

Zen Internet

## Business Dealer Agreement

Sales

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Classification: Official

## 1. Introduction

These terms apply to Zen's relationship with Dealers who introduce customers which enter a contract for Services with Zen.

## 2. Definitions

|                                    |   |
|------------------------------------|---|
| Standard Terms                     | Zen's terms and conditions applicable to the services and made available by Zen on its website or by other means.   |
| Commencement Date                  | The date Zen accepts an order from the Dealer.  |
| Commission                         | The commission offered by Zen as set out in Band A of the Dealer Prices List is in the Partner Portal, <a href="https://business.zen.co.uk">https://business.zen.co.uk</a> or otherwise provided via email.   |
| Dealer                             | An individual or a business who promotes the Zen Services to End Users in accordance with these Terms.  |
| End User                           | The end user of the services.   |
| Intellectual Property Rights (IPR) | Patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. |
| Mandatory Policies                 | Zen's policies which apply to the services (including Zen's Acceptable Usage Policy) made known to the Dealer by Zen from time to time.   |
| Minimum Commission                 | The minimum amount of Commission achieved by the Dealer for Zen to make payment as set out in the Partner Portal or otherwise advised by Zen.   |
| Partner Portal                     | Zen's web-based application which allows the Dealer to obtain direct access to Zen resources, information, technical details, support, promotions   |

|                  |   |
|------------------|---|
| Services         | The Zen services available to be promoted by the Dealer as may be advised to the Dealer by Zen in the Partner Portal or otherwise.              |
| Promotional Work | The tools, documents or other information provided to the Dealer by Zen (in the Partner Portal or otherwise) for the promotion of the Services. |
| Website          | <a href="http://www.zen.co.uk">www.zen.co.uk</a> or such other website as Zen may notify to the Dealer from time to time.                       |

### 3. Appointment as Dealer

- 3.1. With effect from the Commencement Date, Zen appoints the Dealer as its non-exclusive Dealer for the promotion and sale of contracts for the supply of Services.
- 3.2. Zen authorises the Dealer to promote and take orders from End Users for the Services and on behalf of Zen, without prior reference to Zen, but only on Zen's Standard Terms and the Dealer shall be entitled, during the term of his appointment, to describe itself as a Dealer of Zen Services.
- 3.3. Zen shall be free to market Services and to make offers or quotations to or negotiate with or sell the Services to any person in any territory without any obligation to pay Commission to the Dealer.

### 4. Dealer Obligations

- 4.1. The Dealer shall:
- (a) Look after the interests of Zen and act conscientiously and in good faith and not do anything which might reflect upon the integrity or goodwill of Zen;
  - (b) Comply with all reasonable and lawful instructions of Zen concerning the marketing and sale of the Services.
  - (c) Be responsible for its use of the Partner Portal and ensure it keeps any passwords issued to the Dealer by Zen safe and secure.
  - (d) Endeavour to promote and obtain orders for the Services and all in dealings relating to the Services shall clearly indicate to End Users he/she is acting as a Dealer for the Services;
  - (e) Shall not, without Zen's prior written consent, make or give any representations, warranties or other promises concerning the Services beyond those contained in Zen's Standard Terms;
  - (f) Submit to Zen all orders and enquiries for the services promptly (either through the Partner Portal or by telephone or email) in accordance with the process advised to it by Zen) and in sufficiently full and accurate detail as to enable Zen to respond to such orders and enquiries without delay; and

(g) Provide End Users such after sales services and advice as may reasonably be requested by them.

4.2. Except as authorised by Zen in these Terms or otherwise in writing, the Dealer shall not act in a way which will incur any liabilities on behalf of Zen nor pledge the credit of Zen.

4.3. If a Dealer accepts charges on behalf of an End User, the Dealer shall be liable to pay those charges if the End User does not pay.

## 5. Sale Of Services

5.1. All orders for Services placed by the Dealer shall be at Zen's list prices or rates as specified in the price lists provided from time to time by Zen to the Dealer for this purpose, subject to any discounts or deductions as Zen may allow.

5.2. All orders for Services placed by the Dealer shall be on Zen's Standard Terms or on any other terms and conditions that Zen may at any time specify in writing to the Dealer.

5.3. The Dealer shall, when dealing with customers and prospective customers for the Services, bring their notice Zen's Standard Terms and any applicable usage policies so as to incorporate them into each sale contract.

## 6. Zen's Rights and Obligations

6.1. Zen shall always act in good faith in its relations with the Dealer.

6.2. Zen shall supply the Dealer, at Zen's expense, with any Promotional Tools and Collateral (in digital or hard copy format) and any technical and other support that the Dealer may from time-to-time reasonably require for the purposes of promoting and selling the Services and to enable it properly and efficiently to discharge its duties under these Terms.

6.3. Zen shall deal promptly and efficiently with any complaint, dispute or post-supply enquiry relating to the Services raised by a customer who has contracted with Zen through the Dealer.

6.4. Where appropriate, Zen shall inform the Dealer within reasonable time if any customer order placed by the Dealer will not be performed by it, and of the reason for that non-performance.

6.5. Zen may, at its absolute discretion to refuse to accept any order or give any quotation in respect of the services. Zen shall inform the Dealer within a reasonable period of its acceptance or refusal of any order placed by the Dealer but any failure to notify the Dealer shall not be deemed proof of acceptance;

6.6. Zen may modify, change, or discontinue any or all of the Services at any time with immediate effect upon giving notice to the Dealer and/or End User in accordance with the Standard Terms.

6.7. Zen may promote and advertise the Services by such means as it sees fit.

## 7. Commission and Payment

- 7.1. Zen shall, pay to the Dealer the applicable Commission for each accepted order for Services placed by an End User (or by the Dealer on behalf of an End User) which result from the promotion of the Services by the Dealer.
- 7.2. No Commission shall be payable by Zen at any time unless and until the aggregate value of commission accrued since the last payment of commission by Zen is in excess of the Minimum Commission;
- 7.3. Following the end of each calendar month Zen shall send the Dealer a statement setting out the previous calendar month's transactions, the Commission on those transactions and the aggregate Commission payable to the Dealer.
- 7.4. The Dealer shall issue an invoice to Zen (in a form suitable for VAT purposes) for the commissions due to the Dealer within 30 days of receipt of the statement of Commission sent by Zen in accordance with Clause 7.3 above.
- 7.5. Zen shall pay the Dealer the Commission within 30 days of receipt by Zen of the Dealer's invoice.
- 7.6. Payment of Commission shall only be made by BACS transfer to such account of the Dealer as notified in wiring to Zen by the Dealer.
- 7.8. All amounts referred to in these Terms are stated exclusive of VAT which shall be also payable at the rate specified by law from time to time.
- 7.9. Payment shall only be deemed received by Zen from the Dealer or End User on receipt by Zen of cleared funds. All payments shall be made in full without any deduction on any grounds.
- 7.10. Dealers will not receive Commission on Services ordered before becoming a Dealer.
- 7.11. If any Services are cancelled by an End User before the expiry of any minimum period applicable to that Service as set out in the Standard Terms or otherwise, no Commission shall be payable to the Dealer. If Zen has paid any Commission to the Dealer for that cancelled service, it shall be repayable by the Dealer.

## 8. Promotional Material

- 8.1. Zen grants to the Dealer a non-exclusive limited right to use the Promotional Material solely for the purposes of advertising and marketing the Services.
- 8.2. All use by the Dealer of the Promotional Material shall be in accordance with any guidance or instructions issued by Zen from time to time.
- 8.3. The Dealer shall not use any trademark or trade names or other IPR which resemble the trademarks or IPR of Zen and which would therefore be likely to confuse or to mislead the public.
- 8.4. The Dealer will make a statement in any advertising material and promotion literature produced by or for it in connection with the Services as to the ownership of any

trademarks used or referred to. The content of any such statement must be approved by Zen in advance of its use.

8.5. The Dealer agrees and acknowledges that Zen is the owner of the Zen name and logo(s) and all IPR in the Promotional material shall be and remain the exclusive property of Zen.

8.6. To the extent that any Zen IPR is contained in any of the Promotional Material, sale, marketing, or training materials produced by Zen grants to the Dealer a non-exclusive, royalty-free, non-transferable licence to use such Zen IPR only to the extent such use is required to fulfil their obligations under these Terms.

## 9. Compliance with Laws and Policies

9.1. Each party shall at its own expense comply with all laws and regulations relating to its activities under these Terms, as they may change from time to time.

9.2. The Dealer shall comply with Mandatory Policies as Zen may update them from time to time.

9.3. The Dealer shall:

- (a) Comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but limited to the Bribery Act 2010 (Relevant Requirements).
- (b) Not engage in any activity, practice, or conduct which would constitute an offence under the Bribery Act 2010 if that activity, practice, or conduct had been carried out in the UK.
- (c) Promptly report to Zen any request or demand for any undue financial or other advantage of any kind received by the Dealer in connection with activities under these Terms.

## 10. Data Protection

10.1. Definitions.

- (a) *Agreed Purposes*: promotion and sale of the Services to End Users.
- (b) Controller, data controller, processor, data processor, data subject, personal data, processing, and appropriate technical and organisational measures; are set out in the Data Protection Legislation in force at the time.
- (c) *Data Protection Legislation*: (i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and: (II) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law.
- (d) *Permitted Recipients*: the parties to these Terms, the employees of each party and any third parties engaged to perform obligations in connection with these Terms.

(e) *Shared Personal Data*: shall be confined to the following categories of information relevant to the following categories of data subject:

- The names of current and potential End Users;
- Their geographic and email address;
- Their home and mobile telephone numbers; and
- Their itemised call data records.

10.2. The provisions which follow set out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for those Agreed Purposes. Each party shall:

- (a) ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
- (b) give full information to any data subject whose personal data may be processed under these Terms of the nature of that processing. This includes giving notice that, on the termination of these Terms, personal data relating to them may be retained by Data recipient.
- (c) process the Share Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by these Terms.
- (f) process no other personal data acquired in connection with these Terms other than the Shared Personal Data;
- (g) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damaged to, personal data.
- (h) not transfer any personal data outside of the European Economic Area unless prior written consent of the data subject has been obtained and the following conditions are fulfilled:
  - The data subject has enforceable rights and effective legal remedies with regard to the transferred personal data;
  - The transferring party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred.

10.3. Each party shall comply with the Data Protection Legislation and agrees that any material breach of the Data Protection Legislation shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate these Terms with immediate effect.

10.4. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- (a) allow the other party to approve and, if the other party deems necessary, to amend any notices given to data subjects in relation to the Shared Personal Data.
- (b) promptly inform the other party about the receipt of any data subject access request;
- (c) provide or release any Shared Personal Data in response to a data subject access request without first consulting with and obtaining the consent of the other party.
- (d) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (f) at the written direction of any data subject, delete or return all personal data to the data subject unless required by law to store the personal data;
- (g) use compatible technology for the processing of Shared Personal Data to ensure there is no lack of accuracy resulting from personal data transfers;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10; and
- (i) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

10.5. Each party shall indemnify the other against all claims and proceedings and all liability, loss, costs and expenses incurred by the other as a result of any claim made or brought by a data subject or other legal person in respect of any loss, damage or distress caused to them as a result of any breach by the other party of the Data Protection Legislation by that party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such a claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

## 11. Limited Liability

11.1. The following provisions set out the entire liability of Zen (including any liability for the acts or omissions of its employees, agents and/or sub-contractors) in respect of any breach of these Terms, any claim under an indemnity, any breach of statutory duty, any representation, or tortious act or omission (including, but without limitation, negligence) or otherwise arising under or in connection with:

- (a) any of the Services or supply or failure or delay in supply of the Services;
- (b) any breach of any of the express or implied terms of these Terms;
- (c) any use made or resale by the Dealer of the Partner Portal, any of the Services or of any product incorporating any of the Services; and

- (d) any statement made or not made, or advice given or not given by or on behalf of Zen or otherwise in relation to these Terms.
- 11.2. Zen shall not be liable for any loss of profit, loss of anticipated profit, loss of business, loss of contract, economic loss, overhead recovery, anticipated savings, loss of data, depletion of goodwill, product recall no for any special, indirect, or consequential loss or damage, or otherwise for any costs, expenses or claims for consequential compensation whatsoever (however arising).
- 11.3. Zen excludes to the fullest extent permitted by law all conditions, terms, warranties, and stipulations, express (other than those set out in these Terms) or implied, statutorily, customarily, or otherwise which, otherwise would or might subsist in favour of the Dealer.
- 11.4. Despite the provisions of clause 11.3, nothing in these Terms shall operate to exclude or limit the liability of Zen:
- (a) for death or personal injury cause by Zen's negligence.
  - (b) for fraud; or
  - (c) for any obligation implied by law which cannot lawfully be excluded or limited.
- 11.5. The total liability of Zen in respect of all other loss or damage arising under or in connection with this agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of unpaid Commission due to the Dealer under the agreement.
- 11.6. The liability of Zen arising in connection with the supply of Services shall be as set out in Standard Terms.
- 11.7. The provisions of this Clause shall survive the termination or expiry (for whatever reason) of the Dealers appointment.

## 12. Termination

- 12.1. Zen shall have the right at any time by giving notice in writing to the Dealer to suspend or terminate the Dealers appointment with immediate effect if:
- (a) the Dealer is considered by Zen to no longer be suitable as a Dealer as a result of but not limited to competition, working practices, customer complaints or nature of business.
  - (b) the Dealer is in breach of any of these Terms; or
  - (c) the Dealer fails to place a qualifying order in 3-month period.
- 12.2. These terms shall terminate automatically if the Dealer
- (a) the dealer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing; or any steps are taken by the Dealer or any other party commences a formal insolvency process in respect to the Dealer (including but not limited to administration, liquidation, receivership, CVA, IVA or bankruptcy);
  - (b) the Dealer ceases to be a Dealer.

## 13. Consequences of Termination

- 13.1. Termination of the Dealers appointment shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of the termination; or the continued existence and validity of any provision of these Terms which are (expressly or by implication) provided to continue in effect after its termination.
- 13.2. On the termination or expiry of these Terms (from any cause) the Dealer shall:
- (a) Immediately cease to promote or advertise the Service or hold itself out as Zen's Dealer.
  - (b) Provide all reasonable assistance to Zen as it may require to enable Zen to provide the Services to End Users or potential End Users; and
  - (c) Immediately cease using the Promotional Materials and any Zen IPR and shall, at Zen's sole option destroy or return to Zen the Promotional materials or any sales, marketing, training, and/or any other materials bearing any Zen IPR.
- 13.3. On termination of these Terms, the provisions of Clause 7 (Commission) shall continue in force in relation to all sales of the Services where the sales have been concluded before the date of termination.
- 13.4. In the event of termination of the Dealers appointment, the Dealer shall have a 6-month period (the "Cut-off Period") to submit a final invoice to Zen for any unclaimed Commission (a "Closing invoice"). Payment of any unclaimed Commission will be made by Zen within 30 days of receipt of the Closing Invoice. For the avoidance of doubt, Zen will not be obliged to pay the Dealer any sums in relation to Closing Invoices which are received after the Cut-off Period.

## 14. General

- 14.1. Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party (other than as expressly provided in Clause 3.2.)
- 14.2. These Terms constitute 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.
- 14.3. Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in these Terms.
- 14.4. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in these Terms.
- 14.5. Nothing in this clause shall limit or exclude any liability or fraud.

14.6. Zen may amend these Terms for operational or technical reason. Where this is necessary Zen will publish details of all changes on its website and or within the Zen Partner Portal and will endeavour to notify the Dealer at least one month before those changes take effect. Where Zen needs to make changes, as soon as possible, for regulatory or legal reasons, Zen may notify the Dealer of those changes as soon as its reasonable practice to do so.

14.7. No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

14.8. The failure to exercise or delay in exercising any right or remedy under these Terms shall not be regarded as a waiver of such right or remedy, or a waiver of other rights and remedies. No single or partial exercise of any right or remedy under these Terms shall prevent any further exercise of the right or remedy or any other right or remedy.

## 15. Notices

15.1. The Dealer shall keep its contact details up to date in the Partner Portal. Any notice or other information provided by Zen to the Dealer in accordance with these Terms will be validly sent if in writing and sent either by email or first-class post to the Dealers last known postal address.

15.2. Any notice given by the Dealer to Zen must be in writing and sent either by first class post to Zen's registered office or to such other address as may be specified by Zen to the Dealer from time to time.

## 16. Governing Law and Jurisdiction

16.1. These Terms shall be governed by the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.