



# Zen Business Mobile Specific Terms & Conditions

## 1. Agreement Structure

- 1.1 This Agreement is supplemental to the Zen Internet Limited General Terms and Conditions of Supply ("General Terms") and words and phrases shall have the same meaning as set out in the General Terms unless specifically defined in clause 2 below.
- 1.2 This Agreement is composed of the following documents which apply in decreasing order of priority in the event of conflict:
  - (a) the Order
  - (b) these supplemental terms;
  - (c) the General terms;
  - (d) the Price Guide.

## 2. Definitions and Interpretation

### 2.1 Definitions

**Call Data Records** - in relation to the conveyance of any call or other communication over the Network, any data that constitutes traffic data as defined in the Privacy and Electronic Communications (EC Directive) Regulations 2003.

**Charges** - all monies payable by You to Us under this Agreement as set out in Order or (if silent) in the Price Guide (as may be varied pursuant to clause 18 of this Agreement) including without limitation any:

- a) monthly or periodic charges payable by You to access the Services ("Subscription Charges");
- b) variable charges for voice, data and text usage and any other Services and other non-recurring charges payable by You ("Usage Charges");
- c) lump sum termination charges payable by You in the circumstances set out within clause 21.3 ("Termination Charges"); and
- e) additional fees set out in the Price Guide for specified administration or account activity ("Additional Charges"), including without limitation the following:
  - i. Device Unlocking Fee,
  - ii. Inactive Connection Fee,
  - ii. Replacement SIM Card Fee, and
  - iii. Suspension Lifting Fee.

**Confidential Information** - any commercial or technical information in whatever form which is disclosed by one party to the other party and which would be regarded as confidential by a reasonable business person including, without limitation, all business, statistical, financial, marketing and personnel information, customer or supplier details, know-how, designs, trade secrets or software of the disclosing party or any member of its Group.

**Connection** - a connection by which We give You access to the Network, including via a SIM Card that has been configured to attach to the Network, or via any other connection specified in this Agreement. "Re-Connection", "Connect" and "Connected" each have a corresponding meaning. A Connection may (without limitation) be a Connection:

- a) with some inbound or outbound communications activity and which is not an Inactive Connection ("Active Connection");
- b) which is already Connected at the commencement of this Agreement ("Existing Connection");
- c) which is Connected under this Agreement over and above the Connections specified in the Order, but which is not a Re-Connection or transfer or reallocation of a Connection

between Users ("Future New Connection"); or

d) with no inbound or outbound communications traffic in any consecutive 3 month period ("Inactive Connection").

**Customer Equipment** - any equipment and/or software used by You which is not provided by Us.

**Data Controller** - has the meaning set out in the Data Protection Act 1998.

**Data Protection Legislation** - means the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (s/2000/2699), any amendments or replacements to them and all other applicable laws and regulations relating to the processing of personal data and privacy.

**Device** - any mobile or wireless device, handset, USB drive, data card, memory card or other equipment incorporating a SIM Card, or tablet (which may or may not incorporate a SIM Card), provided by Us for use in connection with the Services.

**Disconnect** - removal of access to the Network of a Connection. "Disconnection" and "Disconnected" shall have a corresponding meaning.

**Zen Software** - any software, excluding End User Licensed Software, that is owned by Us or licensed by Us on behalf of a third party, and which may be updated from time to time.

**End User Licensed Software** - software licensed to You by a separate agreement with the licensor of such software, as set out in this Agreement or by any 'shrink wrap' or 'click through' licence agreement or in box documentation provided.

**Equipment** - the Devices ( which may contain Software) set out in the Order and any other equipment, including SIM Cards, that may be supplied by Us to enable You to access the Services as agreed between You and Us from time to time.

**Order** - the order for Services and Equipment which You commit to take and We commit to supply under this Agreement

**Insolvency Event** - an event where either You or Us:

- a) ceases, threatens to cease or suspends trading or carrying on business (other than temporarily by reason of a strike); or
- b) suspends payment of its debts or is or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or commits any act of insolvency, or enters into a composition or voluntary arrangement with its creditors, or has a receiver or administrator appointed over the whole or any part of its business or assets, or has a creditor's winding up petition advertised against it in the appropriate Gazette, or passes a resolution to wind up (other than for the purposes of a solvent amalgamation or reconstruction), or is the subject of any action or procedure commenced in any jurisdiction which is similar to or analogous with any above-mentioned action or procedure.

**Intellectual Property Rights** - copyright, database rights, design rights, patents, trademarks, domain names (whether or not any of the same are registered and including applications for registration of the same) and confidential information, know-how and all other intellectual property or forms of protection of similar nature or having equivalent or similar effect to any of the same, which may subsist in any part of the world.

**List Price** - the standard prices for services and equipment as current at the time the price needs to be determined.

**Minimum Agreement Term** - the minimum term of this Agreement, as detailed in the Order.

**Minimum Connection Period** - the minimum period for which You commit to receive a particular Service and (where You have one or more Connections under a Service to keep each Connection Connected to the Network as set out in the Order or as may be agreed between You and Us from time to time.

**Minimum Spend** - the minimum sum set out in the Order that You commit to pay to Us in

Charges in relation to a particular Service for the Minimum Connection Period.

**Network** - the electronic communications systems by which We make Services available in the United Kingdom.

**Personal Data** - has the meaning set out in the Data Protection Act 1998.

**Price Guide** - the applicable list of current standard prices, terms and conditions for certain standard services as updated from time to time and published at [www.zen.co.uk](http://www.zen.co.uk). To the extent that there is any conflict between the Price Guide and any other point of sale pricing information, the Price Guide takes precedence.

**Roaming** - a Service Plan Add-On by which You can use a SIM Card to connect to another network whilst outside of the UK.

**Service(s)** - the service(s) set out in the Order and any other services that may be agreed between You and Us from time to time, which may include Service Plans and Service Plan Add-Ons and may contain or use Software.

**Service Commencement Date** - the date on which We commence supply of a particular Service to You.

**Service Plan** - a service provided by Us to You for an agreed Subscription Charge.

**Service Plan Add-On** - an additional service added to a Service Plan for an agreed Subscription Charge. Service Plan Add-Ons specified as "Fixed" shall have a Minimum Connection Period identical in length to the original Minimum Connection Period of the Service Plan the Service Plan Add-On is added to.

**Shared Service Plan Add-On** - a Service Plan Add-On under which Services are shared between a specified group of Users.

**SIM Card** - a subscriber identity module supplied to You by Us.

**Single Service Plan Add-On** - a Service Plan Add-On under which additional services may only be used by individual Users.

**Software** - Zen Software and End User Licensed Software, as updated from time to time.

**Sub-contractor(s)** - any person appointed by Us to perform Our obligations under this Agreement to You on Our behalf.

**User** - You or anyone who is permitted by You to use the Service(s) under this Agreement.

**Working Day** - any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in the UK.

### 3. Commencement and Term

- 3.1 This agreement shall commence on date the Order is completed and shall continue until the last remaining Service expires or is terminated by either You or Us in accordance with this Agreement.
- 3.2 The Minimum Agreement Term shall commence on the date that your account is activated (activation being the date Your first Connection is Connected to the Network) and Charges will be applied across all Connections specified in the Order from that date. You will have up to 90 days from the commencement of this Agreement within which to activate its account after which We will otherwise activate Your whole account. Where You are re-signing Existing Connections the Minimum Agreement Term shall commence on the date the Order for re-signing is completed.
- 3.3 The Minimum Connection Period for each Connection shall commence on the date that individual Connection is given access to the Network. The Minimum Connection Period for each Service shall commence on the Service Commencement Date.

## 4. Supply of Services and Agreement

- 4.1 We agree to supply, and You agree to receive, the Services and Equipment subject to the provisions of these Terms.
- 4.2 We shall supply each Service from its Service Commencement Date for its Minimum Connection Period and thereafter until the Service expires or is terminated by either You or Us in accordance with this Agreement.
- 4.3 You agree that You are procuring the Services and Equipment for your own use and for the benefit of Users authorised by You and in accordance with this Agreement and You will not re-sell, re-supply or otherwise distribute the Services and Equipment or allow Users to do so.

## 5. Standard of Service

- 5.1 We will use our reasonable endeavours to provide the Services where technically possible within the range of the base stations that make up the Network, however We are unable to guarantee a continuous fault-free service and have no obligation to provide any Services outside the range of these base stations.
- 5.2 You acknowledge that, as Network design is an on-going process, the range of base stations making up the Network may change from time to time at Our discretion, and that at any time the Network may comprise of different technologies. The Services are made available provided You are in the range of base stations forming part of the relevant technological Network when trying to use any particular Service. Any coverage maps are Our estimate of outdoor coverage and do not guarantee Service coverage which may vary depending on location.
- 5.3 The quality and availability of the Services is also subject to:
  - a) local geography and topography;
  - b) weather and/or atmospheric conditions;
  - c) degradation, congestion or maintenance requirements of the Network including but not limited to re-positioning and/or decommissioning of base stations;
  - d) other physical or electromagnetic obstructions or interference;
  - e) faults in other telecommunication networks to which the Network is connected; and
  - f) the compatibility of Equipment and/or Customer Equipment used.

## 6. Charges and Payment

- 6.1 You are responsible for paying all Charges incurred for Services and Equipment on Your account and must pay the Charges in full and without any deduction or set off within the time period specified in the Order. You are responsible for notifying Your Users if You do not wish Users to incur any particular Charges or use any particular Services.
- 6.2 We will invoice You monthly in advance for Subscription Charges, monthly in arrears for Usage Charges, and after dispatch for any Equipment ordered from US. Charges in respect of Services not supplied directly by Us such as (but not limited to) Roaming may be invoiced several months in arrears by Us.
- 6.3 You will notify US in writing of any disputed invoice within 14 days of the date of such invoice, including the full facts of the dispute. You must pay the undisputed portion of the invoice in accordance with this Agreement and in good faith co-operate with Us to resolve the dispute. Any sum agreed to have been correctly invoiced will be paid and any sum incorrectly invoiced will be resolved by appropriate credit to Your account (in each case within 7 days of resolution).
- 6.4 If any payment is not made when due, We may charge interest on all sums outstanding from the date they fell due at the rate of 5% per annum. This interest shall be calculated on a monthly basis both before and after settlement or judgment until payment is made. We may

further take any or all of the following actions until payment for Charges not the subject of a dispute in good faith is received:

- a) withhold and/or set-off any sums owed by Us to You (including any Credit) against the sums owed by You to Us;
- b) suspend the Service(s) in relation to which the Charges are outstanding in accordance with clause 16.4; and/or
- c) issue a notice pursuant to clause 17.3a on the basis that we both agree that such non-payment shall be a material breach of this Agreement.

## 7. Customer Changes

- 7.1** Changes requested by You, such as the addition, removal or restriction of access to Service Plan Add-Ons, can be made by contacting Us. Additional terms and conditions may apply to Service Plan Add-Ons as set out in the Price Guide, and use by You will constitute Your acceptance of any such additional terms.
- 7.2** Any changes to Your tariff will take effect from the next billing date provided the change is agreed by You and Us more than 10 Working Days prior to that date. Where changes are agreed less than 10 Working Days prior to that date the Charges will take effect from the following billing date.

## 8. Re-signs

- 8.1** Existing Connections which are re-signed shall be governed by this Agreement and no other. Existing Connections not re-signed under this Agreement shall be terminated unless otherwise agreed by Us.
- 8.2** Existing Connections shall start a new Minimum Connection Period from the date the Order for re-sign is complete.

## 9. Use of the Services and Equipment

- 9.1** You shall, and shall procure that Your Users shall:
  - a) keep confidential and not disclose to any third party any Customer account password, personal identification code, number or name issued by Us permitting access to the Services and Equipment;
  - b) provide in a timely manner any information and/or assistance We require in order to supply the Services and Equipment, ensuring the continuing accuracy and completeness of such information;
  - c) comply with any manuals, guidance and any reasonable instructions issued by Us or relevant third party manufacturer or supplier concerning the use of the Equipment, Services and Network and co-operate with Our reasonable security and other checks (which may include Us making calls or sending communications to Users);
  - d) only use Equipment or Customer Equipment which is authorised by Us (such authorisation not to be unreasonably withheld) and compatible for use on the Network;
  - e) inform Us upon becoming aware of any suspected or actual unauthorised use of the Services or Equipment and take all steps necessary, including any steps requested by Us, to prevent such use;

f) not operate without obtaining prior written consent from Us, whether directly or through a third party, any device to route or re-route voice, data or other Services on, from or to the Network, including without limitation:

- (i) any GSM Gateway, or
  - (ii) any device used to forward or divert calls with the intention of reducing Charges for that call except where a Device is supplied as part of a Service by Us and used by You in accordance with the Service terms;
- g) comply with all licence terms as required from time to time for any Software;
- h) do not use, nor knowingly allow the Equipment or Services to be used:
- (iii) for any unlawful or improper purpose or in such a manner that will or may impair the operation of the Network or Our provision of the Services to You or other users,
  - (iv) in any way which causes annoyance, inconvenience or needless anxiety as set out in the Communications Act 2003, nor use the Network or the Services to send spam or unsolicited communications without the receiver's consent,
  - (v) to send, store, communicate or knowingly receive content which is abusive, indecent, defamatory, obscene, menacing, unlawful or a nuisance, or
  - (vi) in any way that breaches the provisions of clauses 23 and 24 or contravenes Our Intellectual Property Rights or those of any third party;
- i) not knowingly distribute malicious software or permit the hacking or unauthorised modification of any Equipment or Software or the Network;
- j) comply with any applicable fair use policy that We may issue from time to time; and
- k) comply with all applicable regulatory provisions, laws, codes of conduct and guidelines.

**9.2** The Services may enable access to the internet, use of which is solely at Your risk.

We have no control over and are not responsible or liable in any way for any content offered by third parties on or through the Services. You agree that You retains responsibility for, and control of, content which it sends or passes over the Network.

**9.3** Use of the Services and Equipment or any content accessed through them in a country other than the UK may be subject to different laws and regulations. You are responsible for ensuring compliance with such laws or regulations and We are not liable for any failure of You or Your Users to do so.

**9.4** You shall be responsible for implementing Your own data archiving and data back-up processes. You acknowledge that You may be required to restore data from Your back-up to relevant systems to enable a Service to continue to be provided.

**9.5** You acknowledges and agrees that We may monitor and record calls or other communications to emergency services and calls or other communications relating to Our customer services and telemarketing.

## 10. Risk and Title

**10.1** Subject to clause 12.2, title to any Equipment supplied by Us on a Charged Basis passes to You once You has paid for such Equipment in full, and title to any Equipment provided by Us on a Funded Basis shall pass to You on delivery.

**10.2** Unless otherwise agreed in writing, title and property in any SIM Cards and Software shall remain vested in Us or the appropriate third party and You are hereby granted a licence to use any SIM Cards only for accessing the Services during the term of this Agreement.

**10.3** All risks in any Equipment, SIM Card and Software pass to You on delivery. Any Equipment, SIM Card or Software returned to Us shall be at You risk until received by Us.

## 11. Equipment

- 11.1** You must satisfy itself that all Equipment is suitable for its intended purpose and requirements. We will use reasonable endeavours to provide the Equipment. Certain Services may require specific equipment and You acknowledges that it may have to purchase certain equipment to benefit from the full functionality and range of Services.
- 11.2** Devices will only be unlocked for use on another UK mobile network where technically possible and at Your request after completion of the relevant Minimum Agreement Term and provided all Charges and the Device Unlocking Fee have been paid.
- 11.3** Equipment may be subject to additional terms (such as user manuals and in box documentation) which You accept by retaining and using such Equipment. If You do not consent to such additional terms You must (at Your cost) return such Equipment within 7 days of delivery.
- 11.4** You must inform Us immediately if You become aware of the loss, theft or damage of any Equipment, and shall remain liable for all Charges incurred by the use of any lost or stolen Equipment until reported to Us. Data on any lost or stolen Equipment is at Your risk and the sending of any command for remote wiping of data (such as a device management solution) is the responsibility of You. You must send any remote wipe command prior to reporting the Device lost or stolen and We will use reasonable endeavours to carry such command across the Network. You acknowledge that once the loss or theft of the Equipment is notified to Us, We will terminate the ability of the Device to communicate with the Network.
- 11.5** We may recall, update or have access to the Equipment as reasonably required to enhance or maintain the quality of Services or to update Software, but will endeavour to minimise any disruption caused to You.
- 11.6** Notwithstanding clause 9.1d, You acknowledge that You have carried out Your own investigations as to the suitability of any Customer Equipment used with the Equipment and that We have made no representations or warranties in relation to the suitability of the Equipment for use with Your Equipment (or vice versa). You will ensure that any Customer Equipment is compatible with the Network and adheres to any technical parameters and guidelines issued by Us from time to time.
- 11.7** We do not warrant the availability of any Equipment and may from time to time amend the range of Equipment available or withdraw particular Equipment from sale or supply a comparable replacement where the Equipment ordered by You is not available at the time of despatch.
- 11.8** You acknowledge that any support services that may be provided by Us are only provided for the specified Equipment and that We do not provide support for any other equipment (including without limitation Customer Equipment).

## 12. Upgrades

- 12.1** You may replace a Device in use by purchasing another Device ("Upgrade") at any time provided the Upgrade is used in connection with the existing mobile number, the Services and any new SIM Card provided with the Upgrade is Connected to the Network.
- 12.2** Where You:
  - a) receive additional Credit as a result of the Upgrade; or
  - b) receive an Upgrade free of charge ,then the Minimum Connection Period applicable to that Connection shall re-start from the date of dispatch of the Upgrade by Us.
- 12.3** Upgrades will be subject to the relevant Service Plan and Service Plan Add-On Charges detailed in the Order or (if silent) in the Price Guide.

## 13. Warranty and Insurance

- 13.1** We shall procure that You receives the benefit of the manufacturer's warranty for all new Equipment (excluding SIM Cards) where We are able to do so for a period of no less than 12 calendar months from delivery. All out of warranty replacements will be charged to You at List Price.
- 13.2** SIM Cards which are defective due to faulty materials or workmanship will be replaced by Us at no charge for the duration this Agreement. You understand and acknowledge that SIM cards have a limited lifespan and may need replacing from time to time. All other replacements of SIM Cards are subject to payment by You of a Replacement SIM Card Fee.
- 13.3** You shall notify Us within 14 days of receipt if any Device has arrived damaged and/or faulty or if an order has been incorrectly fulfilled. We shall replace such damaged or faulty Device with a new Device.
- 13.4** We warrant that the Zen Software shall conform in all material respects to the manufacturer's specification for a period of 3 months from the date of delivery of the Zen Software. Our sole obligation and liability for breach of this warranty will be to promptly repair or replace (at Our expense) the defective Zen Software.
- 13.5** The above warranties are subject to compliance by You and other Users in all material respects with all relevant licences, specifications, user manuals, any other user guidelines and any manufacturer's conditions specified in the warranty. We shall not be liable for faults in or malfunction of any Equipment or Zen Software where:
- a) You or Users have failed to comply with such licences, specifications, manuals, guidelines or conditions; or
  - b) any alteration, modification or addition has been made to the Equipment or Zen Software without our prior written consent.

## 14. Mobile Services

- 14.1** Each Service and Connection under this Agreement shall remain Connected for its Minimum Connection Period.
- 14.2** You acknowledges that the functionality of certain Services is interconnected and that in such circumstances You cannot receive one Service without also purchasing another. Therefore, where You wish to add a Service ("New Facility") which relies on You continuing to purchase an existing Service from Us ("Base Facility"), You agree that the Minimum Connection Period for the Base Facility will be required to meet the longer of:
- a) the Minimum Connection Period of the New Facility; and
  - b) the Minimum Connection Period in respect of the Base Facility.
- 14.3** All SIM Cards shall be supplied by Us pre-Connected. Devices that contain SIM Cards will be Connected when they are dispatched to You unless otherwise agreed by Us. You must start using SIM Cards as Active Connections within 30 days of delivery. We shall liaise with You to determine at Our sole discretion whether there is a justifiable reason for You to delay using SIM Cards. We reserve the right to Disconnect Inactive Connections or to re-allocate these where You request new Connections, to enable the proper management of Inactive Connections. You may request to retain an Inactive Connection however this may be subject to an Inactive Connection Fee.
- 14.4** Connections may be provided with access to certain Service Plan Add-Ons enabled, the terms and conditions of which are set out in the Price Guide.
- 14.5** Where a regulatory authority requires the re-allocation or change of phone numbers, We reserve the right (without liability) to change the phone numbers allocated to You to access the Services, but shall use Our reasonable endeavours to minimise the disruption caused.
- 14.6** It is Your responsibility to configure at Your own cost any virtual private network not supplied by Us which You may use in conjunction with the Services. We do not warrant that any



virtual private network not specifically approved for use by Us will be compatible with the Services and shall bear no liability for any such lack of compatibility.

## 15. Variations by Us

- 15.1** We may by issue of a notice to You (sent by post, e-mail or text message) vary the provisions of this Agreement where such variation is required as a result of:
- any legislation, statutory instrument, government regulation, regulatory requirement or licence;
  - changes imposed by third party manufacturers or suppliers; or
  - a change to Our operations provided such change is also implemented in relation to the majority of Our business customers.
- 15.2** Where any variation by Us to this Agreement is of material detriment to You, We will give You at least one month's written notice of the variation (save where this is not practicable due to a change imposed by a legal or regulatory body) and You will have the right to terminate the relevant Service and/or Equipment in accordance with clause 17.4.
- 15.3** For the purposes of this clause, we both agree that an increase in the Charges (as a percentage) equal to or less any increase in the retail prices index (also calculated as a percentage) or any other statistical measure of inflation published by any government body authorised to publish measures of inflation from time to time, in the 12 month period before any increase shall not constitute a material detriment to You.
- 15.4** Subject to clause 15.2, We may also from time to time vary:
- the Charges; and/or
  - the prices, terms and conditions set out within the Price Guide.
- Where the Charges are set out in the Order, such variation shall take effect from the date the variation is notified to take effect to You. You agree that variations to the Price Guide shall take effect from the date the variation is published at [www.zen.co.uk](http://www.zen.co.uk) and that such publication shall constitute adequate notification of the variation. It shall be the responsibility of You to review the Price Guide periodically. We recommend that the review of the Price Guide is carried out by You no less than every 30 days.
- 15.5** Subject to clause 18.2, We may at any time, withdraw any Service or Equipment where it is either no longer able to provide the Service or Equipment because its nominated third party supplier no longer provides the Service or Equipment to Us, or where We have decided that the Service or Equipment is no longer suitable to Our business operations, provided We give You at least 60 days' notice of such withdrawal. You shall not be liable to pay any Termination Charges in respect of the relevant Service or Equipment where We exercise Our rights under this clause.

## 16. Suspension

- 16.1** We may, without liability to You, suspend Your and/or any or all Users' access to any relevant part, or where necessary all, of the Services:
- during any technical failure, modification or maintenance of the Network;
  - upon instruction by emergency services or any government, regulatory or appropriate authority; or
  - where necessary to safeguard the integrity and security of the Network or to reduce fraud.
- 16.2** We shall use Our reasonable endeavours to keep any suspensions under clause 16.1 to a minimum, to provide prior notice where possible and to restore the Services as soon as reasonably practicable.

- 16.3** Where a User has caused You to be in breach of any of Your obligations under clause 9, We may suspend the Services to that specific User, but where practicable shall use Our reasonable endeavours to notify You in advance of such suspension to allow the opportunity for the alleged breach to be remedied.
- 16.4** Without prejudice to Our other rights under this Agreement, We may additionally suspend Your and/or all the Users' access to the relevant Service(s) where We have not received payment of outstanding Charges (including any accrued interest) within 7 days of the due date of the invoice, and where those Charges are not being disputed in good faith, or where any agreed credit limit on the Charges has been exceeded by You.
- 16.5** You shall remain liable for all Charges during any period of suspension, and where the suspension has been implemented under clauses 16.3 or 16.4, You shall also pay all reasonable costs and expenses incurred by Us in the implementation of the suspension and a Suspension Lifting Fee per suspended SIM Card. We shall restore the Services as soon as the circumstances which gave rise to the suspension are remedied.

## 17. Termination

- 17.1** Subject to clause 18.3 You may terminate this Agreement in whole or in part and may Disconnect any individual Connection at any time by giving Us 30 days' written notice.
- 17.2** We may terminate this Agreement in whole or in part by giving You 30 days' written notice, provided such notice does not expire before the end of the Minimum Agreement Term.
- 17.3** Either party may terminate this Agreement in whole or in part at any time by notice in writing if the other party:
- a) is in material or persistent breach of any of the terms of this Agreement, by giving written notice specifying the breach and (if capable of remedy) requiring it to be remedied. If the breach is not remedied within 30 days of the date of the notice, this Agreement shall end on the expiry of the 30 day notice period. If the breach is not remediable, termination will take effect immediately; or
  - b) becomes subject to an Insolvency Event.
- 17.4** You may terminate a Service or an order for Equipment without liability for Termination Charges by giving Us 30 days' written notice where We have varied the terms of, or increased the Charges under, this Agreement pursuant to clause 15 in relation to that specific Service or Equipment to Your material detriment .. This right to terminate ends 60 days after the date on which the variation became effective.
- 17.5** You shall notify Us immediately in the event You undergo a change of control and We shall have the right to terminate the Agreement by giving at least 30 days' written notice to You in the event of such change of control, provided that We exercise Our right of termination within 6 months of receipt of Your notice. For the purposes of this sub-clause, "control" shall have the meaning given in section 1124, Corporation Tax Act 2010.
- 17.6** In deciding whether to exercise the right to terminate under clause 20.5 We will particularly consider whether:
- a) the new controlling entity is of the same financial standing as You;
  - b) the overall commercial position for Us remains the same after the change of control;
  - c) the new controlling entity is a UK registered company.

## 18. Consequences of Termination

- 18.1** Upon expiry or termination of this Agreement (in whole or in part) for any reason, the following shall apply (and where terminated in part, shall apply to that part) subject to clause 18.2:
- a) You shall pay all Charges due and payable at the relevant date;
  - b) You shall pay any Termination Charges which are due in accordance with clause 18.3;
  - c) where the Agreement includes a Minimum Spend requirement You shall pay Us any outstanding Minimum Spend in accordance with the Order;
  - d) any unused Airtime Fund to which You is contractually entitled to at the date of termination shall be offset by Us against the outstanding Charges. Any unused Technology Fund is forfeited.
  - e) We shall no longer supply and You shall immediately cease to use the Services (except for We Software embedded in such Equipment to which You has title: (i) which cannot reasonably be removed or deleted from that Equipment; (ii) to the extent strictly necessary for the ongoing use of that Equipment; and (iii) subject to clause 24.3) and You's Connections will be Disconnected;
  - f) we both must promptly on request return or destroy all Confidential Information (except that We may retain such information where required for regulatory purposes) and also return any property belonging to the other (and where requested provide written confirmation of this); and
  - g) all Equipment in which title has not passed to You must be returned to We in full working order. Where it is not returned, or if in our reasonable opinion is not returned in good working order, Customer must pay the List Price for such Equipment.
- 18.2** Notwithstanding the above, where all or part of this Agreement has been terminated:
- a) by You pursuant to clause 20.3a (material or persistent breach), clause 20.3b (insolvency) or clause 20.4 (variations);
  - b) by Us under clause 20.5 (change of control); or
  - c) by either You or Us under clause 29.5 (events outside parties' reasonable control),
- You shall only be obliged to pay the Charges due up until the date of termination. Where the Agreement includes a Minimum Spend requirement, You shall pay Us a pro-rated sum in accordance with the Order. Termination Charges will be payable in accordance with the Order where a Service(s) is terminated or a Connection(s) is Disconnected prior to completion of its Minimum Connection Period:
- a) by You under clause 17.1; or
  - b) by Us under clause 14.3 or clause 17.3.
- You acknowledge that the Termination Charges represent a genuine pre-estimate of the loss suffered by Us due to early termination, having regard to the overall commercial deal between You and Us, and that the Termination Charges do not represent a penalty. Where applicable You acknowledge and agree that You will be liable for Termination Charges in respect of both the New Facility and the Base Facility in the event that the Base Facility is terminated during the Minimum Connection Period.
- 18.3** We will provide reasonable assistance to You in accordance with standard telecommunications industry practice in relation to any transfer of Services to another telecommunications operator.
- 18.4** Termination or expiry of this Agreement (or any part of it) will not affect either Yours or Our accrued rights or liabilities and provisions of this Agreement which are intended by their nature to survive termination shall continue in force (including clauses 17, 18, 19, 20, 21, 22, 25 and 26) together with any other provisions necessary for their enforcement or interpretation.

## 19. Liability

- 19.1** The express terms of this Agreement are in lieu of all warranties, conditions and other terms implied by statute, common law, custom, trade, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law, including any implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 19.2** Subject to clause 19.3:
- a) the total liability of each party under or arising in connection with this Agreement in contract, tort (including negligence), breach of statutory duty or otherwise, will be limited to the greater of £100,000 or 100% of the Charges paid or payable by You in the first 12 months of this Agreement;
  - b) Our liability for a failed SIM Card is limited to the cost of a replacement SIM Card; and
  - c) neither You or Us will be liable to the other in contract or tort (including negligence) or otherwise for:
    - (i) any loss (whether direct or indirect) of profit, business, contract, use, anticipated saving or revenue, goodwill, production, business interruption, wasted expenditure,
    - (ii) any loss or corruption of data or software, or
    - (iii) any indirect or consequential loss or damage whatsoever arising under or in connection with this Agreement.
- 19.3** Nothing in this Agreement limits or excludes:
- a) either Yours or Our liability for death or personal injury caused by the negligence of its employees, agents or sub-contractors, for fraud or fraudulent misrepresentation or for any other matter in respect of which liability cannot lawfully be limited or excluded; or
  - b) Your obligation to:
    - (i) pay the Charges or refund any Credits;
    - (ii) pay any Termination Charges; or
    - (iii) meet any Minimum Spend requirement.
- 19.4** We will not be liable for any breach of this Agreement to the extent that any delay or failure by Us to perform Our obligations results from: (a) an act, omission or delay of You, Your agents, sub-contractors, consultants or employees resulting in negligence or breach of law, or which is contrary to the terms of this Agreement; (b) acts, omissions or negligence of other providers of telecommunication services, except where such providers are Sub-contractors; or (c) acts, defaults, omissions or negligence of third party suppliers or manufacturers, except where such providers are Sub-contractors.

## 20. Intellectual Property

- 20.1** All Intellectual Property Rights used by or subsisting in the Services and Equipment shall remain the sole property of Us or (as the case may be) the relevant third party rights owner.
- 20.2** Where Intellectual Property Rights are created during or as a result of the supply of the Services and Equipment to You, these Intellectual Property Rights shall be owned by Us or the third party rights owner as applicable. This clause shall not transfer the ownership of any Intellectual Property Rights created or owned by You as a result of the receipt and ordinary use of the Services and such Intellectual Property Rights shall be owned by You.
- 20.3** You must not:
- a) do anything or allow anything to be done which might jeopardise Ours or Our licensors' Intellectual Property Rights;
  - b) dispute or challenge the rights of the relevant third party rights owner;
  - c) apply for, or obtain, registration in any country of any trade or service mark or any other Intellectual Property Rights which consist of, or comprises of, or are confusingly similar to, the trademarks or Intellectual Property Rights of Zen or Our licensors.

- 20.4** Subject to the provisions of clauses 19, 20.5 and 20.6 We agree to indemnify You during the term of this Agreement against all losses, liabilities (including provision for contingent liabilities), fines, damages, costs and expenses including reasonable legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties (“Losses”) to the extent suffered by, incurred by or awarded against You directly as a result of any proven third party claim that the Services or Zen Software infringes that third party’s Intellectual Property Rights.
- 20.5** You shall only have a right to claim the benefit of the indemnity under the above clause where You:
- a) have complied with the terms of this Agreement in all material respects;
  - b) have promptly notified Us in writing of any complaint or event which Your or Your staff have become aware of which has the potential to lead to a claim being made;
  - c) immediately gives Us sole control to defend all claims and all settlement negotiations relevant to potential Losses being incurred in respect of a claim conducted with any relevant third party, subject to Us agreeing to provide prompt and regular consultation to You;
  - d) provide Us with reasonable assistance in defending such claim (at Our expense); and
  - e) uses all reasonable endeavours to minimise and mitigate its Losses in connection with a claim.
- 20.6** We will not indemnify You against any claim where You have operated or used the Services or Zen Software in conjunction with any other equipment, device, services or software not supplied by Us under this Agreement in such a way that has resulted in or been material in the causation of the claim.

## 21. Software License

- 21.1** The Services and Equipment provided under this Agreement may contain or use Zen Software or End User Licensed Software. Where Zen Software is provided, We grant You a non-exclusive, revocable, non-transferable licence (without the right to sub-licence) to use any such Zen Software in object code form for the purpose of properly accessing the Services in accordance with this Agreement. Any End User Licensed Software provided or accessed shall be governed by the terms of the relevant licence which shall comprise Your sole rights and remedies in respect of such End User Licensed Software.
- 21.2** If You do not accept the licence terms relating to the End User Licensed Software, You shall not use the relevant feature of the Service to which the End User Licensed Software relates and We shall not be required to deliver the relevant Service. You shall indemnify Us and keep Us indemnified in full and on demand for any claim or for any losses incurred or suffered by Us (including any legal costs) arising from Your failure of to comply with the terms of the End User Licensed Software or Zen Software.
- 21.3** The licence granted under this Agreement to use Zen Software may be terminated if You dispute the ownership of any Intellectual Property Rights under this Agreement, fail to comply with any of this Agreement or if the continued use or possession of the Zen Software infringes the rights of any third party. The licence shall further be subject to You undertaking:
- a) not to copy, reproduce, translate, adapt, vary, modify, sub-licence, decompile, reverse engineer or create derivative works from or allow any third party access to any Zen Software (or any part of it) unless expressly permitted to do so by Us or by relevant law; and
  - b) not to use the Zen Software with anything other than the Equipment, unless otherwise expressly specified or approved by Us.
- 21.4** Zen Software delivered to You by electronic means cannot be reissued and You shall ensure that correct email addresses are provided for these purposes and that any firewall or other protection will not prevent such delivery.

## 22. Confidentiality

- 22.1** Each party undertakes that it shall not at any time during this Agreement, and for a period of 3 years after termination of this Agreement, disclose to any person the terms of this Agreement or any Confidential Information, except as permitted by clause 25.2.
- 22.2** Disclosure of Confidential Information is permitted:
- a) by each party to such of its employees, officers, representatives, advisers, contractors and suppliers who need to know such information for the purposes of the implementation and/or performance of this Agreement, provided always that the disclosing party ensures such recipients comply with this clause 25;
  - b) as may be required by law, court order or any governmental or regulatory authority;
  - c) by Us to any debt collection agency, credit reference agency, credit or fraud monitoring scheme, security agency or credit provider of any information relating to Yours account and performance under this Agreement, and to Us, for fraud prevention, credit checks, debt recovery, crime and money laundering prevention and account management;
  - d) by Us as may be permitted pursuant to Data Protection Legislation;
  - e) with the consent of the disclosing party;
  - f) to the extent that information has come into the public domain through no fault of the receiving party; and/or

## 23. Data Protection

- 23.1** You shall ensure that Users' Personal Data is accurate and up to date when disclosed to Us.
- 23.2** You shall ensure that You have obtained all necessary consents under Data Protection Legislation to disclose its Users' Personal Data to Us and for Us to process Users' Personal Data for the purpose of this Agreement.
- 23.3** Each party shall comply with its obligations under Data Protection Legislation in respect of any Personal Data processed under this Agreement. You acknowledge and agree that We are the Data Controller of Users' Personal Data generated by Us providing the Services including without limitation Call Data Records.
- 23.4** We will process Users' Personal Data:
- a) for the provision of the Services (and for these purposes We may share such Personal Data with Our suppliers, Sub-contractors and service providers
  - b) for the purpose of fulfilling Our obligations under this Agreement;
  - c) as may be required by law, court order or any governmental or regulatory authority; and
  - d) in accordance with Our privacy policy (as amended from time to time and which is available at [www.zen.co.uk](http://www.zen.co.uk) and You agree that You will bring Our privacy policy to the attention of Your Users.
- 23.5** We shall implement appropriate technical and organisational security measures against unauthorised or unlawful processing of Users' Personal Data and against accidental loss or destruction of, or damage to, Users' Personal Data.
- 23.6** We may share Your information and Users' Personal Data with service providers acting on behalf of Us for marketing purposes. You agree to Us and/or Our service providers keeping You and Your Users informed about Zen and third party products, services and offers. We, or a service provider acting on behalf of Us may contact You and Your Users by telephone, mail or electronically, online or via any other interactive media, to let You and/or Users know about Zen or third party products, services and offers that may be of particular interest.
- 23.7** We shall not transfer any Personal Data disclosed by You to Us to any country outside of the European Economic Area unless We ensure that such data is subject to an adequate level of protection in accordance with the Data Protection Act 1998.

- 23.8** Any disclosure of Users' Call Data Records by Us to You will be subject to You completing and submitting to Us a request for those records, Zen's policies for disclosure of Call Data Records as amended from time to time and any applicable legal and regulatory restrictions. Any request must be in writing using Zen's current standard format (which is available on request).
- 23.9** Nothing in this Agreement shall prevent Us from processing User's data for internal business analytics purposes and for products and services offered to third parties provided that such data will only be shared with third parties in a form that does not enable the third party to identify an individual User.

## 24. Credit Security

- 24.1** We may carry out credit assessments of You with licensed credit reference agencies when an application is made to Us for the provision of any Services and/or Equipment and as reasonably required during the term of this Agreement (including when additional Services or Equipment are requested). Such agencies will record Our search.
- 24.2** We can at Our sole discretion decide whether Your credit status is acceptable and reserves the right to refuse to supply and/or limit the supply of a particular Service and/or Equipment, or to impose a credit limit on Your account in the event Your credit status changes.
- 24.3** At Your request, We will provide details of the credit reference and fraud prevention agencies that We share information with.
- 24.4** We will not carry out personal credit assessments of any individuals associated with you without the prior consent of such individuals.
- 24.5** We may request that You lodge a deposit for such sum as We may deem appropriate in the following circumstances:
- a) prior to the provision of particular Services or Equipment, or Connection of a particular Device;
  - b) before reinstating Services after any suspension; or
  - c) if We at Our sole discretion decides that Your credit status is unacceptable following a credit assessment.
- 24.6** Deposits taken by Us under clause 27.5 will be held for 12 months from the date of receipt, or (if earlier) until the termination of this Agreement, and then refunded to You upon request. We do not pay interest on deposits. We may set off deposits against any amount owed by You to Us under this Agreement. Any balance left after such set off will be refunded to You by way of a credit to Your account.

## 25. Legal Compliance

- 25.1** Each party shall:
- a) comply with all applicable laws, statutes, regulations, codes and guidance relating to anti-bribery and anti-corruption ("Anti-Bribery Laws"), including without limitation the Bribery Act 2010 and shall not do, or omit to do, any act that will cause the other party to be in breach of the Anti-Bribery Laws;
  - b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
  - c) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement; and

d) maintain throughout the term of this Agreement its own anti-bribery policies and procedures including without limitation adequate procedures (within the meaning of section 7(2) Bribery Act 2010) to ensure compliance with the Anti-Bribery Laws and shall enforce such policies and procedures where appropriate.

- 25.2** The Equipment and/or Software may be subject to export control laws and regulations. You agree to comply with any applicable export laws, regulations, prohibitions or embargoes of any country and agrees to obtain written authority from the relevant licensing authority where necessary.
- 25.3** We do not represent that any necessary export approvals and/or licences have been obtained or will be granted in respect of the Equipment or the Software.
- 25.4** You are responsible under Regulation 9 of the Waste Electrical and Electronic Equipment Regulations 2013 ("WEEE Regulations") for the costs of collection, treatment, recovery, recycling and environmentally sound disposal of any Equipment that has become waste electrical and electronic equipment. You are responsible for any information recording or reporting obligations imposed by the WEEE Regulations.

## 26. General Terms

### Notices

- 26.1** All notices given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next Working Day delivery service to the address given in this Agreement, or sent by email to the email address on the Order (where sent by You) or to Your Representative's email address set out in the Order. (where sent by Us). We may also send notices to You via Your Representative or Users by text or other form of electronic message to the relevant Device.
- 26.2** All notices will be deemed served 48 hours after they are sent, or on earlier proof of delivery. Notices sent by email, text or other electronic means will be deemed served at the time of transmission.
- 26.3** The provisions of clauses 26.1 and 26.2 shall not apply to the service of any proceedings or to the service of any other documents in any legal action.
- 26.4** In the event that any court makes a declaration of ineffectiveness or orders that the Minimum Connection Period of any Service under this Agreement be shortened, then that Service will be terminated and You shall pay the Termination Charges.

### Transfer of this Agreement

- 26.5** Subject to clauses 26.12 and 26.13, neither You or Us shall assign, transfer, mortgage, charge, sub-contract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 26.6** We may novate this Agreement or assign any of Our rights hereunder to: (i) any entity or person to whom We transfer the whole or part of Our business. You agree that, within 14 days of a request from Us, You will enter into a novation on terms reasonably requested by Us to give effect to a novation under this clause.
- 26.7** We may sub-contract any of Our obligations under this Agreement provided We remain liable to You to the extent set out in this Agreement for such performance. Where the Agreement requires You to provide information, assistance or access to Us or requires You to comply with Our instructions, You acknowledge that You will be required to provide equal co-operation to Our Sub-contractors.



**Dispute resolution**

- 26.8** The parties shall use their reasonable endeavours to resolve disputes arising from or in connection with this Agreement ("Disputes"). If either You or Us wish to raise a Dispute, it shall notify the other party in writing of the existence and reasons for such Dispute. Your Representative and Our representative shall then meet and use reasonable endeavours to try to resolve the Dispute as soon as reasonably practicable. Where a Dispute arises and cannot be resolved by consultation at senior management level within 30 days of notification, we both may agree to follow an alternative dispute resolution procedure in good faith, sharing the costs and fees equally unless otherwise determined within that procedure.
- 26.9** Nothing in this Agreement prevents either You or Us from seeking a legal remedy through the courts at any time.
- 26.10** Where a party ("Damaged Party") is subject to a third party claim which gives a right of action against the other party ("Liable Party"), the Damaged Party shall promptly notify the Liable Party of the details of the claim and allow (at the Liable Party's expense) the Liable Party to defend or direct the defence of such third party claim and shall provide all reasonable co-operation to avoid or minimise such claim. The Damaged Party must not make any admission of liability, agreement or compromise in relation to the claim unless directed to do so in writing by the Liable Party.