

XLN Pay Terms and Conditions

DEFINITIONS

These words have the following meanings:

“Acquirer” means the financial institution to which your Payment Transactions and Refund instructions are routed for authorisation and settlement;

“Agreement” means these Terms and Conditions (including any front sheet to which they are attached or with which they are provided) effective from the date of the agreement;

“Business Day” means Monday to Friday excluding English public and bank holidays

“Card” means a current valid, credit, debit or charge card that we may accept for processing under the terms of this Agreement;

“Cardholder” means the individual holder of a Card; “Charges” means any and all of the charges set out in the sections entitled ‘Initial Charges and Regular Charges’ as the case may be and shown on the front sheet which are payable throughout the Minimum Term and thereafter and which may, in the case of any Regular Charges, be subject to adjustment by us from time to time in accordance with the terms and conditions of this Agreement;

“Consumables” means batteries, paper rolls, printer ink or cartridges, all power and other accessories required or desired for operation of the Payment Terminal; “Minimum Term” means the Minimum Term as shown on the front sheet of this Agreement;

“Network” is the PSTN, Broadband or mobile telephone network upon which the Payment Terminal will operate; “Payment Terminal” means the Payment Terminal(s) described on the front sheet, provided to you for the purpose of processing Payment Transactions hereunder and subject to the terms of this Agreement including (inter alia) those set out in Clause 4 below; “Payment Transaction” means a Card transaction processed with the intention of a Cardholder incurring a liability resulting in monies being received from the Card issuer to your Acquirer and credited to your bank account;

“Personal Information” means information (in any reproducible format) which relates to a Cardholder or other identifiable individual, whether supplied by you for processing by us or whether generated by us in the course of performing our obligations. This information may include some or all of the following information: Cardholder name and all data encoded on a Cardholder’s Card;

“Refund” means a Card transaction which has been processed with the intention of monies being remitted to the Cardholder’s Card account;

“Services” means each of the services selected on the front sheet and more particularly described below;

“SIM card” means the card used with a Payment Terminal which uses a Network to provide the Services.

1. AGREEMENT

1.1. We agree to provide you with the Payment Terminal and to provide the Services set out on the front sheet for the Minimum Term and thereafter until terminated in accordance with Clause 6. The Payment Terminal is supplied to you for the purpose of effecting Payment Transactions or Refunds.

1.2. You agree to pay the Charges promptly for the duration of this Agreement and you are deemed to accept these terms conditions when you sign this Agreement. You will pay us VAT on any sums due under this Agreement at the prevailing rate from time to time.

1.3. You will pay the Charges applicable for each respective period during the Minimum Term whether or not you use the Payment Terminal or Services. After the end of the Minimum Term, the Services shall continue, provided you continue to pay the Charges, unless and until terminated in accordance with Clause 6.

1.4. You must not record or pass to any third party any Personal Information other than as permitted by the terms of this Agreement;

1.5. You must pay all Charges by direct debit on the due date and prompt payment is an essential condition of this Agreement. If Charges or other sums are not paid when due, we can suspend or terminate some or all of our Services and charge you interest on what you owe at 4% per annum above the base rate of The Royal Bank of Scotland from time to time from the due date the relevant amount fell due until you pay. You agree that if you do not pay promptly, we can say that you have broken this Agreement and we can terminate this Agreement immediately pursuant to the terms of Clause 6.3.1 below. These rights are in addition to any other legal rights we may have, which we may also rely upon.

1.6. Without prejudice to our right to change Charges in respect of Airtime service under the terms of Clause 2.1.3, we may change any Regular Charges at any-time and from time to time by giving you written notification of the change in question. Where any change represents an increase to any then current Regular Charge we shall provide you with a minimum of 30 days written notice prior to such increase taking effect. If you do not wish to accept the increase in question then you may terminate this Agreement immediately by giving written notice to us prior to the date of the increase in question taking effect. In the event of such termination by you Clause 6.3.2 below shall not apply (but for the avoidance of doubt, Clause 6.3.1 below shall still apply). If you do not serve written notice to terminate under this Clause 1.6 prior to any increase taking effect then you shall be deemed to have accepted the increase in question and shall not longer have any right to terminate this Agreement as a result of that increase.

2. SERVICES

If selected on the front sheet and subject to due payment of the relevant Charges shown on the front sheet, we agree to provide the Services as follows:

2.1. Airtime

2.1.1. To fit a SIM card into and configure the Payment Terminal;

2.1.2. To arrange continuous connection to a suitable Network (subject to Clause 3 below);

2.1.3. Charges in respect of Airtime service may be subject to change after the first twelve months of this Agreement, if the Network provider increases the cost to us.

2.2. Terminal and Transaction Processing Service

2.2.1. To configure the Payment Terminal with appropriate software for the processing of Payment Transactions or Refunds by any Card capable of being accepted by you under the terms of your agreement with an Acquirer;

2.2.2. To provide software upgrades from time to time;

2.2.3. To ensure secure routing for Card authorisations and Payment Transactions to and from your Acquirer.

2.3. Help Desk and Support Service

2.3.1. To provide a Help Desk service on the telephone number shown on the front sheet, available between the hours of 9.00 am and 5.30pm, seven days per week excluding Bank Holidays as a telephone advice bureau for operational difficulties.

2.4. Guaranteed Replacement Service

2.4.1. In addition to the Help Desk service set out in 2.3, if the Payment Terminal develops a fault, we will, unless prevented by circumstances outside our control, provide a replacement Payment Terminal within 24 hours. You acknowledge that this target response time is our service level goal and we do not warrant that any particular replacement shall be made within 24 hours.

2.4.2. Any replacement Payment Terminal shall be provided configured for your use and will be of a similar or improved specification, but may be new or refurbished.

2.4.3. Our repair services under this clause 2.4 shall not extend to accidental damage to the Payment Terminal, nor in respect of any damage caused to the Payment Terminal or any part thereof through misuse or malicious damage, or for theft or loss of the Payment Terminal, nor to faults in respect of batteries or battery packs, Network outages or to any third party device or attachment that is not part of the Payment Terminal provided by us.

2.4.4. We shall be entitled to levy a charge in respect of a Payment Terminal, which upon inspection, is not found to be faulty.

2.5. Payment Terminal

2.5.1. The Payment Terminal is provided to you without charge for the purpose of carrying out Payment Transactions (and for no other purpose) and in consideration of your agreement to utilise our Services for the Minimum Term.

3. NETWORK SERVICE LIMITATIONS

3.1. We will always try to make our Services available to you, but sometimes they may be affected by things beyond our control, including (inter alia) the availability of the Network. We may suspend certain services, but will endeavour to give as much notice as practical.

3.2. The Services are made available subject to:

3.2.1. any software, upgrades or other intellectual property relating to the Payment Terminal or Services not being copied, modified or sub-licensed by you without our specific written consent;

3.2.2. Their not being used for or to access anything illegal, immoral or improper;

3.2.3. their being used only with the Payment Terminal and SIM cards provided for use with the Network (and which have not been lost or stolen) and all relevant laws and rules being followed;

3.2.4. their being used only for the purposes of processing Payment Transactions or Refunds and no other purpose;

3.2.5. the SIM card not being used for any other purposes or otherwise modified or removed from the Payment Terminal;

3.2.6. all reasonable instructions that we may give you being followed;

3.2.7. the Payment Terminal being in range of base stations forming part of the Network;

3.3. Your payment obligations shall not be affected by the unavailability of the Services.

4. OPERATIONAL TERMS

4.1. You hereby agree throughout the duration of this Agreement:

4.2. to use the Payment Terminal in accordance with any operating instructions only for the purpose of effecting Payment Transactions or Refunds in accordance our instructions; and

4.3. to keep the Payment Terminal in good repair and condition and save as provided for herein, to be responsible for any loss or damage to it and not to remove any identifying marks; and

4.4. to insure the Payment Terminal for loss or damage for its full replacement value or otherwise indemnify us against the full cost of repair or replacement (other than as may be covered under Clause 2.4); and

4.5. to keep the Payment Terminal in your own possession in the United Kingdom and not to alter, sell, lend or otherwise deal with it nor to allow any charge or line or similar right to be created over it; and

4.6. to indemnify and keep us fully indemnified at all times against all losses, actions, claims, demands, costs or expenses arising directly or indirectly from the use, possession, operation, condition or maintenance of the Payment Terminal or your failure to carry out any obligation under this Agreement.

5. LIABILITY

5.1. We are only liable to you as set out in this Agreement. We have no other duty or liability to you.

5.2. Nothing in this Agreement removes or limits our liability for death or personal injury caused by our negligence.

5.3. Except as set out in Clause 5.2, our entire liability to you for something we or anyone who works for us does or does not do will be limited to 125% of any monies paid by you to us under this Agreement.

5.4. We are not liable to you in any way for any loss of income, business or profits, or for any loss or damage occasioned by the use of the Services or any failure of the Services.

5.5. We will not be liable to you if we cannot carry out our duties or provide our services because of something beyond our control.

6. TERMINATION

6.1. Either party can terminate this Agreement at any time after expiry of the Minimum Term, by the giving of one month’s notice in writing to the other party.

6.2. Subject to the terms of Clause 6.3 below, you may terminate this Agreement during the Minimum Term by the giving of one month’s notice in writing to us.

6.3. We can at any-time terminate this Agreement immediately and stop providing the Services if any of the following happens:

6.3.1. you fail to pay any Charges or other sums due under this Agreement when due or break an important term or condition of this Agreement; or

6.3.2. you break any other term or condition of this Agreement and do not put it right within 7 days of us asking you to; or

6.3.3. you become bankrupt or make any arrangement with your creditors or are liquidated or have an Administrator or receiver appointed or suffer any other form of insolvency event; or

6.3.4. you are unable to pay your debts as they fall due.

6.3. Upon termination of this Agreement:

6.3.1. for any reason, you must:

- pay us immediately any and all sums then due and owing together with any other sums which have accrued to be paid under this Agreement prior to the date of termination; and

- return to us within 30 days of the date of termination at your own expense and risk the Payment Terminal and SIM card in good condition (fair wear and tear excepted) complete with all accessories, power leads, batteries, chargers and handbooks. You should contact us at the address given on the front sheet for further details regarding these return arrangements,

6.3.2. prior to the expiry of the Minimum Term (whether as a result of you exercising your right under the terms of Clause 6.2 above or by us exercising our rights under the terms of Clause 6.3 above but excluding where termination is by you under the terms of Clause 1.6 above) you must also pay us immediately all Charges which would have been payable for the remainder of the Minimum Term but for the early termination, less a discount of 10%.

6.4. If you fail to return any Payment Terminal and SIM card in accordance with all requirements of Clause 6.3.1 above then you will pay to us on demand the then written down value of the Payment Terminal and SIM card in question, such written down value to be calculated by us in accordance with our standard accounting policies and practices in force at the time in question.

7. GENERAL AND ASSIGNMENT

7.1. If you are more than one person, each person shall be jointly and severally liable under this Agreement.

7.2. You may not transfer your account or any of your rights and responsibilities under this Agreement.

7.3. We may assign or transfer our rights under this Agreement to another party without your consent to a third party (“Assignee”). If we assign or transfer all or any of our rights under this Agreement you will pay all Charges relating to the Airtime Service to the Assignee without deduction, set-off or counterclaim irrespective of whether or not you are using the Payment Terminal for any reason whatsoever. The Assignee will have no obligations to you under this Agreement whether in relation to the Payment Terminal and/or the Services described in clauses 2.2 to 2.4 inclusive. We will, however, continue to remain liable to you for the performance of such Services and/or the provision of the Payment Terminal.

7.4. You are responsible for providing all Consumables necessary for the operation of the Payment Terminal or the Services provided hereunder.

7.5. You must advise us in writing about any change in the address supplied to us.

7.6. Any concession or extra time that we allow you only applies to the specific circumstances in which we give it. It does not affect our rights under this Agreement in any other way.

7.7. English law will apply to this Agreement and any disputes will be settled in the courts of England.

7.8. This Agreement does not confer any benefit on any third party under The Contracts (Rights of Third Parties) Act 1999.

7.9. Failure by a party to enforce rights under this Agreement shall not prevent that party from taking further action.

7.10. This Agreement supersedes all prior arrangements, understandings and agreements between the parties relating to the provision of the Services and sets out the entire agreement between the parties. Neither Party has relied on any representation arrangement understanding or agreement (whether written or oral) not expressly set out in this Agreement.