

## XLN Terms & Conditions

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

- This Agreement covers the provision of phone, broadband and mobile Services by XLN to you (and any other services we agree to provide to you under this Agreement). **“XLN”, “we”, “us”, or “our”** means XLN Telecom Limited, a limited company incorporated in England and Wales registered under Number 3902543 whose registered office is at First Floor Millbank Tower, 21-24 Millbank, London SW19 4QP;
- **Contract length** - The Minimum Term for each Service you order is specified in the Confirmation Letter that we send you by post (or email). You can terminate the Agreement (or any of our Services) after the end of the relevant Minimum Term (or Renewal Term agreed with you) by giving us 30 days 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 Minimum Term or Renewal Term (or if we terminate it due to your breach of the Agreement). Other Charges may apply.
- **Payment** - You shall pay our invoices by direct debit. You may be charged an administration fee for any monthly payments tendered by other means. If you do not pay any of our invoices you may incur an administration fee that will be included on your next monthly bill. Other Charges may apply

### TERMS FOR SERVICES

#### DEFINITIONS

**“Acceptable Use Policy”** means our internet related services and broadband acceptable use policy available on our [Website](#);

**“Agreement”** means these General Terms and Conditions, any Service Schedule, our Confirmation letter(s) and the Price and Tariff Guide applicable to the Services provided to you (and any Specific Offers we agree to apply to you);

**“Broadband Services”** has the meaning specified in Clause 1.9;

**“Business Assurance”** means a service offered by us that covers fault repairs in fixed line(s) located inside your Premises and connected to the Phone Services, in exchange for a monthly fee.

**“Cancellation Fee”** means the fees specified on our [Website](#);

**“Care Level”** means our fault repair response times for Phone and Broadband Services specified in Clause 17.3(e). Care Levels do not apply to mobile Services;

**“Charges” or “Fees”** means our rates for providing you with the Services under this Agreement as specified in the Price and Tariff Guide or as notified or made available to you by any other means;

**“Confirmation Letter”** means our letter confirming your Order, which will be normally posted or emailed to you within 3 days of your agreeing to receive the relevant Services;

**“Content”** shall have the meaning specified in Clause 7.2;

**“Customer Equipment”** means any equipment, including any software, for use with the Services that is not Equipment provided by us and which is owned or controlled by you;

**“Effective Date”** means the date specified in the first Confirmation Letter we send to you;

**“Equipment”** means any equipment we provide to you in connection with the Services;

**“General Terms and Conditions”** means these terms and conditions;

**“Minimum Term”** means the minimum term during which we will provide you the Services as agreed with you (usually confirmed to you in our Confirmation Letter);

**“Order”** means your order for our Services, normally via our telephone application process (or via any other means we make available to you as applicable);

**“Party”** or **“Parties”** means XLN and you, our customer;

**“Phone Services”** has the meaning specified in Clause 1.8;

**“Premises”** means your premises in which we provide the Services to you;

**“Price and Tariff Guide”** means our schedule of rates available on our [Website](#) (or as made available or notified to you by any other means);

**“Renewal Term”** means a further commitment term that you agree to enter into regarding one or more of the Services;

**“Services”** means fixed line, broadband and mobile services or any other services specified in a Service Schedule;

**“Service Start Date”** means: (i) for Phone Services the date you are able to start making and receiving calls using our Phone Services; (ii) for Broadband Services the date you are able to start using your internet connection; and (iii) for any other Service(s) the date specified in the relevant services schedule(s).

**“Software”** has the meaning specified in Clause 9;

**“Specific Offers”** means any tariffs, bundles or promotional offers for the Services, that we make available to you;

**“Term”** means the term during which we will provide you the Services, including the Minimum Term and any Renewal Term agreed with you;

**“Website”** means [www.xln.co.uk](http://www.xln.co.uk) or any other website we notify to you; and

**“you”** and **“your”** or **“customer”** means you, our customer.

The documents comprising this Agreement will have the following order of precedence: (i) the Confirmation Letter; (ii) the Service Schedule(s); (iii) any Specific Offers, (iv) our Price and Tariff Guide; (v) our Acceptable Use Policy and (vi) these General Terms and Conditions.

## **1 Our Services**

- 1.1 We will provide you the Services you Order and that we agree to provide to you.
- 1.2 Unless we state otherwise in writing to you, we will only provide the Mobile Services to you if we are also providing Phone Services to you.
- 1.3 The Services under this Agreement are designed for business customers only. You have confirmed to us that you are a trading business. The Consumer Protection (Distance Selling) Regulations 2000 as amended by the Consumer Protection (Distance Selling) (Amendment) Regulations 2005 do not apply to this Agreement.
- 1.4 We may take instructions from a person if we have a good reason to think that he or she is acting with your permission.
- 1.5 We will provide you with the Services and, where applicable, with the Equipment subject to you complying with the terms of this Agreement.
- 1.6 The provision of each of the Services may be subject to a fair use policy and/or an Acceptable Use Policy as applicable;

- 1.7 We may, from time to time, and at our sole discretion, make Specific Offers available to you. In the event that any Specific Offer applies to you, its terms will be part of the Agreement.
- 1.8 The Phone Services comprise:
- (a) the installation or takeover and rental of one or more fixed telephone lines;
  - (b) the facility to make or receive phone calls;
  - (c) any one of a range of call price plans that enable you to make discounted telephone calls;
  - (d) any other facilities such as caller display that we agree to give you;
  - (e) one phone number for each fixed telephone line that you rent from us, which will be published (with your business details) in BT™ directories free of charge and will be available on directory enquiries services, unless you tell us not to;
  - (f) access to the emergency services and provision of caller location information from your telephone line; and
  - (g) any other fixed line phone related services that we agree to provide to you under this Agreement.
- 1.9 The Broadband Service consists of the provision of fixed line high speed access to the internet in the United Kingdom together with a range of other internet services such as computer security or backup services and email as described in our Confirmation Letter (the “**Broadband Services**”).
- 1.10 The Mobile Services are specified in the [Mobile Services Schedule](#).
- 1.11 The Cloud Voice hosted voice services are specified in the [Cloud Voice Service Schedule](#).
- 1.12 The Wifi Services are specified in the [Wifi Service Schedule](#).

## 2 Term and Commencement

- 2.1 This Agreement commences on the Effective Date and will continue in force until you or us terminate it in accordance with Clause 24 (termination).
- 2.2 You may cancel a Service at any time up to:
- (a) the Service Start Date in the case of a Phone Service and/or a Broadband Service; or
  - (b) one working day prior to the Service Start Date in the case of any other Service.

However, if you cancel a Broadband Service on less than 48 hours’ notice before the Service Start Date you will be liable for a late cancellation Charge. Our Charges are available on our [Website](#).

- 2.3 Each Service will have the Minimum Term agreed with you, and specified in your Confirmation Letter (usually 12 or 24 months). If you terminate a Service before the end of the Minimum Term or a Renewal Term (or we terminate it due to your breach of the Agreement) we will Charge you a Cancellation Fee. Our current Cancellation Fees are available on our [Website](#).

## 3 When we start providing the Services

- 3.1 The provision of each Service commences on the relevant Service Start Date. The Service Start Date and any other dates agreed with you 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 a Service Start Date or any other date. Time is not of the essence.

- 3.2 We will agree a date with you for installation of new lines. If you cancel any appointment for the installation of any Service with less than 48 hours' notice, you will be liable to pay a missed appointment charge as part of our Charges which are available on our [Website](#).
- 3.3 For fixed line transfers, we will normally transfer the line from your current provider within ten (10) working days. The time taken to port numbers from other networks varies and sometimes portability may not be possible or reasonably practicable. If this happens we will provide you with a new number(s).
- 3.4 You acknowledge that in order to avoid delays occurring in the ordering process, we will need to be notified by BT™ of any products or services presently in use on your line that are incompatible with the WLR or NGN service. BT™ or other 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 BT™ or other network providers to disclose such information to us. You also give us authority to act as your agent to arrange connection onto our Services.

#### **4 Proper use of the Services**

- 4.1 Your breach of your obligations under this Clause 4 may result in the suspension or termination of the affected Services or in the termination of the Agreement.
- 4.2 You are responsible for terminating, at your own expense, any contracts you may have with your previous suppliers for services similar to our Services or which are not compatible with our Services. You are solely responsible for any liabilities you may incur when you terminate your agreements with them.
- 4.3 To be able to receive our Phone or our Broadband Services you will need to at least have a suitable phone line in your Premises (i.e. BT™ provided analogue direct exchange line which terminates on a BT™ public switched telephone network master socket forming part of a BT™ network), unless we tell you otherwise in writing.
- 4.4 You agree:
- (a) to 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 licenses which apply to the use of the Services by you;
  - (b) not to allow an alternative supplier (or any third party) to override or bypass our Services either through the installation of equipment or through the BT™ local exchange during the Term of the Agreement;
  - (c) not to use the Services in any way we consider is, or is likely to be detrimental, to the provision of the Services to you or to services we provide to any other XLN customers; and
  - (d) to be responsible for any engineering reprogramming costs or equipment removal costs that may be required to terminate the Service of your previous supplier(s).
- 4.5 If you request and we agree to a change of all part of the Services, or a change of the Premises where we provide the Services to you, you must complete such formalities as we shall 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 prior to effecting such changes.
- 4.6 You do not own any number or have any right to sell the number(s) related to the service.
- 4.7 You warrant that you will comply with all consumer and other applicable legislation, regulations, instructions or guidelines issued by regulatory authorities and relevant licences which relate to the provision of the information on your website including those notified by us to you.

- 4.8 You must not use the Services, including but not limited to internet related Services, associated computer security or backup Services and software:
- (a) in a way that breaches any legislation or any licence applicable to you or that is in any way unlawful or fraudulent;
  - (b) to make nuisance calls;
  - (c) to distribute, deliver, transmit, knowingly receive, upload, download, use or re-use any information or material which is offensive, abusive, defamatory, indecent, obscene, immoral, unlawful (including but not limited to child pornography) or menacing, or in breach of any intellectual property, privacy or any other rights of third parties or which might cause annoyance, inconvenience or needless anxiety to anyone, or to commit a fraud or other criminal offence;
  - (d) for purposes other than the genuine use of our Services including, without limitation, conveyance of calls for the proper benefit of members of the public using a telecommunications service; or
  - (e) to send or procure the sending of any chain letters or unsolicited advertising or promotional material (“spamming”);
  - (f) to propagate computer worms or viruses;
  - (g) to attempt to gain unauthorised entry to any site or network; or
  - (h) contrary to any reasonable instructions we give you to protect the integrity and quality of our Services or otherwise.
- 4.9 The Services are provided solely for your use and you must not resell or attempt to resell the Services (or any part of it) to any third party.
- 4.10 You will fully indemnify and hold us harmless against all losses, damages, amounts paid by way of settlement, costs and expenses (including legal fees) of whatsoever nature suffered or incurred by us arising out of or in connection with any actual or potential claims or legal proceedings against us by a third party because of your use of Services in breach of your obligations under this Clause 4. We shall notify you of any such claims or proceedings and inform you regularly as to the progress of such claims or proceedings.
- 4.11 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.
- 4.12 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 or by someone you have knowingly allowed to use the Services we provide to you.

## **5 Your use of the Broadband Services**

- 5.1 This Clause 5 will apply in the event that we provide Broadband Services to you.
- 5.2 We can only provide the Broadband Services in areas of the United Kingdom in which we or our suppliers are technically able to offer Broadband services from time to time.
- 5.3 In order to use the Broadband Services, you need an existing analogue telephone line on the BT Openreach™ network, unless we tell you otherwise in writing. You must also ensure that compatible cables and extension leads are used to and from your telephone socket, router or modem, and PC in order to use the Broadband Service. You acknowledge that we are dependent upon certain third parties to install and provide the Broadband Services to you. You also acknowledge and affirm that there may be technical limits that prevent us from delivering an operational service to you. We will endeavour to provide the Broadband Services to you at the access rate you choose but, due to: (i) congestion within the network; (ii) the ability of your BT™ line to carry data services; or (iii) the distance from the exchange, the speed of service may be reduced at times.

- 5.4 If you have purchased a computer security service from us, you must uninstall any other computer security services from your computer.
- 5.5 Routers purchased directly from XLN will receive technical support within their warranty period. Technical support for modems or routers acquired from any other source is therefore the responsibility of the manufacturer.
- 5.6 If we offer you limited Broadband plan, it may include a monthly data transfer allowance. This allowance expires at the end of each calendar month and any unused allowance cannot be transferred to a subsequent month. XLN will usually notify you once you have reached 80% and 100% of your monthly allowance, but you are solely responsible for tracking your data usage. If you subsequently exceed this allowance we reserve the right to charge you for this extra usage at our then current rates.
- 5.7 You acknowledge that Services are provided to other users and 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.
- 5.8 In using our Broadband Service you agree to comply with our Acceptable Use Policy.

## **6 Your use of the other Services**

- 6.1 The mobile service schedule will also apply to you if we provide mobile services to you. The mobile services will automatically cease if we stop providing you with Phone Services, unless we agree otherwise.
- 6.2 The Cloud Voice service schedule will also apply to you if we provide Cloud Voice services to you. The Cloud Voice services will automatically cease if we stop providing you with Phone Services, unless we agree otherwise.

## **7 Your Use of Content**

- 7.1 Where the Service allows access to the internet you understand and affirm that the use of the internet is at your own risk.
- 7.2 We do not warrant or guarantee the accuracy or completeness of any of the information, sound, images, software and any other materials (in whatever form) and services contained on or available through the Services or any further information or results which may be derived from it (the "**Content**"). You acknowledge that you will not rely on any Content in making any business or other decision and that your use of the Content is at your sole risk.
- 7.3 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.
- 7.4 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.

## **8 User Names and Passwords**

- 8.1 You must ensure that user names 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 user names and passwords and inform us immediately if you know or suspect that a user name or password has been disclosed to an unauthorised user or is being used in an unauthorised way. You must not change or attempt to change a user name without our written consent.

- 8.2 We reserve the right (at our sole discretion):
- (a) to suspend user names 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; and
  - (b) to ask you to change any or all of the usernames and passwords you use in connection with the Services.
- 8.3 You must inform us immediately of any subsequent changes to the information you supply to us when you register for the Services.
- 8.4 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.
- 8.5 You shall be liable for any unauthorised use of user names and passwords by third parties if this use is due to you failing in keeping them confidential or in implementing safety measures to prevent and detect any unauthorised use of user names and passwords.

## 9 Software

- 9.1 Where we provide software to you to enable you to use the Services, including backup and computer security services ("**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 the Software in accordance with its applicable end user license agreement, which you will be required to accept in order to install the Software.
- 9.2 Any Software provided to you as part of the Services is provided for your use only. You must not re-sell, rent, transfer, assign or sub-license the Software to anyone else. You may make one copy of the Software for back up purposes, but are not otherwise allowed to copy, decompile or modify the Software (in whole or in part) for any purpose unless specifically permitted by law. You may not adapt, transmit, distribute externally, play or show in public, 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 Equipment

- 10.1 We may sell or provide subsidised Equipment to you. The Equipment is designed for use with the relevant Services in accordance with the Agreement and usually includes 12 months manufacturer warranty (or as otherwise specified in the manufacturer's warranty).
- 10.2 We shall bear the risk of loss or damage to the Equipment and to SIM cards until the point of delivery to you and you shall bear the risk of loss or damage to the Equipment and SIM cards from the time of delivery to you.

## 11 Customer Equipment

- 11.1 Any Customer Equipment you use in connection with the Services must be:
- (a) technically compatible with the Services and must not harm our (or our suppliers) network or other user's equipment (or our supplier's equipment);
  - (b) connected using the applicable network termination point (in accordance with standard industry practice and with our instructions); and
  - (c) adequately protected by you against viruses and other breaches of security.

## 12 Charges

12.1 This Clause 12 applies to all the Services. We charge you for using the Services. You will be charged at the rates specified in our Price and Tariff Guide (or as otherwise notified or made available to you). You acknowledge and agree that:

- (a) save for manifest error, Charges are calculated from data recorded by us and our suppliers and not from your own records;
- (b) your monthly invoice will normally include:
  - (i) in advance, your line rental (where applicable), your fixed monthly Charges (including inclusive call price plans, calls and Broadband bundles or Broadband packages), other recurring Charges which are billed one month in advance or other Charges which we request you to pay in advance; and
  - (ii) in arrears, any monthly 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) which you incurred in the last period (normally the last month);
- (c) we may also send you a separate invoice for any other Charges not included in your monthly invoices and request you to pay any of these Charges in advance;
- (d) all our Charges are subject to VAT at the prevailing rate;
- (e) we will send you our invoices by post unless you opt-in to e-billing. If you do not opt-in to e-billing we reserve the right to apply a reasonable administration Charge for sending you our invoices by post;
- (f) we may charge you an administration Charge for payments tendered by means other than direct debit;
- (g) 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;
- (h) we will charge you a reasonable Charge for restricting outgoing calls;
- (i) if you breach the Agreement (including any of your payment obligations under Clause 15), and as a result we suspend all or part of the Services or terminate the Agreement or any Service, we shall charge you a reasonable Charge:
  - (i) per fixed or mobile line we cease, should we terminate the Agreement (or any specific Service);
  - (ii) to reinstate Services suspended; or
  - (iii) to reinstate lines that have been ceased.
- (j) save where the fault is with your Phone Services and you have taken our Business Assurance service, 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;
- (k) we will charge you our then current Charges if you purchase any Equipment;
- (l) we may charge you a monthly maintenance Charge depending on the Care Level we agree with you or if you are covered by the Business Assurance service;
- (m) if you change address, where technically feasible and commercially practicable, you may transfer the Phone Services and/or Broadband Services to your new address on payment of the moving Charge; and
- (n) you will continue to pay the Charges during any period of suspension, unless we say otherwise in writing.



12.2 In the event that we have agreed to provide you with a bundle for all or part of the Services (e.g. Phone, Broadband and mobile 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.

12.3 Our current Charges are listed on our [Website](#).

### **13 Specific Charges for your use of the Phone Services**

13.1 If we provide Phone Services to you, this Clause 13 will apply to you (in addition to Clause 12). You agree to pay and are responsible for paying the Charges for the Phone Services or for any Equipment you purchase.

13.2 Charges for the Phone Services will be incorporated into your monthly XLN Telecom invoice.

13.3 Unlimited local & national inclusive call price plans are available to businesses only and not to residential customers.

13.4 The inclusive minute allowances specified in your call price plans will be deducted in one minute increments (with any part minutes rounded up to the nearest minute).

13.5 Call Charges for calls outside of your inclusive minute allowances (both UK and international) will then be rounded up to the nearest whole penny and will be charged to you at our then current rates specified in our Price and Tariff Guide. In addition, a per call connection Charge will apply.

13.6 Our unlimited call plans connected to our Phone Services are not available to businesses operating call centres. If we believe you are operating a call centre we reserve the right to switch you to a more appropriate tariff or call price plan at any time, to suspend the Phone Services or to terminate this Agreement with immediate effect.

13.7 Local & national calls are numbers beginning 01 and 02 and 03 only and do not include non-geographic numbers (0845, 0870 etc) premium rate numbers (09xx) and Internet access numbers.

13.8 Mobile call rates refer to calls from your landline to Vodafone, O2, EE (T-Mobile and Orange), Three and Virgin only. It does not include calls Lyca or Lebara mobiles or any mobile virtual network operator not based on the UK GSM cellular networks. If your tariff includes minutes to UK mobiles the same applies.

13.9 Connection Charges will apply to all calls except to calls which are part of an inclusive call price plan or calls to free-phone numbers as specified in our Price and Tariff Guide.

13.10 Unused minutes or texts on tariffs with an inclusive minute allowance do not roll-over to the next month.

13.11 If a call price plan has a minimum monthly spend, the minimum monthly spend will be charged in the event that usage charges are below the minimum monthly spend. The minimum monthly spend will also be considered a recurring charge (line rental) for the purposes of calculating Cancellation Fees.

### **14 Specific Charges for your use of the Broadband Services**

14.1 If we provide Broadband Services to you, this Clause 14 will apply to you (in addition to Clause 12).

14.2 The Charges applicable to the Broadband Services will normally be included in the Charges you pay for our bundled Services or will otherwise be specified to you separately in your monthly XLN Telecom invoice.

14.3 We will apply a monthly Charge if your telephone line is incompatible with our Next Generation Network or if the telephone exchange that serves your telephone line has not been upgraded to support our Next Generation Network. Our current Charge is listed on our [Website](#).

## 15 Payment Terms

- 15.1 You are responsible for and must pay the Charges for the Services whether the Services are used by you or by someone else.
- 15.2 You shall pay your invoices by monthly variable direct debit. We reserve the right to refuse any new customer not wishing to pay by direct debit. You are responsible for notifying us as soon as possible of any changes to you bank details that may affect your payment of the Charges.
- 15.3 Arrears and/or unwillingness to maintain payment by direct debit may result in one or more of your Services being restricted and in the termination of your Agreement.
- 15.4 Cancellation of your direct debit does not constitute notice of termination of the Agreement by you, but we reserve the right to terminate the Agreement immediately if you cancel your direct debit for the payment of the Services and/or you chose another payment method.
- 15.5 You are protected at all times by the direct debit guarantee as detailed in Clause 33 below.
- 15.6 If you fail to pay any sum due, within 14 days from the date of the invoice, we shall be entitled to charge interest on the amount due at the rate of four percent (4%) above the Barclays Bank Plc base rate ruling from time to time calculated from the due date until we receive your payment.
- 15.7 We reserve the right to perform a credit check on you with no prior notice given and to pass your credit history with us on to other credit agencies and/or County Court.
- 15.8 We reserve the right to request a deposit, paid in advance, from you should:
- (a) periodical credit checks reveal insufficient credit scoring or County Court Judgments against you for debts or non-payments or if unusual usage and call Charges are incurred by you. In the event that you don't comply with our request within 14 days of notification by us, we reserve the right to terminate the Agreement and to demand full and final outstanding balance settlement with immediate effect; or
  - (b) we agree to provide you with a free line installation, in connection with Phone and/or Broadband Services, in return for you committing to an Initial Term or Renewal Term as applicable. We reserve the right to request a deposit from you. Such deposit will be released against your full payment of our first six months' invoices, or as otherwise specified by us in writing.
- No interest is payable on any deposit held by us under the Agreement.
- 15.9 We may, at our sole discretion and at any time, impose a credit limit on your account or amend it. 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 the Service. We will endeavour to notify you as soon as possible if any of these situations arise. You will still be responsible for all Charges incurred including those exceeding the credit limit.
- 15.10 You agree to pay us all Charges without set-off, deduction, withholding, restriction or condition whatsoever.
- 15.11 If you wish to dispute an invoice, you must contact our customer services within 30 days from the date of the invoice. After such period, any undisputed invoice will be deemed correct. You must pay the full amount of any disputed invoice, if the amount disputed is less than 5% of the total the invoice. You must pay the amount not in dispute in a disputed invoice if the disputed amount is more than 5% of the total invoice.
- 15.12 If you do not pay an invoice before the due date, we may instruct a debt collection agency to collect payment for 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.
- 15.13 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.

- 15.14 You are solely responsible for paying any amounts due to us under the Agreement. We reserve the right to reject payment of any of the amounts you owe under the Agreement from any third parties (including without limitation the payment of any relevant Cancellation Fees from third parties).

## 16 Intellectual Property Rights

- 16.1 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 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.

## 17 Repairs to the Services and Equipment

- 17.1 We will use reasonable endeavours to provide an uninterrupted service, but you acknowledge and agree that from time to time faults may occur, including faults (such as intermittent faults) which may recur and have no identifiable cause.
- 17.2 If you report a fault in a Service, we (or our subcontractors) will repair the fault in accordance with the relevant Care Levels (where the fault is connected to Phone and Broadband Services) or as we notify you in writing.
- 17.3 Repairs to our Phone and/or Broadband Services:
- (a) BT Openreach™ will continue to have responsibility for maintaining your landline and fix any faults that may occur. We will use reasonable endeavours to correct any defect or fault in our Phone and Broadband Services or to report the defect or fault to BT Openreach™ (or to the relevant suppliers responsible for fixing such defects or faults). Customer Service & Fault Notification: 0844 880 7777. Our faults line is available 24/7.
- (b) If you have broadband on the landline and we are not providing this service to you, your broadband provider is responsible for repairing broadband faults. You are responsible for notifying the fault to your broadband provider (although, we may, at our sole discretion, report the fault to the party responsible for the service).
- (c) We will not be responsible for any faults arising from Customer Equipment. We may charge you a call out Charge at our then current rates which can be found on our [Website](#), if we send an engineer to your Premises and it transpires that the fault or failure is on your Customer Equipment and not in our Services, or is caused by accidental damage (or where an engineer attends and finds no fault).
- (d) Additional time related Charges and replacement equipment costs may also be added.
- (e) The speed with which faults are repaired on your line depends on the Care Level applicable to you. As our Phone and/or Broadband customer you receive Care Level 1 as standard but you can pay more to receive an improved Care Level. Care Level repair speeds are set by BT Openreach™ and may vary. The current repair times and prices of the different Care Levels available can be found on our Website

## 18 Repairs to the Equipment

- 18.1 In the event that your Equipment becomes faulty within its warranty period:
- (a) you shall notify us that the Equipment is faulty and follow our instructions (e.g. we may request you to return the Equipment to us by post).
- (b) we will either repair the faulty Equipment or provide you with a replacement Equipment (and, at your sole discretion, we may also send you a temporary replacement Equipment for specific Services).

(c) we (or our subcontractors) will inspect the Equipment and if we reasonably conclude that the Equipment is not faulty, then we may return the Equipment to you and you will be responsible, at our reasonable discretion, for: (i) the costs of inspecting the equipment; (ii) any postal charges we incur; and (iii) the cost of providing you with a temporary replacement and refurbishing it after your use;

- 18.2 If we send an engineer to your Premises to check any faulty Equipment you will be responsible for the engineer call out charge whether the Equipment is within its warranty period or not.
- 18.3 In the event that your Equipment becomes faulty outside its warranty period you will be responsible for any fees connected to the repair of the Equipment or to replacing it.
- 18.4 Neither we nor the manufacturer accepts liability for any damages to the Equipment caused by you or by third parties even within the applicable warranty period.

## **19 Allocation and Number Portability**

- 19.1 We will use reasonable endeavours to provide number portability to you, as soon as reasonably practicable and on reasonable terms, when you request so and provided that:
- (a) there are no technical or physical reasons preventing the portability of the number(s) requested by you; and
- (b) you undertake to pay our Charges for such number portability if applicable.
- 19.2 If you sign up to the Phone Services and you request to transfer your number from another telephone provider, we will use reasonable endeavours to do this if reasonably practicable and provided that your existing telephone provider agrees to release the number. If it is not reasonably practicable, we will provide you with a new number(s).
- 19.3 Any telephone numbers allocated to you by us (if any) do not belong to you. You accept that you do not acquire any rights whatsoever in such telephone numbers and you must make no attempt to apply for registration of the same as a trademark, service mark, or domain name whether on its own or in conjunction with some other words or trading style. You are not entitled to sell or agree to transfer to a third party any telephone number allocated to you by us.

## **20 Access to your Premises**

- 20.1 To enable us to carry out our obligations under the Agreement, you must provide to our representatives and to any of our suppliers, agents or subcontractors access to your Premises at all reasonable times, including without limitation access for the purposes of installation, inspection, maintenance, replacement, upgrade or removal of a phone line, an internet access connection or any equipment associated with it (including but not limited to the Equipment).
- 20.2 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.
- 20.3 You shall provide 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 applicable on the Premises.

## **21 Moving Address**

- 21.1 We will provide the Phone line and the Broadband Services at the Premises you specify when you Order these Services.
- 21.2 If you move to another address within our service area, you may ask us to provide the Services to your new address (and you must give us 30 days prior notice before the move). We cannot guarantee that we will be able to provide you with the Services at your new address until we have carried out a line check for your new address.

- 21.3 If you move to another address before the end of any applicable Minimum Term (or Renewal Term), Cancellation Charges will apply to you, unless you agree to keep receiving our Services at your new address and we agree, and are able, to provide these Services at your new address.
- 21.4 If we agree to provide the Services to your new address, you may have to pay a service transfer Charge as specified in our Price and Tariff Guide.
- 21.5 Where required, we will send you a new contract for the Services that we will provide to you at your new address and your Charges will be adjusted accordingly.
- 21.6 You may not be able to keep your phone number if you move to a new address.

## **22 Email Services**

- 22.1 On your request, we will provide you with an email address using an XLN branded domain. The email service comes with a standard mailbox size which cannot be increased and it is subject to our Acceptable Use Policy. XLN may, without notice, delete the mailbox and its contents if it has not been accessed for over 60 days. When the Broadband Service or the Agreement is terminated, the email service will also terminate and any information stored in the email service will be erased.
- 22.1 You agree to use the email services and administer your email package(s) in accordance with our instructions, with terms of this Agreement and with our Acceptable Use Policy.

## **23 Suspension of the Services**

- 23.1 We may suspend or restrict any of the Services (without being liable to compensate you):
- (a) in the event of a local or national emergency;
  - (b) to comply with a request from a government or other competent authority;
  - (c) to protect or provide services to rescue or other essential services or otherwise;
  - (d) to maintain the quality of our Services and/or those of our suppliers;
  - (e) if you fail to pay any amount due to us or any other member of the XLN group of companies;
  - (f) if an event affecting our ability to provide the Services occurs which is beyond our reasonable control;
  - (g) if we have good reason to suspect fraudulent activity or misuse of our Services, the Equipment or any other materials;
  - (h) if we reasonably believe that any of the Services we provide to you is being used in breach of Clauses 4.4 and 4.8 (this applies even if you are unaware that the relevant Service is being used in such a way); or
  - (i) if you cease to do business; or have bankruptcy or insolvency proceedings brought against you; or make an arrangement with your creditors (other than where solely for solvent amalgamation or solvent reconstruction); or a receiver, administrative receiver or administrator is appointed over any of your assets; or you go into liquidation; or 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 there is a corresponding event under Scottish law.
- 23.2 We may suspend the Services including during scheduled periods of downtime where necessary for operational reasons (connected to us or to our suppliers) such as repair, maintenance or improvement of the Services (or software connected to the Services) or because of an emergency. We will restore the Services as soon as we reasonably can after suspension.

## 24 Termination

- 24.1 In the event that the Agreement or a Service is terminated by you (or is terminated by us due to your breach of the Agreement) before the end of any relevant Minimum Term (or, where applicable, before the end of a Renewal Term) you shall:
- (a) pay our then current Charges for any Equipment provided to you free of charge (or, where applicable, an amount equivalent to any subsidy provided by us to you for your purchase of any Equipment); and
  - (b) pay the relevant Cancellation Fee; and
  - (c) pay back any promotional credits or subsidies applied to your account.
- 24.2 You shall be entitled to terminate any Service any time after the end of its relevant Minimum term (or after the end of a new Renewal Term) by giving us at least 30 days' written notice.
- 24.3 In the event that you terminate the Agreement, any Service Schedule will automatically terminate.
- 24.4 You shall be entitled to terminate the Agreement immediately without being liable to pay the amounts specified in Clause 24.1 above if:
- (a) we breach a material term of this Agreement which, after your written notice to us, we have not rectified within 30 days;
  - (b) you give us notice to end the Agreement in accordance with Clause 30.1 below;
  - (c) we are not able to provide you with the Services because we cease to do business, unless a suitable supplier takes over the provision of the Services and agrees to keep providing the Services in similar terms as the terms of this Agreement; or
  - (d) 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 24.4(d), if we provide the Services to you in accordance with the Agreement.
- 24.5 You shall not be entitled to terminate the Agreement in accordance with Clause 24.4(b) above, if:
- (a) a variation in the Agreement is imposed by law or by a governmental or regulatory authority;
  - (b) we increase our Charges in line with VAT (or any other directly and specifically applicable taxation or regulatory levy, payment of which is compulsory).
  - (c) we increase our Charges, or pass on to you price increases from our third party suppliers and in a way permitted under any applicable legislation, regulation or guidance; or
  - (d) we undertake any changes in the Agreement in accordance with Clause 30.2 below.
- 24.6 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.
- 24.7 In the event that we or you terminate a Service, Clause 25 below shall apply as it relates to the terminated Service and the rest of the Agreement will remain in force as it relates to the Services not affected by this termination.
- 24.8 We shall be entitled to terminate this Agreement immediately if you breach any of your obligations under Clause 4.1 to 4.8, Clause 9, Clause 11, Clause 15 and Clause 16 of the Agreement.
- 24.9 We subscribe to the Ofcom Business Broadband Speeds Code of Conduct and will release you from this Agreement without any Cancellation Fee where required to do so by that code

## 25 Effects of Termination

25.1 On termination of the Agreement:

- (a) all the Services shall be terminated;
- (b) any licence granted to you by us or by our licensors shall immediately cease, and you must immediately stop using the Services;
- (c) 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. 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. 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;
- (d) we may require you to return the relevant Equipment at your own cost if the Agreement (or the relevant Service) is terminated pursuant to Clause 24.1. If you do not return the Equipment in good working condition (fair wear and tear excepted) or do not return the Equipment at all, then you may be charged for the 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 Equipment); and
- (e) unless the Agreement or a relevant Service Schedule states otherwise, we may delete all your Content and customer data (including any emails stored on the relevant Services). You are responsible for arranging a back-up of such Content and data.

25.2 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. 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 Clauses 15 (Payment Terms), 27 (Liability) and 28 (Warranties and Representations) of the Agreement).

## 26 Complaints

26.1 We make every effort to ensure that our customers are happy with the level of service they receive from us. However, despite our best efforts, things can go wrong. We take customer complaints very seriously and aim to resolve them quickly and efficiently. If you have a complaint about any part of our service, please contact our customer service team or refer to our complaints code of practice posted on our [Website](#). You can also request a copy from our customer service team.

## 27 Liability

27.1 Nothing in this Agreement shall exclude or restrict a Party's liability for matters which cannot by law be excluded or restricted. Nothing in this Agreement limits or excludes your liability to pay the Charges (or any amount owed by you under this Agreement) or each Party's liability for: (i) death or personal injury resulting from negligence of that Party; (ii) fraud or fraudulent misrepresentation; or (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or (iv) any other liability which cannot be limited or excluded by applicable law. However, nothing in this Clause 27 gives a Party any right or remedy which it would not otherwise have.

27.2 Subject to Clause 27.1, we shall not be liable under, or in connection with, the Agreement for:

- (a) loss of income;
- (b) loss of business profits or contracts;
- (c) business interruption;

- (d) loss of the use of money or anticipated savings;
- (e) loss of information;
- (f) loss of opportunity, goodwill or reputation;
- (g) loss of, damage to or corruption of data;
- (h) any loss or damage that is not foreseeable by us;
- (i) cost of procurement of substitute goods or services; or
- (j) any indirect, special or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise or, whether any such losses could be reasonably foreseen by us or not or if even if we have been advised of the possibility of such damages.

Each of the Sub-clauses 27.2(a) to 27.2(j) shall be deemed to be independent of the others.

- 27.3 Subject to Clause 27.1, our entire liability to you in contract, tort (including negligence) or otherwise arising out of or in connection with this Agreement shall, for any one incident or series of related or unrelated incidents within a period of 12 months, be limited to the annual Charges paid by you to us in the 12 months immediately prior to the relevant incident(s) (or if the Agreement was in force for less than 12 months when the liability arose, the Charges paid by you from the Effective Date to such date).
- 27.4 We shall have no liability to you in respect of any fraud perpetrated by you or any third party.
- 27.5 You acknowledge that our directors, employees, members of staff, agents, sub-contractors, licensors, and suppliers shall have the benefit of the limits and exclusions of liability set out in this Clause 27 including without limitation in terms of the Contracts (Rights of Third Parties) Act 1999.

## **28 Warranties and Representations**

- 28.1 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.
- 28.2 In particular, but without prejudice to the generality of this Clause 28, you acknowledge and accept that:
  - (a) we do not warrant that the Services will be available to you error-free, at any particular time or continuously; and
  - (b) 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.
- 28.3 You warrant to us that:
  - (a) you have the authority to enter into this Agreement; and
  - (b) you will comply with any legal and regulatory requirements applicable to the Services provided under this Agreement.
- 28.4 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.
- 28.5 We do not warrant that our Services will be compatible with your computer systems, software and/or hardware.



## 29 Monitoring and Recording Calls and Data Protection

- 29.1 We may monitor and record calls relating to customer services and telemarketing. We do this for training purposes and to improve the quality of our services.
- 29.2 You acknowledge that we may process information (including personal data) about you, obtained from you and/or other sources (such as credit reference agencies), in order to provide the Services or as otherwise set out in the privacy policy available on our [Website](#), as amended from time to time by us (the “**Privacy Policy**”). You confirm that you have read and understood the Privacy Policy.

## 30 Variations

- 30.1 We may vary the terms of this Agreement and the Charges from time to time. In the event that we make changes to this Agreement that are likely to cause a material detriment to you, you will be entitled to terminate this Agreement within 30 days of us notifying you of such changes. In order to ensure continuity, time will be of the essence for your notice to be received by us and if we have not received your notice within that time, you will be bound by the terms of this Agreement as varied.
- 30.2 Subject to Clause 30.1 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 you XLN account or by posting our updated Agreement or Price and Tariff Guide on our Website at [www.xlntelecom.co.uk](http://www.xlntelecom.co.uk).
- 30.3 Unless we give you our prior consent in writing, you shall not be entitled to make any variations to this Agreement.

## 31 Force Majeure

- 31.1 Neither Party will be liable to the other for any failure to deliver the Services or for any breach by it of this Agreement, where such failure or breach is due to a reason outside the reasonable control of such Party, including, but not limited to any act of God, reduction or failure of power supply, reductions or failures of other telecommunication operators, internet providers or communication suppliers, physical obstructions, atmospheric conditions and other causes of radio interference, acts or omissions of national or local government authority, war, act of terrorism, military operation, riot or delay, employee dispute, or supply of equipment by third parties.
- 31.2 If such failure to deliver continues for more than 3 months after the commencement of such failure, then either Party may terminate this Agreement on notice in writing to the other Party.

## 32 General

- 32.1 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.
- 32.2 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.
- 32.3 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 sub-contract any of our obligations under this Agreement.
- 32.4 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.
- 32.5 Each Party affirms and represents that it is acting on its own behalf and not for the benefit of any other person.

- 32.6 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. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 32.6 shall not affect the validity and enforceability of the rest of this Agreement.
- 32.7 The Parties acknowledge that this Agreement constitutes the entire agreement of the Parties and supersedes and cancels any statements, warranties or representations whether written or otherwise made by a Party or any officer, employee or agent of such Party prior to the date hereof.
- 32.8 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).
- 32.9 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 only exception that Clause 27 and 28 above, will also be enforceable by our directors, employees, members of staff, agents and subcontractors, licensors, and suppliers. 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.
- 32.10 Any notices sent by you to us must be sent by email to [service@xlntelecom.co.uk](mailto:service@xlntelecom.co.uk), or by post (or fax) or recorded delivery to our address above, must quote your account number and shall not be effective until received by us. Notices sent by us to you may be sent: (i) by hand, post or by recorded delivery to your billing address specified on your Order or to your registered office; or (ii) by fax to your fax number specified on your Order or as otherwise notified by you to you in writing; or (iii) by email to your email address specified on your Order or as otherwise notified to us in writing; or (iv) by posting information on our Website. Notices given by hand shall be deemed given the same day. Notices given by post shall be deemed to have been received 48 hours from the date of posting. Notices given by recorded delivery shall be deemed given on the date and at the time of signature of the delivery receipt. Notices by fax shall be deemed given when transmitted, provided that the sender shall have received a transmission report confirming correct transmission. Any communication by email shall be deemed to have been made on the working day on which the notice is first stored in the recipient's electronic mail-box. To be effective, written notice of any material breach, must prominently state that the correspondence is a formal notice of breach, and must be sent via pre-paid recorded delivery or registered post.

### **33 The Direct Debit Guarantee**

- 33.1 This guarantee is offered by all banks and building societies that take part in the direct debit scheme.
- 33.2 The efficiency and security of the Scheme is monitored and protected by your own bank or building society.
- 33.3 If the amounts to be paid or the payment dates change we will notify you 10 working days in advance of your account being debited or as otherwise agreed.
- 33.4 If an error is made by us or your bank or building society, you are guaranteed a full and immediate refund from your branch of the amount paid.
- 33.5 If you receive a refund you are not entitled to, you must pay it back immediately when we ask you to.
- 33.6 You can cancel a direct debit at any time by writing to your bank or building Society. Please also send a copy of your letter to us.