
Zailab Services Portal – Terms of Service

1. Introduction

Thank you for visiting the Zailab Services Portal, a Website that allows Customers to buy communication optimization services. These Terms are the general terms governing the relationship between us (Zailab) and you (Customer) in respect of communication optimization services selected by you. These Terms govern your use of the Services via the Website. Any orders for tangible goods (e.g. kiosks) will be the subject of separate orders concluded between us, which orders are not regulated by these Terms. Please read these Terms carefully before using our Services. By accepting this Agreement, you acknowledge that you have read, understood, accepted, and agreed to be bound by these Terms.

2. Definitions and interpretation

Definitions. In this Agreement:

Agreement means these Terms and our Privacy Policy;

Authorized User means (i) a Customer who has been assigned Credentials or (ii) a user in your employ who has been assigned Credentials;

Content means any content added to the Website. Content includes photos, images, audio files, video files, text files, listings, postings, messages, or other materials;

Credentials means a unique UserID and password for the Zailab Services Portal that has been assigned to an Authorised User;

Customer or **you** mean any person who visits or logs into the Website, uses the Services or accepts this Agreement;

Data means any data that you provide to us, including transactional information and Personal Information;

Effective Date means the date upon which you accept this Agreement;

Personal Information means personal information as defined by the Protection of Personal Information Act or correlative foreign legislation as dealt with in our Privacy Policy;

Services means the Services available via the Website that Zailab provides to the Customer, which services correspond to the service option selected by you;

Service Levels means Zailab's reasonable efforts to provide Services in accordance with the service levels detailed in the Service Level Agreement;

Terms means these Terms of Service;

Third Party Software means software that is owned by third parties and includes open source software;

the Website means www.zailab.com;

Zailab or **we** or **us** or **our** means Zai Lab (Pty) Ltd. Registration Number: 1998/20944/07;

Writing means any mode of reproducing information or data in the physical form (includes hard copy printouts, handwritten documents, and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (like pdf), but excludes information or data in the form of an email.

Interpretation. All headings are inserted for reference purposes only and do not affect the interpretation of this Agreement. Whenever "including" or "include", or "excluding" or "exclude", together with specific examples or items follow a term, they will not limit its ambit. Terms other than those defined within this Agreement will be given their plain English meaning. References to any legislation will be deemed to include references to the enactment as re-enacted, amended, or extended. A reference to a person includes a natural and juristic person and a reference to a party includes the party's successors in title or permitted assigns. Unless stated elsewhere in these Terms, any reference to days shall mean calendar days.

3. Duration

These Terms commence on the later of: (i) the Effective Date; and (ii) the date on which you complete the registration process as per clause 4 below, and continue until terminated: (i) in accordance with a provision in these Terms; (ii) by giving thirty (30) days written notice by either party; or (iii) in terms of the Privacy Policy.

4. Registration and cancellation

You must register and accept this Agreement to use the Services. Notwithstanding anything to the contrary contained in this Agreement, we reserve the right, at our sole discretion, to cancel, deny, suspend or revoke your registration for any reason whatsoever, and thereby cancel, deny or suspend your continued use of the Services. Should we deny or suspend your continued use of the Services, we will refund any monies already paid by you for Services you have not received at the time of cancellation, denial or suspension.

Registration information. You must have the legal capacity to register. When registering you must provide your full legal name, a valid email address, and any other necessary information requested by us. If you are a juristic person, the person making the application must also be duly authorized to conclude contracts on your behalf.

Identity verification. It is important for us to know who we are doing business with online. You authorize us to make any inquiries we consider necessary to verify your identity. This could include:

- us conducting a credit check; or
- you providing us with documentation such as your registration documents if you are a juristic person or the front page of your ID book or proof of your address; and
- us verifying this against third party databases.

5. Security

Credentials. When registering, you will be required to select your Credentials which will enable you to sign into your account on our Website. If you are a juristic person, you will have to designate a specific Authorized User. Only you may use your Credentials. We do not permit multiple people to share a login.

Choice of Password. You must choose a password that complies with our requirements which will be communicated to you during the registration process. We reserve the right to change these requirements at any time and it is your responsibility to amend your password in accordance with these changes. We are not responsible for any loss or damage you experience if you do not comply with our password requirements.

Access. Only Authorised Users may access the Service by using their Credentials to sign into your account on our Website. Authorised User obligations. Each Authorised User agrees:

- to keep their Credentials secure;
- not to disclose their Credentials to any other person;
- not to provide access to any person;
- to secure all data under their control;
- not to interfere with the functionality or proper working of our services and Website;
- not to introduce any viruses, worm, logic bomb, trojan, wares, a potentially unwanted program (PUP) or other malicious software into our service or Website;
- not use the Services for direct marketing, spamming, unsolicited communications, or other advertising or marketing activities prohibited by applicable law;
- to immediately notify us in Writing of any lost Credentials; and
- to notify us of any known breach of our Privacy Policy.

Your instructions. Each Authorized User is responsible and liable for activities that occur under their account. You authorize us to act on any instruction given by you and provide corresponding Services, even if it transpires that someone else has defrauded both of us unless you have notified us in Writing prior to you acting on a fraudulent instruction. We are not liable for any loss or damage suffered by you attributable to your failure to maintain the confidentiality of your Credentials.

Payments. Our security obligations relating to any payment systems we might use are dealt with in our Security Policy, the terms of which are incorporated here.

Monitoring security. You consent to us monitoring your use of the Website and Services for security purposes and in order to ensure that the Website and Services are always running and functioning as they should. We reserve the right to take whatever action we deem necessary to preserve the security and reliable operation of our Website and Services. You undertake that you will not do or permit anything to be done which will compromise our security. If:

- we are unable to verify any information you provide to us; or
- we reasonably believe that your activities pose a significant credit or fraud risk to us or our other customers, or may cause financial loss or legal liability for us, our other customers, or you, then we shall be entitled immediately to suspend or terminate your use of the Services.

6. Services

Provision of Services. You have a limited, non-exclusive, non-transferrable, revocable right to use the Services in accordance with these Terms by signing into your account on the Website. Any person wishing to use the Services contrary to these Terms must obtain our prior Written consent. The Services and Website are provided in English only. We will use reasonable efforts to provide the Services to you at the Service Levels.

Policies. We may from time to time establish general policies and limits concerning the use of the Website and Services. We may log off, deactivate, suspend or delete any Customer account that breaches those policies.

Modification. We may modify, suspend, or discontinue providing the Services (or access thereto via the Website) on 30 days notice.

7. Acceptable use

Responsibility. You are responsible for your conduct and Content on the Website. You must ensure that your users have the correct permissions to use the Services and act on the Website.

Prohibited conduct. Your conduct on the Website or in using the Services must not be unlawful, harmful, threatening, abusive, harassing, defamatory, libelous, invasive of another's privacy or harm minors in any way. When using the Services or Website:

- Do not harass, stalk, degrade, intimidate, or be hateful toward an individual or group of individuals.
- You may not impersonate any person, falsely state, or otherwise misrepresent your affiliation with any person.
- Nothing may be false, deceptive, misleading, deceitful, or constitute bait and switch.
- Do not infringe any patent, trademark, trade secret, copyright, or other proprietary rights of any party.
- Malware or badware is prohibited.
- Do not negatively affect the ability of any other customer to use our services or the Website.
- Do not employ misleading email or IP addresses, or forged headers or otherwise manipulated identifiers in order to disguise the origin of Content transmitted through the Website.
- You may not impose an unreasonable or disproportionately large load on our infrastructure.
- Do not attempt to gain unauthorized access to the Services or Website or engage in any activity that disrupts or diminishes the quality of, interferes with the performance of, or impairs the functionality of our services or the Website.
- You will not alter or exploit any Data for personal or commercial use without our prior Written consent.

Third party terms and policies. Aspects of the Services may use Third Party Software, which usage may require you to accept terms and conditions in addition to those detailed herein.

Time and place. This Agreement is concluded at the time that you accept this Agreement (without the need for further communication from us), and the place at which this Agreement is deemed to be concluded (i.e. the place at which acceptance of this Agreement is deemed to have taken place) is at the place where we have our head office.

Your Warranties. When registering as a User and accepting this Agreement, you represent and warrant that you:

- are old enough under applicable law to enter into this Agreement;
- have the legal capacity to conclude legally binding contracts;
- possess the legal right, full power, and authority to enter into this Agreement;
- are authorized to use the Credentials required for any account; and
- will submit true, accurate and correct information to us.

If you are younger than 18 years of age, you warrant that you have the consent of your legal guardian to enter into this Agreement or that you have obtained legal status in another manner.

Your Data***Privacy and protection of Personal Information.***

Legal Obligations. We are each responsible for complying with our respective obligations under applicable laws governing Personal Information.

Use of Personal Information. The manner in which we might use your personal information is dealt with in our Privacy Policy. By accepting this Agreement, you accept our Privacy Policy. If at any time you are not satisfied with the level of privacy we provide, then you should not use the Services or the Website.

Responsible Party. You remain the responsible party for determining the purpose and means of our processing of personal information, including that processing will not place us in breach of any laws.

Your trans-border Data flows. You consent to us transferring your personal information across a country border to enable us to comply with our obligations under this Agreement. You are solely responsible for determining that any transfer of your personal information across a country border complies with the applicable laws.

Indemnity. You agree to indemnify, defend, and hold us harmless (and those related to us and our personnel, co-branders or other partners) from and against any claim, demand, loss, damage, cost, or liability (including legal costs) arising out of or relating to: (i) you failing to comply with your obligations under this Agreement; (ii) any wrongful or unlawful actions by you; or (iii) wrongful or unlawful use of the Services or Website. If permissible under applicable law, legal costs will be on an attorney and own client basis.

Location of your Data. In order to provide or enhance the Services, we may transfer or store your data in multiple locations that are located in different countries.

Preservation of the Integrity of your Data. Both parties will take reasonable precautions (having regard to the nature of their obligations under this Agreement), to preserve the integrity of your Data and prevent any unauthorized access, corruption or loss of your Data. We will not be liable for any lost or corrupted Data or be required to recover lost or corrupted Data. We suggest that you back up your Data regularly.

Records. You agree that our records are prima facie evidence of the Services supplied to you.

8. Fees and payment

Fees and payment. In consideration for the provision of Services, you agree to pay us the fees associated with the service option selected by you and for any communication cost that was accrued by you. We will invoice the applicable fees in advance or deduct them from your bank account in terms of an existing debit order authorization, starting from the Effective Date. We may change the fees and payment terms upon at least 30 days prior written notice to you. You may cancel the Services at any time on 30 days written notice to us.

Due dates. Fees must be paid promptly on the due date as reflected in an invoice or any payment arrangement agreed in Writing between you and us. Fees are not subject to any deduction, set off or demand.

Manner of payment. Payment may be made via Visa, MasterCard, Diners or American Express credit cards or by bank transfer into the Zailab's bank account, the details of which will be provided on request.

Credit card acquiring and security. Credit card transactions will be acquired for Zailab via PayGate (Pty) Ltd who are the approved payment gateway for all South African Acquiring Banks. PayGate uses the strictest form of encryption, namely Secure Socket Layer 3 (SSL3) and no credit card details are stored on the website. Users may go to www.paygate.co.za to view their security certificate and security policy.

Customer details separate from card details. Customer details will be stored by Zailab separately from card details which are entered by the client on PayGate's secure site. For more detail on PayGate refer to www.paygate.co.za

Late payments. In the event of late payment by you hereunder, you will be liable for any collection fees and administration costs incurred by us in collecting such late payment. You must pay such fees and costs to us on-demand. Pending full payment of any late payments, fees or costs by you, we may delay or stop the provision of any Services or access to the Website.

Interest on overdue amounts. Any amount not paid by you on the due date will bear interest from the due date until the date you pay it. The rate of interest will be either 2% above the published prime overdraft rate from time to time of our bankers or 15%, whichever is higher. A letter signed by a general, branch or other bank manager setting out their rate will be proof of the rate. Interest will be payable on a claim for damages from when the damages were suffered.

Appropriation. We may appropriate any payment received from you towards the satisfaction of any indebtedness to us under this Agreement.

Withhold payment. You may not withhold payment of any amount due to us for any reason.

Certificate. A certificate, signed by an accountant appointed by us of the amount due by you and the date on which it is payable will be conclusive irrefutable proof of the correctness of the certificate's contents.

Tax. All fees include value-added tax but exclude other taxes levied in any jurisdiction, duty (including stamp duty), tariffs, rates, levies and any other governmental charge or expense payable, which you must pay where applicable in addition to the fees.

Payment profile. You and any signatory consent and agree that we may provide any registered credit bureau with information about the payment of amounts by you in terms of this Agreement.

9. Intellectual property

Ownership. Nothing in this agreement should be construed as an assignment or license of any intellectual property by us to you.

Your Data license. When you upload your Data to the Website, you give us a worldwide license to use, host and store your Data, solely for purposes of providing and improving the Services.

Trademarks. Zailab's logo and sub-logos, marks, and trade names within South Africa are the trademarks of Zailab and no person may use them without our permission.

Restrictions. Except as expressly permitted under this Agreement, you will not:

- make derivative works of, decompile, reverse engineer or copy the Website;
- modify, adapt, merge, translate, decompile, disassemble or reverse engineer software used in providing the Services;
- create the impression or state that you own or developed the Website or Services;
- mashup the Website or Services with other websites or services; or
- use the Website or Services in any manner not authorized in terms of this Agreement or permit third person to use the Website or Services using your Credentials.

10. Warranty

Disclaimer. Use of the Services and Website is at your sole responsibility and risk. The Service and Website are provided on an as-is and as available basis. Except for the warranties given in these Terms, we expressly disclaim all representations, warranties, or conditions of any kind, whether express or implied, including:

- any implied warranties or conditions of satisfactory quality, no latent defects, merchantability, fitness for a particular purpose, accuracy, system integration, quiet enjoyment, title, and non-infringement; or
- any warranties regarding Third Party Software, to the extent permitted by applicable law. We do not warrant that the Services or Website: (i) will meet your requirements or that your use thereof be uninterrupted or error-free; or (ii) will be legally effective or complete, timely, secure, error-free or free from infection by malicious software. You should keep up-to-date security software on the systems used to use the Services or to access the Website. You use the Services and Website at your own risk.

Exclusion of liability. Despite any warranty given by us, we will not be liable for any defect arising from your failure to follow our instructions (whether oral or in Writing), or from your misuse of the Services.

11. Limitation of liability

Correct faults. The Website and Services are supplied “as is” and we do not warrant that the software used to provide the Services or run the Website is free of bugs, inadvertent errors, defects or malfunctions. If we are notified of any significant inherent defect or error in such software during the term of this Agreement, we will take all reasonable steps to correct any such defect or error within a reasonable time. If this clause is held inapplicable or unenforceable, then the following clause will apply.

Direct damages limited. To the extent permitted by applicable law, regardless of the form (whether in contract, tort, or any other legal theory) in which any legal action may be brought, our maximum liability to you for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid by you to us for the Services related to the claim.

Indirect damages excluded. To the extent permitted by applicable law, in no event will we (or our personnel) be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, loss of use, damages relating to downtime or costs of substitute products) arising out of loss of Data; interruption of use or availability, failure or malfunction of the Services or Website, telecommunication facilities or hardware; stoppages or other impairment of other assets; bugs, inadvertent errors, defects or malfunctions in the software used to provide the Services or Website; breach or failure of express or implied warranties; breach of contract; misrepresentation; negligence and strict liability in delict.

12. Suspension of the service

Preservation of Data (suspension). In the event that we suspend your access to any Services or the Website, we will not take any action to intentionally erase any of your Data in our possession during the period of suspension and the fees will continue to accrue.

13. Breach

If you:

- commit a breach of this Agreement;
- infringe the copyrights or other rights of others;
- fail to pay any amount due and fail to remedy the breach within 2 days of having been called on in writing to do so;
- effect or attempt to effect a compromise or composition with your creditors; or
- are provisionally or finally liquidated or placed under judicial management,

you agree that we may, to the extent permitted by applicable law and without prejudice to our rights under these Terms or in law, deactivate or delete your account, terminate access to or use of the Services and the Website, claim specific performance of these Terms, or cancel this Agreement immediately on written notice and claim damages from you (including, any claim for any fees already due).

14. Effect of Termination

Data deletion. Upon termination or cancellation of these Terms or this Agreement or upon the deactivation or deletion of your account:

- your rights to access the Services and Website will immediately cease to exist;
- all amounts due to us for Services rendered prior to termination or cancellation will become due and payable immediately even if we have not invoiced them;
- you may not withhold the amounts for any reason unless the arbitrator directs otherwise; and
- all your Data may be erased, unless we have in Writing agreed otherwise (e.g. under an agreement to provide post-termination assistance).

15. Resolving disputes

Notifying each other. There will be a dispute about or from this Agreement if a party writes to the other about it and asks for it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- Negotiation (direct talks to try and agree on how to end the dispute); failing which

- Mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which
- Arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

Negotiation. Each party must make sure that their chosen representatives meet within 10 business days of notification, to negotiate and try to end the dispute by written agreement within 15 more business days.

Mediation. If negotiation fails, the parties must refer the dispute to mediation.

Arbitration. If mediation fails, the parties must refer the dispute within 15 business days to arbitration. The arbitration will be held: (i) in Cape Town and in English; (ii) in accordance with the Arbitration Act and AFSA Rules from time to time in force; (iii) in accordance with the formalities and/or procedures to be settled by the arbitrator; and (iv) in an informal and summary manner. The arbitrator will be an independent person agreed upon by us, and failing such agreement within 14 calendar days after the date on which notice of arbitration is given, will be appointed by the President from time to time of the Cape Law Society, who may be requested by either of us to make that nomination at any time after the expiry of that 14 day period. The arbitrator is entitled: (i) to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose shall have the widest powers of investigating all our books and records, and the right to make copies and/or take extracts therefrom and the right to have them produced or delivered at any reasonable place required by him for such purposes; (ii) appoint experts to assist the arbitrator to determine factual issues; (iii) to interview and question under oath any of our personnel; (iv) to decide the dispute according to what he considers just and equitable in the circumstances; and (v) to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise as he in his discretion may deem fit and appropriate. The arbitration shall be held as quickly as possible after it is demanded with a view to it being completed within 60 calendar days after it has been so demanded. Any award that may be made by the arbitrator: (i) will be final and binding on us and will not be subject to any appeal or review; (ii) will be carried into effect; and (iii) may be made an order of any court within either of our jurisdictions.

Periods. The parties may agree in Writing to change the periods for negotiation or mediation.

Urgent interim relief. This clause will not stop a party from applying to the court for urgent interim relief (temporary help) while the dispute resolution process is being finalized. An example might be an interdict (a type of court order).

Severability. This clause is separate and divisible from the rest of this Agreement and remains effective even if this Agreement ends or is invalid.

16. Notices and domicile

Notices. The parties will send all notices, authorizations, disclosures, acknowledgments, or requests by hand delivery, prepaid registered post, fax, or email to an address or number given in the specific terms.

Service (delivery) address for legal documents. You choose your street address and numbers as per your registration details provided via the Website as your domicilium citandi et executandi (i.e. address for the service of any document used in legal action) for this Agreement.

Change of addresses or numbers. Each party may change their addresses or numbers to any other addresses or numbers in South Africa by Writing to the other party 14 days before the change.

Deemed delivery. Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, fax or email confirmation of delivery.

Notice actually received. If a party actually receives any notice or other communication, this will be good enough.

17. Force Majeure

Parties not liable. No party will be responsible for any breach of this Agreement caused by circumstances beyond its control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, or acts of God.

Party affected to notify the other party. If there is an event of force majeure, the party affected will tell the other immediately, and they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this Agreement. The parties will continue to comply with the responsibilities that are not affected by the circumstances.

Right to cancel. If a party cannot fulfill a material (significant) part of its responsibilities under this Agreement for more than 60 days because of force majeure, the other party may cancel this Agreement by written notice.

18. Assignment and subcontracting

No assignment. You may not delegate your obligations under this Agreement or assign your rights under this Agreement, in whole or in part. We may assign this Agreement to any successor or purchaser of our business or some of its assets.

Exception. Despite this clause, we may cede and assign all rights and obligations under this Agreement to a related person without your prior written consent, provided that we notify you within a reasonable time of the event occurring.

19. General

Electronic communications. To the fullest extent permitted by law, you consent to receive all notices and other communications from us electronically. Electronic communications may be posted on our Website or sent to the email address we have on record for you. Please print a copy of each communication and retain it for your records.

Changes to the Terms. We may change the Terms at any time and where this affects your rights and obligations, we will notify you of any changes by placing a notice in a prominent place on the Website or by email. If you do not agree with the change this agreement will terminate and you must stop using the Services within 30 days. If you continue to use the Services 30 days following notification of a change to the Terms, the changed terms will apply to you and you will be deemed to have accepted such terms.

Changes to any Third Party Software License agreement. We will notify you of changes to Third Party Software license terms if such changes will impact your rights or obligations. We will notify you by placing a notice in a prominent place on the Website or notifying you by email. The updated Third Party Software license terms will be effective immediately and you will be deemed to have accepted them upon notification.

Fact related to the Website. A certificate, signed by an administrator of the Website, of any fact, related to the Website and Services provided (including what Content was published or functionality was available on the Website at a specific point in time) will be rebuttable proof of the correctness of the certificate's contents.

Waiver (giving up of rights). Any favor or leniency we may allow you will not affect or substitute any of our rights against you.

Severability. If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this Agreement if it does not change its purpose.

Governing Law. South African law governs this Agreement.

Jurisdiction. You consent to the jurisdiction of the High Court in respect of any action or proceedings that we may bring against you in connection with these Terms, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.

Non-exclusivity. We may provide any services similar or identical to the Services to any other person or entity.