you pay to us for a Connectivity Service affected by a Target Resolution Time Failure;

**“Service Commencement Confirmation”** has the meaning specified in Clause 3.5 of the Business General Terms;

**“Service Commencement Date”** has the meaning specified in Clause 3.5 of the Business General Terms;

**“Service Desk”** has the meaning specified in Clause 17.1 of the Business General Terms;

**“Service Enhancement Request”** means a request from you for a modification to the Service beyond its current specification;

**“Service Installation Report”** means the document or form which details the work to be completed during an Installation Service and used to note if an installation has been completed successfully or requires additional work;

**“Service Levels”** means the service quality levels as specified in Schedule 8;

**“Service Level Agreement”** means the service quality levels offered by a Communications Provider under a contract. In relation to this Agreement the service quality levels for our Services will be detailed in Schedule 8;

**“Service Level Guarantee”** means the compensation payable under a contract if the Communications Provider fails to meet a Service Level Agreement;

**“Service Order Acceptance”** means the response we send to you as detailed in Clause 3.2 of the Business

General Terms;

**“Service Order Form”** means a form that we send you (either electronically or physically) detailing the Services and/or Equipment you have requested to order. This will also detail any Charges including, if relevant, the Fixed Subscription Charge and Initial Term for each Service;

**“Service Period”** means the individual period for each individual Service provided in accordance with this Agreement;

**“Service Provider”** means any person or company providing underlying or network facilities or software services to us in connection with the Services;

**“Service Schedule”** means the schedules of the Agreement regulating the Services we provide to you;

**“Service Sign Off”** means a document that confirms both parties agree on the outcome of an installation. Service Sign Off requires signatures from the relevant individual(s) or stakeholder(s) on site to acknowledge both parties agree on the outcome of the visit. Organisations have Service Sign Off documents as proof that they have fulfilled their obligations or if it is agreed further work or visits are required;

**“Service Specific Information Form”** means a form sent to you for a Service you request which will be used to gather additional detail required to install and/or deliver the Service;

**“SIM”** means Subscriber Identity Module;

**“Small Business Customer”** means, a Customer which is an undertaking for which fewer than eleven (11) individuals work (whether as employees or volunteers or otherwise) and who is not a communications or internet service provider themselves;

**“Software”** has the meaning as described in Clause 9.1 of the Business General Terms;

**“Specific Terms and Conditions”** means any additional Terms and Conditions for a specific Service which is agreed in addition to this Agreement;

**“Subcontractor”** means a subcontractor of Xoomtalk engaged by us to perform all or any part of the Services or any other obligation of ours under this Agreement;

**“Target Resolution Time”** means the time the Service Desk will aim to resolve a fault in the Service once a Ticket Number has been allocated calculated in full hours or days;

**“Technical Support Number”** means +44(0)333 110 3000 or such other number as we display on our Website;

**“Third Party Cross-Connect”** means any type of physical hardwired connection between our fibre termination point and the Customer Equipment, including (but not limited to): (i) internally within a facility, connections between racks within the same facility; or any neutral fibre distribution point (FDP); or the 3rd party optical distribution frame (ODF); and (ii) external to a facility, interconnect chambers situated outside of the facility giving access into the facility and the Customer Equipment;

**“Third Party Networks”** means the networking systems owned and operated by third parties, leased by Xoom, to facilitate the provision of the Services;

**“Ticket”** means an email confirmation with a Ticket Number automatically issued and sent to you by the Service Desk when you report an Incident to the Service Desk;

**“Ticket Number”** means a reference number provided by the Service Desk to you on reporting an Incident to the Service Desk;

**“User”** (also known as End User) means the person or entity receiving the benefit of the service. User and Customer are interchangeable terms when the customer is a Direct Customer;

**“User Name”** means an identifier issued to the Customer for controlling the Customer's access to the Services;

**“VAT”** means Value Added Tax chargeable under English law for the time being;

**“VoIP”** means Voice over Internet Protocol;

**“VoIP Services”** means any VoIP based telecommunication services we agree to provide to you under Schedule 5 (VoIP Services);

**“Wayleave”** means written consent by the occupier, the landlord or a local authority (as applicable) to us or our suppliers, which confers the right for us or our suppliers to install, maintain, adjust, repair, alter, keep and enter to inspect apparatus on, under or over their property for the statutory purpose as defined in the Electronic Communications Code or otherwise;

**“Website”** means [www.xoomtalk.com](http://www.xoomtalk.com);

**“Wholesale Partner”** means a business who sells our services to their own direct customers as obligated by the terms in Schedule 1;

**“Working Day”** means any day other than Saturdays, Sundays, public or bank holidays in England;

**“Working Hours”** means 09:00 to 17:30 GMT or BST Monday to Friday with the exception of Bank Holidays;

**“XML”** means Extensible Markup Language;

**“Xoom”, “we”, “us” or “our”;** means Xoom Ltd as detailed at the beginning of this Agreement;

**“Xoomtalk”** is a trading name owned by Xoom;

**“Xoom Equipment”** means any equipment owned or controlled by Xoom placed on your or your customers premises for the provision of the Service (including but not limited to the equipment related to or used in connection with the metallic path facility or fibre provided by a Service Provider);

**“Xoom Network”** means the system which Xoom owns and operates for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy of (i) speech, music and other sounds, (ii) visual images signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images or (iii) signals serving for the actuation or control of machinery or apparatus;

**“You”** means the person, group of persons or other entity whose name and address is set against the signatory on this Agreement or are set out in the Service Order Acceptance, and references to "your" shall be construed accordingly.

## **Appendix 2 - Removed from Agreement**