

# Terms & Conditions Mobile

The Customer's attention is particularly drawn to the provisions of clauses 2, (Basis of Contract), 8 (Charges), 12 (Limitation of liability), 13 (Termination) and 14 (Consequences of Termination).

## 1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

### 1.1 Definitions:

**Account:** the Customer's account for the provision of Services and/or Mobile Equipment under the Contract, set up by Zusi which may or may not have a specific account number.

**Administration Fee:** the amount of £50 per Line.

**Application form:** any application form issued by Zusi to the Customer detailing the Services and subsequently signed (electronically, digitally or otherwise) by or on behalf of the Customer.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Buyout:** has the meaning set out in clause 10.2.

**Cancellation Fees:** the Term Fees, the return of any Buyout paid by Zusi to or on behalf of the Customer, the return of any Deal Incentives paid by Zusi to the Customer (including invoice credits) and the recommended retail price (as at the Commencement Date) of any Mobile Equipment provided by or on behalf of Zusi to the Customer (including Mobile Equipment subject to a Mobile Equipment Leasing Contract) and the Administration Fee.

**Charges:** the charges detailed at clause 8.

**Commencement Date:** means the date upon which the Contract is signed by or on behalf of the Customer (including any electronic signature).

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.8.

**Contract:** the contract between Zusi and the Customer that is made up of these Conditions and the Order for the supply of Services and/or Mobile Equipment.

**Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

**Customer:** the party Zusi contracts with to provide the Services and/or Mobile Equipment.

**Deal Incentive:** a monthly discount offered by Zusi to the Customer as against the full charges for the Services for the amount specified in the Order.

**Delivery Location:** has the meaning given in clause 3.4.

**Fair Usage Policy:** the fair usage policy of Zusi detailed at Zusi's website at [zusi.co.uk](http://zusi.co.uk).

**Force Majeure Event:** has the meaning given to it in clause 17.

**Grade A Condition:** excellent condition, small insignificant scratches or marks, full working order.

**Hardware Fund:** a fund for Mobile Equipment to the maximum value specified in the Order.

**Zusi:** means Zusi Limited, trading as Zusi , of Lymedale Business Centre Hooters Hall Road Newcastle-Under-Lyme ST5 9QF registered in England with company number 09114925.

**Line:** a mobile communications telephone number commencing with the numbers 07.

**MDM:** mobile device management including MaaS360 or similar services.

**Minimum Period:** the minimum period of the Contract of 2 years from the Commencement Date or connection of all the Services (whichever is the latter) or such other longer period as may be specified in the Order or the Network Contract (including, but not limited to, a period referred to in the Order as contract length, length, term, minimum term, period or contract period).

**Mobile Equipment:** any mobile or wireless device, handset, tablet, USB data drive, data card, memory card, SIM card or similar device or card provided to the Customer under the Contract and or the Mobile Equipment Leasing Contract for use in connection with the Services.

**Mobile Equipment Leasing Contract:** the mobile equipment leasing contract between the customer and a third party whereby some or all of the Mobile Equipment detailed in the Order is to be financed by and/or leased via a third party.

**MVNO Services:** means services whereby Zusi are leasing telephone and data spectrum from a Network Provider acting as a mobile virtual network operator (under the name Zusi Mobile or any other name operated by Zusi Telecommunications Ltd) and the provision of telecommunications and data services which does not require the Customer to enter in to a separate Network Contract in addition to the Contract.

**Network Contract:** a contract entered or to be entered in to between the Customer and a Network Provider in addition to the Contract for the provision of Network Services

**Network Provider:** means a third party telecommunications network provider including, but not limited to EE Limited, Plan Communications Ltd, Vodafone Limited or Telefonica UK Ltd (O2).

**Network Services:** the supply of telecommunications or data services provided by a Network Provider.

**Order:** the Customer's order for the supply of Services and/or Mobile Equipment, as set out in the Application Form or Purchase Order.

**Purchase Order:** any purchase order issued by Zusi to the Customer detailing the Services and subsequently signed by or on behalf of the Customer.

**RPI Rate:** the retail prices index rate published by the Office for National Statistics.

**Services:** the services supplied by Zusi to the Customer as set out in the Order including, but not limited to MVNO Services or the procurement of Network Services.

**Small Business Customer:** a Customer with not more than 10 employees.

**Term Fees:** in respect of MVNO Services, the fees calculated by multiplying the remaining number of months of the Minimum Period by the monthly charges for the Services or £250 per Line whichever is the higher amount; or in respect of any Network Services, sixty per cent of the monthly fees payable under the Network Contract calculated by multiplying the remaining number of months of the Minimum Period by the monthly fees payable under the Network Contract or £250 per Line whichever is the higher amount (and in either case, whether MVNO Services or not, the monthly charges to be multiplied by the remaining number of months of the Minimum Period shall be the full monthly charges specified in the Order and exclusive of any Deal Incentive).

**Verification Call:** a telephone call between Zusi and the Customer whereby Zusi summarise the Contract including but not limited to summarising the Services, Charges, Mobile Equipment and Minimum Period and the Customer confirms the accuracy of the same.

## **1.2 Interpretation:**

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Basis of contract: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

**2.1** The Contract starts on and is effective from the Commencement Date, shall renew in accordance with clause 15 and shall continue until terminated by either party in accordance with these Conditions.

**2.2** Where applicable and where a Network Provider rejects the Network Contract and/or refuses to enter in to the Network Contract (on or after the Commencement Date), the Contract shall remain in full

force and Zusi may elect to provide the services in place of the Network Provider (on an MVNO basis) or shall use reasonable endeavours to procure Network Services from an alternative Network Provider on similar terms to the Network Contract whereupon the Customer shall be obliged to co-operate in entering in to an alternative Network Contract. If the Customer refuses to sign an alternative Network Contract, contrary to this clause 2.2 or fails to do so within 14 days of a request by Zusi to sign an alternative Network Contract, Zusi shall be entitled to terminate the Contract and clause 14 shall apply.

**2.3** Where a Network Provider or the relevant Mobile Equipment Leasing Contract provider insists on the payment of a deposit as a condition precedent to entering in to the Network Contract or Mobile Equipment Leasing Contract the Customer shall be liable to pay such deposit. If the Customer refuses to pay such deposit, contrary to this clause 2.3 or fails to do so within 14 days of a request by Ice, the Network Provider or the relevant Mobile Equipment Leasing Contract provider, Zusi shall be entitled to terminate the Contract and clause 14 shall apply. At its sole discretion, Zusi may elect to pay a deposit requested by the Network Provider or Mobile Equipment Leasing Contract provider, on behalf of the Customer whereupon Zusi shall be entitled to deduct the value of the paid deposit from any sums due from Zusi to the Customer under clause 9 (Deal Incentives).

**2.4** Ice, the Network Provider (where applicable) or the Mobile Equipment Leasing Contract provider may at any time during the Contract require the Customer to pay a deposit or provide a guarantee as security for the payment of future invoices. If the Customer refuses to pay a deposit or provide a guarantee (or fails to procure a guarantee from a third party) within 14 days of a request, Zusi shall be entitled to terminate the Contract and clause 14 shall apply.

**2.5** Zusi offers no warranty in respect of mobile signal coverage and both parties acknowledge that each of the major Network Providers advertise 98 per cent or more network coverage in the United Kingdom and such coverage cannot be verified by Ice. The Customer acknowledges that prior to signing the Contract, the Customer has taken all reasonable steps to ensure that the mobile network being connected to under the

Contract or Network Contract has sufficient signal or coverage in the Customer's location or locations where the Customer desires a reliable mobile signal.

**2.6** Notwithstanding clause 13 of these Conditions, Zusi may terminate the Contract, without any liability to the Customer, during the first 30

days from the Commencement Date for any reason whatsoever upon providing 7 days' notice to the Customer.

**2.7** 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.

**2.8** Any quotation given by Zusi shall not constitute an offer and is only valid for a period of 10 Business Days from its date of issue. An Application Form or Purchase Order when emailed or sent to the Customer for signature shall constitute an offer. Once signed, the Order shall be strictly in accordance with the Application Form or Purchase Order as transmitted by Zusi and no variations shall be binding unless the Order is signed by a director of Ice. The signatory of the Order, on behalf of the Customer, confirms that they are fully authorised to sign on behalf of & bind the Customer and agrees personal liability for all fees (as though standing in place of and substituting the Customer) should the signatory not, in fact, be so authorised or if the Customer rejects the Contract on grounds that the signatory was not authorised to sign on behalf of the Customer save that the Customer shall be deemed to have approved the Contract and authorised the signatory if the Contract is not rejected by the Customer (on grounds of a lack of authorisation) within 1 calendar month of the Commencement Date.

**2.9** All of these Conditions shall apply to the supply of both Services and Mobile Equipment except where application to one or the other is specified.

**2.10** The Customer acknowledges that the Contract is a business to business contract and warrants that s/he is acting in the course of his or her business, trade or profession.

**2.11** The Customer may specify a spend cap or billing limit upon entering in to the Contract or upon 30 days' notice to Ice. Notwithstanding any agreed spending cap or data cap (or alert) between the Customer and Zusi (and/or the Network where applicable) the Customer hereby accepts full responsibility for data usage plus charges and acknowledges that usage information available to Zusi is provided by third parties, is not live and may be significantly delayed. The Customer further agrees that it shall use its best endeavours to monitor and limit data usage so as not to exceed any contracted allowance or agreed billing limit and a failure to use best endeavours (which as a minimum requirement shall include the use of an 'app' that monitors and records usage) shall represent a material breach of Contract on the part of the Customer which is not capable of remedy

whereupon Zusi shall be at liberty to terminate the Contract with immediate effect and clause 14.2 shall apply.

2.12 The Customer acknowledges that MVNO Services may differ from Network Services, that the provision of text alerts (for usage) and caps are not automatically provided and need to be specifically requested by the Customer (where available). The Customer further acknowledges that access to the Network Provider's online billing or ios/Android applications may not be available.

2.13 The Customer acknowledges that usage of the Services abroad may be very costly and the Customer should check out of bundle rates before travelling. Bundles such as World Traveller Select (also known as WTS) and similar bundles allowing the Customer to use their UK allowance whilst abroad attract a daily charge or set bundle charge (which may be triggered more than once daily) in accordance with the Network Provider's published rates. The Customer agrees to check WTS or other bundle charges for usage abroad before travelling as exceeding the bundle or incurring charges outside of the UK allowance will be very expensive.

2.14 We can introduce you to a limited number of lenders and their finance products which may have different interest rates and charges. We are not an independent financial advisor. We will provide details of products available from the lenders we work with, but no advice or recommendation will be made. You must decide whether the finance product is right for you. We do not charge you a fee for our services. Whichever lender we introduce you to, we will typically receive commission from them (either a fixed fee or a fixed percentage of the amount you borrow). The lenders we work with could pay commission at different rates.

### **3. Mobile Equipment**

3.1 The Mobile Equipment to be provided under the Contract shall be specified in the Order. The Customer acknowledges that some or all of the Mobile Equipment shall be provided under a Mobile Equipment Leasing Contract and the Customer is obliged to sign and return a Mobile Equipment Leasing Contract pursuant to clause 7.

3.2 The provision of Mobile Equipment is subject to availability. Where the customer specifies a preference for a particular colour of Mobile Equipment (handset) Zusi may substitute the colour for a different colour at its discretion.

**3.3 Subject to clause 3.6 of these Conditions, the Mobile Equipment shall be delivered within 3 months of the commencement date and if Zusi is unable to source or provide the Mobile Equipment within such period, the Customer shall be entitled to have the Account credited to the equivalent value of Ice's trade purchase cost of the Mobile Equipment. Such credit to be made in accordance with clause 9 of these Conditions as though it were a Deal Incentive.**

**3.4 The Mobile Equipment shall be delivered to the location set out in the Order or such other location as the parties may agree (Delivery Location).**

**3.5 Delivery of the Mobile Equipment shall be deemed completed on the second business day after posting by Zusi or the Network Provider or on the second business day following the Mobile Equipment being collected from Zusi or the Network Provider from a courier with instructions to deliver to the Delivery Location.**

**3.6 Any dates quoted for delivery of the Mobile Equipment are approximate only, and the time of delivery is not of the essence. No Mobile Equipment will be dispatched until the Customer has provided porting authorisation codes irrespective of any delivery date specified on the Order. Zusi shall not be liable for any delay in delivery of the Mobile Equipment that is caused by a Force Majeure Event or delays caused by a third party manufacturer (or supplier) or the Customer's failure to provide Zusi with adequate delivery instructions or any other instructions that are relevant to the supply of the Mobile Equipment.**

#### **4. Quality of Mobile Equipment**

**4.1 Zusi shall pass on the benefit to the Customer of any warranties it receives from the manufacturer of the Mobile Equipment.**

**4.2 The Customer acknowledges that any attempt to repair, service or tamper with the Mobile equipment may invalidate the manufacturer's warranty.**

#### **5. Title and risk**

**5.1 The risk in the Mobile Equipment shall pass to the Customer on completion of delivery.**

**5.2 Subject to clause 5.3, title to the Mobile Equipment shall not pass to the Customer until the Contract is validly terminated in accordance with these Conditions and all sums due under the Contract, including**

but not limited to Cancellation Fees, have been paid by the Customer to Ice.

**5.3** Where the Customer has entered in to a Mobile Equipment Leasing Contract, in addition to the Contract, the Customer holds the Mobile Equipment as bailee and title to the Mobile Equipment shall pass (if at all) in accordance with the terms of the Mobile Equipment Leasing Contract.

**5.4** Until title to the Mobile Equipment has passed to the Customer, the Customer shall:

(a) maintain the Mobile Equipment in satisfactory condition and keep it insured against all risks for its full price on Ice's behalf from the date of delivery;

(b) notify Zusi immediately if the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d); and

(c) give Zusi such information relating to the Mobile Equipment as Zusi may require from time to time.

**5.5** If before title to the Mobile Equipment passes to the Customer, the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d), then, without limiting any other right or remedy Zusi may have:

(a) Zusi may at any time:

(i) require the Customer to deliver up all Mobile Equipment in its possession and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Mobile Equipment is stored in order to recover each item of Mobile Equipment.

## **6. Supply of Services**

**6.1** In consideration of the Customer paying the Charges and fulfilling all of its commitments as set out in the Contract, Zusi agrees to supply and the Customer agrees to receive the Services and/or the Mobile Equipment subject to the provisions of the Contract.

## **7. Customer's obligations**

**7.1** The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;**
- (b) co-operate with Zusi in all matters relating to the Services and Network Services including, but not limited to, promptly signing a Mobile Equipment Leasing Contract and/or a Network Contract where applicable (to the satisfaction of the Mobile Equipment Leasing Contract provider and/or Network Contract provider), completing a Verification Call to the satisfaction of Zusi & the Mobile Equipment Leasing Contract provider and providing all information reasonably requested by such provider;**
- (c) provide Zusi with such information and materials as Zusi may reasonably require in order to supply the Services including, but not limited to providing porting authorisation codes and authorising Zusi to use such codes to enable connection of the Services, re-signing an Order form to correct any defects or errors and ensure that all information provided is complete and accurate in all material respects;**
- (d) promptly notify Zusi of a change of address, change of registered office or change of trading location(s);**
- (e) where applicable, comply with all terms of the Network Contract and/or the Mobile Equipment Leasing Contract including, but not limited to, the terms for payment of all charges and fees under the Network Contract and/or the Mobile Equipment Leasing Contract.**
- (f) authorise the Network Provider to disclose all information to Zusi relating to the Network Contract;**
- (g) if provided with 15 or more mobile devices under the Contract, set up on-line billing and not cancel on-line billing prior to the termination of the Contract;**
- (h) return to Zusi a hardcopy of the signed Contract and where applicable the signed Mobile Equipment Leasing Contract within 14 days of the Commencement Date;**
- (i) within 14 days of the Commencement date, send to Zusi by way of trade in, all pre-existing mobile phone handset(s) (together with any pass code(s) or word(s) required to operate each handset) which are owned by the Customer. Each handset provided by the Customer under this clause shall be free from any “Find My iPhone” activation lock or similar lock which prevents a new account or profile being registered on the handset and shall be fully functional failing which the Customer shall no longer be eligible for any agreed Deal Incentive under clause 9 or Buyout under clause 10.**

**7.2** The obligations set out at clauses 7.1 (a) to (i) above are conditions of the Contract. In addition to any other remedies that Zusi may have for a breach of those conditions by the Customer, whether set out in the Contract or otherwise, if the Customer breaches condition 7.1 (i) the Customer shall be liable to pay £500 to Zusi for each handset that is retained by the Customer (or £500 where the Customer has failed to provide a pass code or word or any such pass code or word provided is incorrect or if a handset has an activation lock). Where Zusi is liable to pay a Deal Incentive, Buyout or any other sums to the Customer, it may elect to set off those monies due against any sums due from the Customer under this clause 7.2. If the handset(s) returned under clause 7.1(i) are in a worse state than Grade A Condition, the Customer shall be liable to pay to Zusi up to £500 for each handset and Zusi may elect to set off such charges against any Deal Incentive or Buyout.

## **8. Charges and payment**

**8.1** In addition to the charges detailed at clause 8.2 of these Conditions, the price for the Services and Mobile Equipment shall be the price set out in the Order or, if no price is quoted, the price set out in Ice's price list as at the Commencement Date. The full monthly (non-discounted) charges detailed in the Order shall be payable for the Minimum Period as a primary obligation and the Customer's entitlement to a Deal Incentive shall be in accordance with clause 9 and entitlement to a Buyout shall be in

accordance with clause 10. The Customer acknowledges that certain charges may be payable directly to the Network Provider and/or where applicable to a third party under the Mobile Equipment Leasing Contract. The price payable for additional services and out of bundle charges (unless indicated as inclusive in the Order), including but not limited to, bolt on services, call features, calls to international numbers, calls to the Channel Islands, roaming charges, calls to service numbers, calls to premium rate numbers, calls to 08 & 09 numbers, calls to 0845 & 0870 numbers, calls to 0500 numbers, calls to mobiles, calls to retrieve messages, internet calls, calls to 074 numbers, calls to 070 numbers, calls to a personal numbering service, satellite calls, calls to or involving Lyca Mobile or similar international call providers, MDM services, usage above or in breach of the Fair Usage Policy, information and paging services, data usage, text messages, picture or multi-media messages shall be the price specified in Ice's price list in force at the time such additional services or out of bundle services are utilised. Fixed bundles (including World Traveller Select) for usage outside of the UK (where available) attract a daily or bundle charge the price for which is available upon request.

**8.2 The Customer shall be liable to pay to Ice:**

**(a) a fee of £250 per Line which is connected or to be connected under the Contract; and**

**(b) a consultation fee of £500.**

**8.3 Where the Order provides for MDM or MaaS360 as inclusive in the Charges the number of inclusive licences or handsets shall not exceed the number of Lines or connections under the Contract. All other MDM or MaaS360 licences/handsets or licences/handsets that exceed the number of connections under the Contract shall be chargeable and payable by the Customer at the rate of £5 per month per licence or handset. Any MDM or Mass360 offered as inclusive under the Contract shall be the provider's basic or 'essential' package only and any other package shall be chargeable at the rate of £5 per Line, connection or handset. It is the Customer's responsibility to manage its MDM or MaaS360 account to avoid selecting options or features that are not included in the basic or 'essential' package. Certain options or features may automatically involve upgrading the package whereupon the Customer shall be liable to pay to Zusi £5 per month per MDM or MaaS360 licence or handset.**

**8.4 The Customer shall pay £30 for each porting authorisation code (pac code) requested in respect of each and any Line connected under the Contract or Network Contract and if such a request is made during the Minimum Period, clause 14.2 shall apply.**

**8.5 In respect of Customers that are not Small Business Customers, Zusi reserves the right to:**

**(a) increase the Charges from time to time and shall provide the Customer with at least 7 days' notice prior to such increase taking effect. For the avoidance of doubt, the Customer shall not be entitled to terminate the Contract upon any increase in Charges; and**

**(b) increase the price of the Mobile Equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Mobile Equipment to Ice.**

**8.6 Each year the monthly tariff charge (as detailed in the Order) will be subject to an annual adjustment by the RPI Rate plus an additional 1.3% and the adjusted amount (new tariff price) will appear on the Customer's April invoice onwards. The Customer also acknowledges and agrees that (where applicable) the Network Contract is subject to an RPI Rate adjustment each year.**

**8.7 Zusi may invoice the Customer for Charges under the Contract. Liability for Charges arises from the Commencement Date irrespective of connection of the Services. Where applicable, Network Services shall be invoiced by and payable to the Network Provider. Where a Mobile Equipment Leasing Contract has been entered in to, the provider of Mobile Equipment under such contract shall invoice the Customer in accordance with the terms of the Mobile Equipment Leasing Contract. Zusi may invoice on a monthly basis for MVNO Services.**

**8.8 The Customer shall pay each invoice submitted by Ice:**

**(a) within 14 days of the date of the invoice; and**

**(b) in full and in cleared funds to a bank account nominated in writing by Zusi by way of direct debit, failing which a payment processing fee of £6 per invoice shall be payable by the Customer, and**

**time for payment shall be of the essence of the Contract. Where the Customer cancels a direct debit mandate to Zusi a cancellation fee of £15 shall be payable in respect of each instance of cancellation. Invoices will be provided to the customer in braille or audio formats upon request subject to the Customer paying a fee of £15 per invoice.**

**8.9 The Customer shall be liable to pay the Charges whether the Services are being utilised by the Customer or a third party. This includes all Charges arising from unauthorised or fraudulent use.**

**8.10 Invoices shall be deemed to be undisputed and the Customer acknowledges that it shall not be entitled to dispute an invoice unless the Customer notifies Zusi in writing of any dispute (clearly identifying the reasons for the dispute) within 30 days of the date of the invoice.**

**8.11 All amounts payable by the Customer under the Contract, Network Contract or Mobile Equipment Leasing Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Zusi to the Customer, the Customer shall, on receipt of a valid VAT invoice from Ice, pay to Zusi such additional amounts in respect of VAT as are chargeable on the supply of the Services or Mobile Equipment at the same time as payment is due for the supply of the Services or Mobile Equipment.**

**8.12 If the Customer fails to make a payment due to Zusi under the Contract by the due date, then, without limiting Zusi's remedies under clause 13 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether**

before or after judgment. Interest under this clause 8.9 will accrue each day at 4% a year above the TSB Bank's base rate compounding quarterly.

**8.13** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Zusi may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Zusi to the Customer.

## **9. Deal Incentives**

**9.1** Providing the Customer has complied with all obligations under clause 7 (and clause 2 where applicable) and providing the Customer is not in breach of the Contract, the Customer shall be entitled to the Deal Incentive detailed in the Order (subject to clause 9.2). Where the Customer is entitled to a Deal Incentive Zusi shall reimburse (or provide a credit in the case of MVNO Services) the Customer the amount of any Deal Incentive upon the Customer first providing Zusi with a VAT invoice from the Customer to Zusi for the amount of the monthly Deal Incentive (the value of the Deal Incentive specified in the Order shall be inclusive of VAT). No invoice shall be required where Zusi are providing MVNO Services.

**9.2** The Customer shall be liable to pay the Network Provider the full amount of all charges under the Network Contract irrespective of any Deal Incentive. Providing the Customer has not committed a breach of the Contract or any Network Contract or any Mobile Equipment Leasing Contract and upon receipt of an invoice in accordance with clause 9.1, Zusi shall reimburse or credit the Customer for the amount of the Deal Incentive. The payment under this clause 9 shall be made monthly in equal instalments starting with the first payment within 90 days of receipt of the Customer's invoice issued in accordance with clause 9.1 (or credit 1 month from the connection of the services in the case of MVNO Services) and ending at the Review point referred to in clause 15. For the avoidance of doubt, no Deal Incentive shall be due or payable after the Review point and if no Review is specified in the Order no Deal Incentive shall be due or payable during the second half of the Minimum Period. The monthly payment date under this clause

may not be the same each month and is subject to change at any time. Where the terms of this clause 9 are inconsistent with the Order, this clause 9 shall prevail.

**9.3 Entitlement to any Hardware Fund expires at the Review point if not already utilised by the Customer. Unless otherwise specified on the Order the Hardware Fund shall be utilised by the Mobile Equipment being ordered through and supplied by Zusi and the Hardware Fund shall be reduced by the RRP (as at the time of the order) of the Mobile Equipment ordered. Where the Order expressly states that part or all of the Hardware Fund is available in cash the payment for such cash value shall be made in 4 monthly instalments commencing 90 days from the Customer providing an invoice to Zusi for the agreed Hardware Fund.**

## **10. Buyout**

**10.1 The Customer acknowledges that by entering in to the Contract and/or the Network Contract, the Customer may have to pay termination or other charges to a Network Provider or third party for cancelling or terminating a pre-existing contract with that Network Provider or third party.**

**10.2 The Order may specify a sum that Zusi is prepared to reimburse the Customer to cover some or all of the termination charges referred to in clause 10.1 (Buyout). Providing the Customer has complied with all obligations under clause 7 (and clause 2 where applicable) and providing the Customer is not in breach of the Contract, subject to clause 10.3 (or 10.4 in the case of MVNO Services), Zusi shall reimburse the Customer with the Buyout specified in the Order upon receipt of VAT invoices for the amount of the Buyout from the Customer's old supplier and from the Customer to Zusi (the value of the Buyout specified in the Order shall be inclusive of VAT). Where the Buyout figure specified in the Order is insufficient to cover all of the charges referred to at clause 10.1, the Customer shall remain liable to pay the remainder. For the avoidance of doubt, the maximum liability to Zusi for a Buyout is the amount that the Customer is liable to pay to its old supplier or the amount specified in the Order (whichever is the lower amount).**

**10.3 Notwithstanding this clause 10, it shall remain the Customer's liability to pay any termination or similar charges referred to in clause 10.1. Providing the Customer has not committed a breach of the Contract or any Network Contract or any Mobile Equipment Leasing Contract (excluding any pre-existing contract for services similar to those provided under the Contract), and upon receipt of invoices in accordance with clause 10.2, Zusi shall reimburse the Customer for the amount of the Buyout. The reimbursement under this clause 10 shall be paid in three monthly instalments and the first reimbursement payment shall be made by Zusi within 90 days of receipt of the invoice issued in accordance with clause 10.2. The monthly payment date**

under this clause may not be the same each month and is subject to change at any time.

**10.4** Contrary to clauses 10.2 and 10.3, where Zusi is providing MVNO Services and providing the Customer is not in breach of the Contract, Zusi shall reimburse the Customer with the Buyout amount specified in the Order (upon receipt of the invoices referred to in clause 10.2) by way of a pro rata credit to the Customer's invoices over 4 months. By way of example, if the Buyout is for £1000, Zusi shall credit the Customer's invoice in the sum of £250 for 4 months. If the credit produces a negative value, the balance shall be paid to the Customer within 14 days following transmission of Ice's relevant invoice.

**10.5** Where Ice, despite not being contractually obliged to do so, pays the Buyout sum whether in a lump sum or instalments, to the Customer up front as opposed to by way of reimbursement, such Buyout sum paid by Zusi to the Customer shall be paid over to the Network Provider in respect of the pre-existing contract without delay.

## **11. Confidentiality**

**11.1** Each party undertakes that it shall not at any time during the Contract, and for a period of three years after termination of the Contract, disclose to any person any confidential information including, but not limited to, the business, affairs or charges of the other party, except as permitted by clause 11.2.

**11.2** Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**11.3** Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

**12.1 Nothing in these Conditions shall limit or exclude Ice's liability for:**

**(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;**

**(b) fraud or fraudulent misrepresentation; and**

**(c) any other matter in respect of which liability cannot lawfully be limited or excluded; 12.2 Subject to clause 12.1, Zusi shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:**

**(a) loss of profits;**

**(b) loss of sales or business;**

**(c) loss of agreements or contracts;**

**(d) loss of anticipated savings;**

**(e) loss of use or corruption of software, data or information;**

**(f) loss of or damage to goodwill; or**

**(g) any indirect or consequential loss. 12.3 Subject to clause 12.1, Ice's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the amount paid by the Customer to Zusi for Charges paid under the Contract.**

**12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 (as amended) and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 (as amended) are, to the fullest extent permitted by law, excluded from the Contract.**

**12.5 This clause 12 shall survive termination of the Contract.**

**12.6 Subject to clause 12.1, Zusi and the Customer agree that the Contract shall not be rescindable on grounds of misrepresentation.**

**13. Termination and Suspension: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

**13.1 Subject to clause 14.2 the Customer may terminate the Contract at any time by giving Zusi written notice. At its sole discretion, Zusi may**

accept verbal notice of termination and/or notice by email. A minimum of 30 days' notice is required once the Minimum Period has expired.

**13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:**

**(a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;**

**(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its**

**creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;**

**(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or**

**(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.**

The Customer shall be deemed to have provided a written notice to terminate under clause 13.1 (whereupon clause 14.2 shall apply) if during the Minimum Period, the Customer refuses to accept delivery of any Mobile Equipment or returns any Mobile Equipment or requests a porting access code (pac) from Zusi or the Network Provider or enters in to a contract with a third party during the Minimum Period for such third party to take over the Services or part of the Services.

**13.3 Without affecting any other right or remedy available to it, Zusi may terminate the Contract and any other contract between Zusi and the Customer with immediate effect by giving written notice to the Customer if:**

**(a) the Customer fails to pay any amount due under the Contract or Network Contract or Mobile Equipment Leasing Contract on the due date for payment; or**

**(b) there is a change of control of the Customer.**

**13.4 Without affecting any other right or remedy available to it, Zusi may suspend the supply of Services, disconnect the Services or suspend all further deliveries of Mobile Equipment under the Contract if the Customer fails to pay any amount due under the Contract, the Network Contract or the Mobile Equipment Leasing Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d), or Zusi reasonably believes that the Customer is about to become subject to any of them.**

**13.5 Without affecting any other right or remedy available to it, Zusi may suspend the supply of Services, disconnect the Services or suspend all further deliveries of Mobile Equipment under the Contract or any other contract between the Customer and Zusi if the customer fails to sign a Network Contract or pay a deposit contrary to clauses 2.2, 2.3 or 2.4.**

**13.6 Where the Services are suspended or disconnected under clauses 13.4 or 13.5, the Customer shall be liable to pay to Zusi a disconnection fee of £29 for each instance of disconnection where the Contract provides for 9 Lines or fewer and where the Contract provides for 10 or more Lines a disconnection fee of £3 per Line shall be payable.**

#### **14. Consequences of termination**

**14.1 On termination of the Contract the Customer shall immediately pay to Zusi all Charges together with all of Ice's outstanding unpaid invoices and interest and, in respect of Services and Mobile Equipment supplied or Charges for which no invoice has been submitted, Zusi shall submit an invoice, which shall be payable by the Customer immediately on receipt;**

**14.2 Cancellation Fees will be payable by the Customer to Zusi if prior to the expiry of the Minimum Period:**

**(a) the Contract is terminated; or**

**(b) the Network Contract is terminated; or**

**(c) the Network Services are disconnected as a consequence of the Customer's breach of the Network Contract; or**

**(d) the Mobile Equipment Leasing Contract is terminated.**

**(e) all or any of the Lines under the Contract or Network Contract are cancelled, disconnected, suspended, ceased or transferred to a third party provider.**

**14.3 The Cancellation Fees payable in accordance with clause 14.2 shall be invoiced by Zusi to the Customer and shall be payable immediately upon receipt.**

**14.4 The Customer acknowledges that the Cancellation Fees represent a genuine pre-estimate of the loss suffered by Zusi due to early termination, having regard to the overall commercial deal between the parties and that the Cancellation Fees do not represent a penalty. The Customer further acknowledges that where the Order specifies that the Mobile Equipment is free of charge (or words to that effect), clause 14.2 shall prevail and the cost of the Mobile Equipment shall be repayable by the Customer to Ice.**

**14.5 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.**

**14.6 Upon termination of the Contract until the Customer ports the Line(s)/sim(s) to a new provider using porting authorisation codes or until the Customer requests the Line(s) to be ceased all continued usage including texts, calls and data usage shall be based on a new contract between Zusi and the Customer and shall be chargeable at out of bundle rates as detailed in the out of bundle price guides on Ice's website at [ice-comms.co.uk](http://ice-comms.co.uk).**

**Invoices for such charges shall be payable by the Customer within 7 days of issue and the Customer shall not be entitled to a right of set off.**

**14.7 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect. For the avoidance of doubt, clause 14.2 and corresponding obligations shall survive termination.**

## **15 Upgrades and Renewal**

**15.1 Where the Order specifies an upgrade or review point, Zusi shall review the Contract and/or the Network Contract and the monthly charges being paid by the Customer (Review). Following any Review, Zusi may elect to offer the Customer a new contract whereupon, if the Customer elects to accept the offer, the Customer shall sign a new Contract (New Contract) including a new Purchase Order or Application Form (New Order).**

**15.2 Where the Customer agrees to a New Contract, clause 14.2 shall not apply to the (old) Contract and the Customer will be bound by the terms of the New Order, including any new minimum period or period specified in the New Order and the Customer shall be required to trade in its old handsets in accordance with clause 7.1(i).**

**15.3 If the New Contract involves moving from one Network Provider to a different Network Provider or from MVNO (Zusi Mobile) to a Network Contract the Charges, including monthly tariff, under the subsisting Contract (Old Contract) remain payable by the Customer until the Services and connections are live with and connected via the new Network Contract under the New Contract.**

**15.4 Where the Customer fails to pay any amount due under the Old Contract, any sums due from Zusi under the New Contract under clauses 9 and/or 10 may be withheld by Zusi and Zusi may suspend the Services under the Contract or terminate the New Contract with immediate effect whereupon clause 14.2 will apply.**

**15.5 Where the terms of this clause 15 are inconsistent with the Order, this clause 15 shall prevail.**

**15.6 Nothing in this clause 15 or the Contract obliges Zusi to provide any upgraded or new Mobile Equipment, to reduce the Charges payable by the Customer or to offer any Deal Incentives as part of a New Contract upon conducting a Review. Any Mobile Equipment and the cost of such Mobile Equipment to be provided in the New Contract shall be specified in the New Order. The Customer will not be able to downgrade the Contract to a sim only New Contract (without Mobile Equipment) unless the Mobile Equipment under the Contract has been paid for in full by the Customer.**

**15.7 Unless the Customer has provided 30 days' written notice to terminate the Contract prior to the expiry of the Minimum Period, the Contract shall automatically renew for a further period of 12 months (Renewal Period), whereupon no Deal Incentive shall be due and the Contract shall continue to renew for successive Renewal Periods until the Customer provides 30 days' written notice to terminate. Clause 14.2 shall apply if the Contract is terminated prior to the expiry of any 12 month Renewal Period.**

**15.8 Clause 15.7 shall not apply to a Small Business Customer.**

## **16. Dispute Resolution**

**16.1** The parties shall use their reasonable endeavours to resolve disputes arising from or in connection with the Contract (Dispute). If either party wishes to raise a Dispute, it shall notify the other party in writing (in accordance with clause 18.2) clearly identifying the reasons for the Dispute and providing copies of any supporting documentation that is relied on.

**16.2** A Customer with no more than 10 employees may be able to take a Dispute to adjudication under the Ombudsman Services dispute resolution scheme. A copy of Ice's complaints code is at [zusi.co.uk](http://zusi.co.uk).

**16.3** Nothing in this Contract prevents Zusi from seeking a legal remedy through the courts at any time. The time costs of Zusi's In House Solicitor dealing with a Dispute (including but not limited to the recovery of Charges and/or Cancellation Fees) both before and during any court claim shall be payable by the Customer to Zusi on an indemnity basis at the guideline rate for a band A fee earner specified at [www.gov.uk/guidance/solicitors-guideline-hourly-rates](http://www.gov.uk/guidance/solicitors-guideline-hourly-rates) and at the grade for where the Customer's principal place of business is situated (Legal Costs). The Customer acknowledges that such Legal Costs are reasonable and payable notwithstanding rule 27.14 of the Civil Procedure Rules or any successor provision dealing with the recoverability of costs on the small claims track.

**16.4** Any overdue invoice issued by Zusi to the Customer may be referred to a third party debt agency and the Customer shall be liable to pay such third party's fees in addition to Ice's Legal Costs.

## **17. Force majeure**

Zusi shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

## **18 General**

### **18.1 Assignment and other dealings**

(a) Zusi may at any time novate the Contract or assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

## **18.2 Notices**

**(c) Any notice or other communication given by the Customer to Zusi under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid recorded delivery post or next working day delivery service at Ice's registered office or such other address where Zusi asks the Customer to send notices to.**

**(d) Any notice or other communication given by Zusi to the Customer under or in connection with the Contract shall be sent to the Customer's contact email address specified in the Order (or such other primary email address of the Customer as Zusi may elect), or by post to the Customer's registered office (if a company) or the address specified in the Order or any other address where the Customer requests Zusi to send notices to.**

**(e) Any notice or other communication shall be deemed to have been received: if delivered by hand or recorded deliver post or by a next working day delivery service, on signature of a delivery receipt; if sent by first or second class post (non recorded) at 9am on the second business day after posting; or if sent by email (only where permitted under clause (18.2 (d))) at the time of transmission.**

**(f) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.**

**18.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.**

**18.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.**

**18.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**18.6 Entire agreement.**

(a) The Contract 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.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty that is not set out in the Contract.

**18.7 Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**18.8 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (in the case of Zusi to be signed by a director). Zusi may change these Conditions from time to time and the varied or updated Conditions shall be available to view at [zusi.co.uk](http://zusi.co.uk). Minor changes will take effect immediately upon the varied Conditions being posted at [ice-comms.co.uk](http://ice-comms.co.uk) and material changes shall take effect 30 days after the varied Conditions have been posted at [zusi.co.uk](http://zusi.co.uk).

**18.9 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**18.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation