



# Professional services terms & conditions

Issue date: 27 June 2016

These Specific Terms and Conditions are to be read in conjunction with our General Terms and Conditions of Supply.

## 1. Definitions

Except as set out below, all definitions contained within these ISDN Terms and Conditions (the "Terms"), have the same meaning as those set out in the General Terms and Conditions of Supply. "Conditions" means these terms and conditions as amended from time to time in accordance with clause 3.2 below;

**"Contract"** means the contract between Zen and the Customer for the supply of Services in accordance with these Conditions;

**"Customer"** means the person, group of persons or other entity whose name and address is or are set out in the Statement of Works;

**"Deliverables"** means all products and materials developed by Zen in relation to the Services in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts);

**"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**"Order"** the Customer's order for Services as set out in the Customer's written acceptance of the Statement of Works subject to these Conditions;

**"Pre-existing materials"** means materials which existed before the Commencement Date;

**"Services"** means the services to be provided by Zen to the Customer as set out in the Statement of Works;

**"Services Representative"** A Zen manager appointed as responsible party for the Statement of Works and Statement of Works;

**"Statement of Works"** means the document produced by Zen detailing the Services and schedule of work to be carried out by Zen on behalf of the Customer and the Deliverables to be produced by Zen for the Customer;

## 2. Interpretation

**2.1** Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

**2.2** The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

**2.3** Words in the singular shall include the plural and vice versa.

**2.4** A reference to one gender shall include a reference to the other genders.

**2.5** A reference to any party shall include that party's personal representatives, successors or permitted assigns.

**2.6** A reference to a statute, statutory provision or subordinated legislation is a reference to it

as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts; provided that, as between the parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.

**2.7** A reference to “writing” or “written” includes faxes but not e-mail.

**2.8** Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

### 3. Application of Conditions

**3.1** These conditions shall:

3.1.1. apply to and be incorporated in the Contract; and

3.1.2. prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer’s communication with Zen, purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

**3.2** Any variation of the Contract shall be in writing and signed by or on behalf of the parties.

### 4. Basis of Contract

**4.1** The Order constitutes an offer by the Customer to purchase the Services and any Deliverables in accordance with these Conditions.

**4.2** The Order shall only be deemed to be accepted when Zen issues written acceptance of the Order at which point and on which date the Contract shall come into existence (being the “Commencement Date”).

**4.3** Any samples, drawings, descriptive matter or advertising issued by Zen, and any descriptions or illustrations contained Zen’s catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services and any Deliverables described in them. They shall not form part of the Contract or have any contractual force.

**4.4** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**4.5** Any quotation given by Zen shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

### 5. Zen’s Obligations

**5.1** Zen shall use reasonable endeavours to supply the Services and any Deliverables to the Customer in accordance with the Statement of Works in all material respects.

**5.2** Zen shall use its reasonable endeavours to meet the performance dates specified in the Statement of Works, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

**5.3** Zen will appoint a Services Representative who shall have authority to contractually bind Zen on all matters relating to the Services. Zen shall use reasonable endeavours to ensure that the same person acts as Zen’s Services Representative throughout the term of the Contract, but may replace him from time to time where reasonably necessary in the interests of Zen’s business.

**5.4** Zen shall have the right to make any changes to the Services and any Deliverables which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services or any Deliverables, and Zen shall notify the Customer in any such event.

- 5.5** Zen warrants to the Customer that the Services and any Deliverables will be provided using reasonable care and skill.

## 6. Customer's Obligations

**6.1** The Customer shall:

- 6.1.1. ensure that the terms of the Order and any information it provides for the Statement of Works are complete and accurate;
- 6.1.2. co-operate with Zen in all matters relating to the Services, any Deliverables and the Statement of Works and appoint its own representative, who shall have the authority to contractually bind the Customer on matters relating to the Contract;
- 6.1.3. provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, to Zen, its employees, agents, consultants and subcontractors as is reasonably requested by Zen in order to allow it to carry out the Services and provide any Deliverables;
- 6.1.4. provide in a timely manner such information to Zen, its employees, agents, consultants and subcontractors as Zen may request, and ensure that such information is accurate in all material respects;
- 6.1.5. be responsible (at its own cost) for preparing the relevant premises for the supply of the Services and any Deliverables;
- 6.1.6. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
- 6.1.7. keep and maintain all materials, equipment, documents and other property of Zen ("Zen's Materials") at the Customer's premises in safe custody at its own risk, maintain the Zen Materials in good condition until returned to Zen, and not dispose of or use the Zen Materials other than in accordance with Zen's written instructions or authorisation; and
- 6.1.8. comply with any additional obligations as set out in the Statement of Works.

- 6.2** If Zen's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees ("Customer Default"), Zen may suspend performance of the Services until the Customer remedies the Customer Default and in addition the Customer shall be liable to pay to Zen on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Zen confirming such costs, charges and losses to the Customer in writing.

- 6.3** The Customer shall not, without the prior written consent of Zen, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from Zen or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Zen.

## 7. Change Control

- 7.1** The Customer's representative and Zen's Consultancy Representative shall be in contact on a daily basis, or otherwise on a routine basis set out in the Statement of Works, to discuss matters relating to the Statement of Works. If either party wishes to change the scope of the Services or Deliverables, it shall submit details of the requested change to the other in writing.
- 7.2** If either party requests a change to the scope or execution of the Services or Deliverables, Zen shall, within a reasonable time, provide a written estimate to the Customer of:
- 7.2.1. the likely time required to implement the change;
  - 7.2.2. any variations to Zen's charges arising from the change;
  - 7.2.3. the likely effect of the change on the Statement of Works; and

7.2.4. any other impact of the change on the terms of the Contract.

- 7.3** If Zen requests a change to the scope of the Services or Deliverables, the Customer shall not unreasonably withhold or delay consent to it.
- 7.4** If the Customer wishes Zen to proceed with the change, Zen has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, Statement of Works, Statement of Works and any other relevant terms of the Contract to take account of the change.

## 8. Charges and Payment

- 8.1** Clause 8.2 shall apply if the Services are to be provided on a time-and-materials basis. Clause 8.3 shall apply if the Services are to be provided for a fixed price. The remainder of this clause 8 shall apply in either case.
- 8.2** Where the Services are provided on a time-and-materials basis:
  - 8.2.1. the charges payable for the Services shall be calculated in accordance with Zen's standard Rate Card as amended from time to time;
  - 8.2.2. Zen's standard daily fee rates are calculated on the basis of a seven and a half hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
  - 8.2.3. Zen shall be entitled to charge at an overtime rate of 50% of the normal rate for part days and for time worked by members of the project team outside the hours referred to in clause 8.2.2 on a pro-rata basis;
  - 8.2.4. Zen shall ensure that all members of the project team complete time sheets recording time spent on the Statement of Works, and Zen shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 8.2.5; and 8.2.5. Zen shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition.
- 8.3** Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Project Plan or Statement of Works. The total price shall be paid to Zen (without deduction or set-off) in instalments as set out in the Statement of Works on its achieving the corresponding deliverable or on production of the work set out in the Consultancy Report. On achieving a deliverable, Zen shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 9.4.
- 8.4** Any price contained in the Statement of Works excludes the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by Zen in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Zen for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Zen.
- 8.5** The Customer shall pay each invoice submitted to it by Zen in full, and in cleared funds, within 30 days of receipt.
- 8.6** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by Zen to the Customer, the Customer shall, on receipt of a valid VAT invoice from Zen, pay such additional amounts in respect of VAT as are chargeable on the supply of the Services and/or the Deliverables at the same time as payment is due for the supply of the Services.
- 8.7** Without prejudice to any other right or remedy that Zen may have, if the Customer fails to pay Zen on the due date Zen may:
  - 8.7.1. charge interest on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of National Westminster Bank PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or

after any judgement. Zen may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

8.7.2 suspend all Services and provision of the Deliverables until payment has been made in full.

- 8.8** Time for payment shall be of the essence of the Contract.
- 8.9** All payments payable to Zen under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 8.10** Zen may, without prejudice to any other rights it may have, set off any liability of the Customer to Zen against any liability of Zen to the Customer

## 9. Intellectual Property Rights

- 9.1** All Intellectual Property Rights and all other rights in or arising out of or in connection with the Services and any Deliverables or the Deliverables shall be owned by Zen. Zen hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If Zen terminates the Contract under clause 12.1, this licence will automatically terminate.
- 9.2** The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on Zen obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Zen to license such rights to the Customer.

## 10. Confidentiality and Zen's Property

- 10.1** The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Zen or its agents, and any other confidential information concerning the Zen's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to Zen, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 10.2** All materials, equipment and tools, drawings, specifications and data supplied by Zen to the Customer shall at all times be and remain the exclusive property of Zen, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Zen, and shall not be disposed of or used other than in accordance with the Zen's written instructions or authorisation. 10.3. This clause 10 shall survive termination of the Contract, however arising.

## 11. Limitation of Liability

- 11.1** The following provisions set out the entire financial liability of Zen (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
  - 11.1.1. any breach of the Contract;
  - 11.1.2. any use made by the Customer of the Services, the Deliverables or any part of them;
  - 11.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 11.2** All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3** Nothing in these conditions excludes the liability of Zen:
  - 11.3.1. for death or personal injury caused by Zen's negligence;

11.3.2. for fraud or fraudulent misrepresentation.

**11.4** Subject to condition 11.2 and condition 11.3:

11.4.1. Zen shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:

11.4.1.1 loss of profits; or

11.4.1.2 loss of business; or

11.4.1.3 depletion of goodwill or similar losses; or

11.4.1.4 loss of anticipated savings; or

11.4.1.5 loss of goods; or

11.4.1.6 loss of contract; or

11.4.1.7 loss of use; or

11.4.1.8 loss of use or corruption of software, data or information; or

11.4.1.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

**11.5** Zen's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

**11.6** This clause 11 shall survive termination of the Contract.

## 12. Termination

**12.1** Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

12.1.1 the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

12.1.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or

12.1.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

12.1.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

12.1.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or

12.1.6 the other party ceases, or threatens to cease, to trade; or

12.1.7 there is a change of control of the other party; or

12.1.8 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

**12.2** Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

## 13. Consequences of Termination

**13.1** On termination of the Contract for any reason: 13.2 the Customer shall immediately pay to Zen all of Zen's outstanding unpaid invoices and interest and, in respect of Services

and Deliverables supplied but for which no invoice has been submitted, Zen shall submit an invoice, which shall be payable by the Customer immediately on receipt; and 13.3 the Customer shall return all of the Zen's Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Zen may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

## 14. Force Majeure

**14.1** Zen shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Zen or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

## 15. Waiver

**15.1** A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

**15.2** Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## 16. Severance

**16.1** If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

**16.2** If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## 17. Entire Agreement

**17.1** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**17.2** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## 18. Assignment

**18.1** The Customer shall not, without the prior written consent of Zen, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

**18.2** Zen may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

## 19. NO PARTNERSHIP OR AGENCY

**19.1** Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way

(including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 20. Third Party Rights

**20.1** The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

## 21. Notices

**21.1** Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Contract. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## 22. GOVERNING LAW AND JURISDICTION

**22.1** The Contract 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 law of England.

**22.2** 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 the Contract or its subject matter or formation (including non-contractual disputes or claims).