



XCOM

Registration number 2016/0168

P.O Box 82000 • Olympia  
Stand 791 Elisenheim • Windhoek • Namibia  
Contact Number: +264 81 442 4870 Johann Potgieter • Email: management@xcom.tech

Application Document Number

XCI

## SIGN-UP AGREEMENT

### CUSTOMER DETAIL

Customer Name: \_\_\_\_\_

ID Number: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Cellphone Number : \_\_\_\_\_

Email Address: \_\_\_\_\_

Business Name : (If Business) \_\_\_\_\_

Business Type: Eg. CC, Pty (Ltd) \_\_\_\_\_

Business Contact Number: \_\_\_\_\_

Business Vat Number : \_\_\_\_\_

### Banking Details

Bank: \_\_\_\_\_

Account Name: \_\_\_\_\_

Account Number: \_\_\_\_\_

Branch Name: \_\_\_\_\_

Branch Code: \_\_\_\_\_

### Payment Detail

Payment Option:  Monthly Debit Order  Annual in Advance (5% Discount)

Debit Date each Month  20th  25th  1st  Other \_\_\_\_\_

### AUTHORISED SIGNATORY

Name: \_\_\_\_\_

Surname: \_\_\_\_\_

Capacity: \_\_\_\_\_

Date: \_\_\_\_\_ YYYY/MM/DD Signature \_\_\_\_\_

Please Debit My/Our Bank Account on the date and duration as selected and shown above for each month.  
In favour of Xcom Namibia (Excellent Communications Pty Ltd) as per this agreement.



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## Package Selection

Home Package Extreme Connect 5  N\$ 599.00

Business Package Extreme Connect 20  N\$ 2659.00

Home Package Extreme Connect 10  N\$ 999.00

Business Package Extreme Connect 50  N\$ 6299.00

Business Package Extreme Connect 5  N\$ 899.00

Business Package Extreme Connect 100  N\$ 11199.00

Business Package Extreme Connect 10  N\$ 1399.00

**All Packages are 24 Months**

**Once Off Town Installation N\$ 1500.00**

**Once Off Farm/Rural Installation N\$ 5000.00**

## Agreement Approval between Customer and XCOM Namibia

For / On behalf of the **CUSTOMER**

This agreement is signed at \_\_\_\_\_ On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Full Name \_\_\_\_\_

Surname \_\_\_\_\_ Signature \_\_\_\_\_

The signatory warrants His/Her authority and fully accepts the terms and conditions of the Agreement attached hereto

**AND**

For / On behalf of **Xcom Namibia (Excellent Communications Pty Ltd)**

This agreement is signed at \_\_\_\_\_ On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Full Name \_\_\_\_\_

Surname \_\_\_\_\_ Signature \_\_\_\_\_

The signatory warrants His/Her authority and fully accepts the terms and conditions of the Agreement attached hereto

## APPROVAL (FOR OFFICE USE ONLY)

Approved By Finance Department

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Approval Ref / Account Number

**XCI**

APPROVED BY OPS MANAGER

Date: \_\_\_\_\_

Signature: \_\_\_\_\_



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# TERMS & CONDITIONS

## 1. DEFINITIONS

- 1.1 "Acceptance Date" means the date on which the customer accepted this agreement.
- 1.2 "Activation Date" means the date on which Xcom will give the customer access to and/or enable the customer to use a product or service;
- 1.3 "Acceptable Use Policy" (AUP) means the policy, which is available on the Website and is incorporated by reference in this Agreement, that regulates the use of the services;
- 1.4 "Agreement" means this agreement entered into between the customer and Xcom;
- 1.5 "Xcom" means Excellent Communications (Pty) Ltd, Registration number 2016/0168;
- 1.6 "Business Day" means Monday to Friday, but excludes Saturdays and a day which is an official public holiday in Namibia;
- 1.7 "Business Hours" means the hours between 08h00 and 17h00 on a Business Day;
- 1.8 "Customer" means a user or host of any Xcom services;
- 1.10 "EC Act" means the Electronic Communications Act 8, 2009;
- 1.11 "ECT Act" means the Electronic Communications Act and Transactions Act 8, 2009;
- 1.12 "Equipment" means any device, equipment or hardware used to access the services or used in conjunction with the services;
- 1.13 "CRAN" means the Communications Regulatory Authority Of Namibia;
- 1.14 "Juristic person" means a company or close corporation and includes a body corporate, partnership, association or trust;
- 1.15 "CAA" means the Credit Agreement Amendment Act 3 of 2016;
- 1.16 "Services" means any Xcom internet access package and any other related internet services;
- 1.18 "VAT" means Value Added Tax as provided for in the Value Added Tax Act 10, 2000;
- 1.19 "Website" means www.xcom.tech

## 2. DURATION, TERMINATION

- 2.1 The agreement will commence on the acceptance date and endure indefinitely until it is cancelled as provided for in this clause 2, or otherwise provided in this agreement. In the event that the services applied for is not activated within 30 (thirty) days of the acceptance date due to an uncontrollable event, the agreement will automatically terminate and no party shall have any liability to the other as a result of such termination.
- 2.2 The customer may terminate this agreement by giving 3 (three) calendar month's written notice to Xcom.
- 2.3 Xcom may cancel this agreement by giving 1 (one) calendar month's written notice to the customer.
- 2.4 Notwithstanding the termination of the agreement, in the event that the customer continues to use the services despite the termination of the agreement, the customer will remain liable for and promptly pay on demand all amounts that would have been due to Xcom as a result of the use of or access to the services and this agreement shall be deemed to continue to apply until such time as all amounts due to Xcom has been paid in full.
- 2.5 If the agreement results from any direct approach to you by Xcom or is an electronic transaction as contemplated in the ECT Act, the customer will be entitled to cancel the agreement on written notice to Xcom without reason or penalty within 5 (five) Business Days of, in the case of services only being provided in terms of the agreement, the acceptance date.

## 3. CAA AND ECT ACT

- 3.1 Although the agreement is not a credit agreement as contemplated in the NCA, the customer's application for a service or equipment may be subject to a credit referencing or risk assessment process. This means that Xcom may utilise the information provided by the customer and the credit record from a registered credit bureau in order to determine whether the customer will be in a position to meet the obligations under the intended Agreement. Xcom will be entitled to decline to activate services that the customer applies for if Xcom reasonably determined that the customer may not be able to meet its commitments under the agreement.
- 3.2 Xcom will be entitled to perform these assessments each time the customer applies for services or equipment.

## 4. SERVICE DELIVERY, SERVICE AVAILABILITY

- 4.1 Xcom will use reasonable endeavours to make its services available to the customer, and to maintain the availability for use by customers. However, Xcom will provide the services "as is" and "as available" and do not warrant or guarantee that the services will at all times be free of errors or interruptions, be always available, fit for any purpose, not infringe any third party rights, be secure and reliable, or will conform to the customer's delivery timeline requirements and subject to any Service Level Agreement, where applicable.
- 4.2 Xcom will use its best endeavours to notify the customer in advance of any maintenance and repairs which may result in the unavailability of a service, but cannot always guarantee this.

## 5. PAYMENT

- 5.1 The customer agrees to pay all amounts due under this agreement.
- 5.2 The customer agrees that:
  - 5.2.1 Xcom will be entitled and authorised to draw all amounts payable in terms of the agreement from the account specified;
  - 5.2.2 the debit order will commence on the activation date and will continue and not be revoked until termination of this agreement or until all amounts due and owing to Xcom have been fully and finally discharged;
  - 5.2.3 the customer will sign all such forms and do all such things as may be necessary to give effect to the debit order as contemplated in this clause 5.2;
  - 5.2.4 the customer's first bill may be for part of a month and the customer will be charged for the number of days less in the month in which the customer signed up or switched over, plus the subscription for the next month.
- 5.3 Should the customer fail to pay any amount on the due date for payment then Xcom may, without prejudice to any of its other rights and remedies:
  - 5.3.1 take all such further steps as may be necessary to recover the outstanding amount from the customer, including without limitation the use of debt collection mechanisms;
  - 5.3.2 suspend the customer's access to the service or the use of any product with notice to the customer until such time as the outstanding amount has been paid in full; or
  - 5.3.3 terminate this agreement with immediate effect.
- 5.4 To the fullest extent permitted by law, all amounts due and payable in terms hereof shall be paid free of exchange and without deduction or set-off, by way of a direct debit order in favour of Xcom (drawn against a current banking account nominated by the customer), or in such other manner as Xcom may from time to time determine. It is recorded and the customer acknowledges that several Xcom products (like Internet and VoIP line rental) are payable monthly in advance.
- 5.5 Should the customer's debit order not be honoured for whatever reason, Xcom will be entitled to charge the customer a reasonable administrative fee.
- 5.6 If any changes are proposed to any terms of an agreement between Xcom and any Third Party supplier impacts on the provision of any services or products in terms of this Agreement, Xcom shall be entitled to amend the terms, fees or charges for its services or products at any time on 30 (thirty) days' notice to the customer. The amendment will take effect on the date indicated in the notice.
- 5.7 Xcom will use reasonable endeavours to inform the customer well in advance, and in any event prior to disconnection, about the possibility of disconnection in the case of non-payment.
- 5.8 To the extent that Xcom incurs any additional expenditure relating to the tracing and/or collection of unpaid amounts, those costs shall be for account of the customer to the extent permitted by law, including attorney and own client costs.

## 6. EQUIPMENT

- 6.1 Except for Equipment that the customer had fully paid for, all Equipment installed or provided by Xcom remains the property of Xcom and the customer agrees that:
  - 6.1.1 the customer will take reasonable care of such equipment;
  - 6.1.2 the customer may not sell, lease, mortgage, transfer, assign or encumber such equipment;
  - 6.1.3 the customer may not re-locate such Equipment without Xcom's knowledge and permission;
  - 6.1.4 the customer will inform any landlord that such Equipment is owned by Xcom and therefore not subject to any landlord's hypothec; and
  - 6.1.5 the customer will return such equipment to Xcom, at the customer's expense, upon termination of the services to which the Equipment is related.

## 7. BREACH

- 7.1 Subject to any other provisions set out in this terms and conditions, should the customer be in breach of any provision of this Agreement, then Xcom shall be entitled, without prejudice to any other rights that it may have and to the extent, required or permitted, as the case may be, by law, to forthwith:
  - 7.1.1 afford the customer a reasonable opportunity to remedy the breach taking into account the nature of the breach in question; or
  - 7.1.2 suspend the customer's access to services;
  - 7.1.3 cancel all agreements concluded between Xcom and the customer; or
  - 7.1.4 claim immediate performance and/or payment of all obligations in terms hereof.
- 7.2 Should Xcom suspend, disconnect or terminate the customer's services, Xcom will be entitled to, charge the customer a reasonable fee for reconnecting the customer's services.

## 8. INDEMNITY

- 8.1 The customer hereby unconditionally and irrevocably indemnify Xcom and agree to indemnify and hold Xcom harmless against all loss, damages, claims, liability and/or costs, of whatsoever nature, howsoever and whensoever arising, suffered or incurred by Xcom as a result of any claim instituted against Xcom by a third party (other than the customer) as a result of (without limitation):
  - 8.1.1 the use of Xcom services or products other than as allowed or prescribed in the Agreement;
  - 8.1.2 any other cause whatsoever relating to the Agreement or the provision of services or products to the customer where the customer has acted wrongfully or failed to act when the customer had a duty to so act.
- 8.2 To the fullest extent possible, the customer disclaims all responsibility or liability for any damages or loss howsoever arising, including but not limited to direct, economic, consequential loss or loss of profits, resulting from the use of or inability to use the services in any manner or from any reliance on the services in any way.
- 8.3 The customer agrees to indemnify and hold harmless Xcom, its members, employees, servants, subcontractors and partners from any demand, action or application or other proceedings, including for attorney's fees and other related costs made by any Third Party and arising out of or in connection with this Agreement and or the inability of any User to use the services.
- 8.4 The customer acknowledges its responsibility for its own internet security and privacy. Customers are strongly advised to install firewalls and anti-virus software for their own protection. consideration for services or a product during the immediately preceding 12 (twelve) month period in respect of the services or product which gave rise to the liability in question.

## 9. LIMITATION OF LIABILITY

- 9.1 Save to the extent otherwise provided for in this Agreement or where the customer is entitled to rely on or receive, by operation of law, any representations, warranties or guarantees, Xcom do not make or provide any express or implied representations, warranties or guarantees regarding the availability, accuracy, reliability, timeliness, quality, security of any product or services.
- 9.2 Without limiting the generality of the provisions of clause 9.3, Xcom shall not be liable for and the customer will have no claim of whatsoever nature against Xcom as a result of -
  - 9.2.1 any unavailability of, or interruption in the services due to an uncontrolled event;
  - 9.2.2 any damage, loss, cost or claim which the customer may suffer or incur from any suspension or termination of the service/s for any reason contemplated in the Agreement.
- 9.3 In addition to and without prejudice to any other limitations of liability provided for in the Agreement and to the fullest extent permitted by applicable law, Xcom shall not be liable to the customer for any direct damages howsoever arising and neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Agreement, whether resulting from negligence, breach or any other cause. To the extent that a competent court or tribunal or other competent dispute resolution body or authority finally determines, notwithstanding the exclusion contained in this clause, that Xcom is liable to the customer for any damages, Xcom's liability to the customer for any damages howsoever arising shall be limited to the amounts paid by the customer under this Agreement in.

## 10. CESSION AND DELEGATION

- 10.1 The customer may not sell, cede, assign, delegate or in any other way alienate or dispose of any or all of its rights and obligations under and in terms of this Agreement without the prior written approval of Xcom. Xcom shall be entitled to sell, cede, assign, delegate, alienate, dispose or transfer any or all of its rights and obligations under and in terms of this Agreement to any of its affiliates or to any third party without the customer's consent and without notice to the customer.

## 11. JURISDICTION

- 11.1 Notwithstanding any other terms of this Agreement, the customer hereby consents to the jurisdiction of the Magistrate's Court of Namibia in respect of any proceedings that may be initiated by Xcom arising out of this Agreement, provided that Xcom shall be entitled, in its reasonable discretion, to institute such proceedings in the High Court of Namibia and, in such event, the customer consents to the jurisdiction of such court.

## 12. GENERAL

- 12.1 The parties acknowledge and agree that this Agreement constitutes the whole of the agreement between them and that no other agreements, guarantees, undertakings or representations, either verbal or in writing, relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on the parties. No changes or cancellation of this Agreement by the customer will be binding on any of the parties unless recorded in writing and signed by both parties, notwithstanding activation of the service.
- 12.2 The customer agrees that any invoices or notices sent by Xcom to the customer in terms of any agreement concluded between the parties may be sent via e-mail unless otherwise prescribed by law.
- 12.3 The customer acknowledges that it has read and understood the Xcom Acceptable Use Policy (AUP) (which is available here) and that a failure to observe the provisions of the AUP may lead to the suspension of the services and or cancellation of this Agreement.
- 12.4 No indulgence, leniency or extension of time which Xcom may grant or show to the customer shall in any way prejudice Xcom or preclude Xcom from exercising any of its rights in the future.
- 12.5 The physical address where Xcom will receive legal service of documents is the following:  
Stand 791 Eisenheim, Windhoek, Namibia



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