

GENERAL TERMS AND CONDITIONS OF THE ZINIA SERVICE APPLICATION AND SUBSCRIBER AGREEMENT

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement the following expressions, words or phrases, shall bear the meanings assigned to them below:
- 1.1.1. **"Activation Date"** shall mean the date of commencement of the Services, being the date of Technical Handover; or cutover.
- 1.1.2. **"Agreement"** means this subscriber agreement and any annexures or schedules, as amended from time to time;
- 1.1.3. **"Equipment"** shall mean the voice and/or data apparatus, together with all additions or accessories thereto including hardware, software and intellectual property, as specified in this Agreement and its schedules, if applicable;
- 1.1.4. **"Monthly Port Fee"** shall mean the monthly charge for being connected to the System as determined by Zinia, which amount shall be dependent on the value of the Services provided Zinia and therefore subject to variation, and the Subscriber shall be advised of this cost in writing after the Activation Date;
- 1.1.5. **"Prevailing Legislation"** shall mean any and all legislation which may be applicable between the Supplier and the Customer, including but not limited to the Consumer Protection Act, No. 68 of 2008, and the National Credit Act, No. 34 of 2005;
- 1.1.6. **"Services"** shall mean but not be limited to any service(s) providing voice, data, connectivity, cloud or hosted as well as any other such service Zinia may at its option choose to make available to the Subscriber;
- 1.1.7. **"Subscriber"** shall mean the contracted party, or its affiliate, which has applied for, by signature of this Subscriber Agreement, the service as detailed on the fascia of this Subscriber Agreement;
- 1.1.8. **"System"** shall mean the access medium(s) by which the agreed connectivity is provided by Zinia to the Subscriber which shall include but will not be limited to; radio interfaces, fiber optics, terrestrial lines, GSM and Microwave services;
- 1.1.9. **"Tariff"** shall mean the charges which Zinia shall charge for the Services as annexed hereto, which tariff is subject to amendment from time to time by Zinia at its sole and absolute discretion;
- 1.1.10. **"Technical Handover"** shall mean the date on which the solution provided has been fully installed, handed over and data traffic is being carried across the Zinia Network as expressly defined by Zinia; and
- 1.1.11. **"Zinia"** shall mean Zinia ISP Proprietary Limited, registration number 2010/001203/07, a private company duly incorporated in accordance with the company laws of the Republic of South Africa.
- 1.2. Words that have not been expressly defined in this Agreement but have a generally and commonly understood meaning and context within the Information and Communication Technology sector(s) will be interpreted as having such meaning and context.
- 1.3. No provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted and/or introduced such provision.
- 1.4. Save where otherwise specified, references to "writing" or "written" includes any non-transient means of representing or copying words legibly, including by facsimile or electronic mail.
- 1.5. References to any South African legal term for any action, remedy, proceeding, document, court, official, status, concept, state of affairs or thing include, in respect of any jurisdiction other than South Africa, a reference to the nearest equivalent in such jurisdiction to the South African term.
- 1.6. References in this Agreement to any Party shall include, or be deemed to be references to, (as may be appropriate) its respective successors, personal representatives and permitted assignees or transferees.

2. CONNECTION TO THE SYSTEM AND PROVISIONS OF THE SERVICE

- 2.1. Zinia shall use its best endeavors to make only the services as agreed to in the Subscriber Agreement available to the Subscriber throughout the duration of this Agreement.
- 2.2. The Subscriber acknowledges that it will be liable for all charges for the services rendered through the System as identified by either the USI or any other means as defined by Zinia at the agreed tariff.
- 2.3. The Subscriber acknowledges and agrees that Zinia is providing the Service and deploying Equipment into the Subscribers environment where both legacy and third party equipment which has been/is to be installed. As such Zinia can only guarantee the Service if the other, either legacy or new third party, equipment, including but not limited to PABX, VOIP, modems, gateways, wireless access points, radios, routers, switches, hubs and server connected to the System are approved, in writing, by Zinia.
- 2.4. The subscriber acknowledges that Broadband services are best effort and shared services and performance may vary dependent on network and usage patterns and are not guaranteed services.

3. PAYMENT

- 3.1. Zinia reserves the right to require a deposit from the Subscriber before activation or extension of any Service. Such deposit may be retained and appropriated, in whole or in part by Zinia at its sole and absolute discretion, towards payment of any amounts which are due, owing and payable to Zinia by the Subscriber.
- 3.2. Zinia will invoice Subscriber every month between the 20th and the 25th day and the Subscriber agrees to pay Zinia all invoiced charges for services within 10 (ten) calendar days of the date of invoice.
- 3.3. Payments shall be made by means of debit order or any means agreed to in writing by Zinia. For all payment methods excluding direct debit order an additional R50 (fifty Rand) will be charged to the Subscriber to offset the additional administration charges.

- 3.4. The Subscriber further agrees and accepts that the service will automatically be suspended on non-payment of any monies due and a re-connection fee of no less than R750 (seven hundred and fifty Rand) will become due and payable before reconnection of the System will occur.
- 3.5. The Subscriber agrees that payment shall only have been made to Zinia when the monies remitted by the Subscriber have been received into Zinia's bank account.
- 3.6. Should any service be suspended for non-payment, Zinia requires a 24-hour administration period to re-activate the service.
- 3.7. The Subscriber shall be liable for all charges for the Service provided to the Subscriber whether the Subscriber utilises the Services or not.
- 3.8. The Subscriber shall not be entitled to claim any deduction, set off, exchange or counterclaim howsoever arising in respect of goods supplied and/or services rendered.
- 3.9. The Subscriber will be liable for all fees incurred with respect to the following:
 - 3.9.1. unpaid or rejected debit orders;
 - 3.9.2. redirected debit orders; and/or
 - 3.9.3. no debit order signed or improperly completed.

4. DURATION

- 4.1. Notwithstanding the date of signature of this Document by the Parties, this Agreement shall commence on the Activation Date. Subject at all times to the provisions of clause 11 below, the duration of this Agreement will be for the fixed term, as set out on the cover page of this Agreement under the section titled "Equipment and Service Details", and will thereafter be automatically renewed for a period of 12 (twelve months) unless the Subscriber notifies Zinia in writing of its intention to terminate this Agreement 90 (ninety) days prior to the termination date.
- 4.2. This Agreement shall endure for the full duration of the agreement term, as contemplated in clause 4.1 above and the Subscriber agrees and understands that it shall be liable for all amounts which become due, owing and payable during the term of this Agreement, and any renewal period.

5. INSTALLATION OF EQUIPMENT

- 5.1. The Subscriber shall allow Zinia or its approved representative to carry out such work at the Subscriber's premises as is necessary to effect implementation and provision of the Services.
- 5.2. The Subscriber hereby indemnifies Zinia, its directors, employees, agents or approved representatives against any all loss, damages, costs and expenses which may be incurred as a result of performing such installation and/or implementation. Zinia shall not in any matter whatsoever be liable for the acts or omissions of whatever nature of its approved representatives/agents and or any other party.
- 5.3. Nothing in the Agreement confers, or shall be deemed to confer, on the Subscriber any rights in, or license to use, any intellectual property of Zinia. The Subscriber shall make no copies of manuals, documentation, computer programs or similar intellectual property without the prior written consent of Zinia, nor will the Subscriber use or display the Zinia brand or logo on any document or equipment without Zinia's prior written consent.
- 5.4. The Subscriber hereby expressly acknowledges that installation timeframes provided by Zinia are guidelines only and cannot be guaranteed as various elements of the installation and implementation process of dependent on third party service providers and government departments. Accordingly, the Subscriber acknowledges and agrees that its shall not be entitled to cancel this Agreement as a result of any delay in installation and/or implementation, save in circumstances where installation and/or implementation will not be effected within the foreseeable future. Zinia undertakes to provide regular updates to the Subscriber in order to ensure the Subscriber is aware of any delays and/or hindrances in the installation process.

6. RAPID DEPLOYMENT

- 6.1. As a value-added service to the Subscriber, the Subscriber shall be entitled to request the Rapid Deployment services from Zinia pending the installation and implementation of the Services.
- 6.2. The Rapid Deployment services are temporary connectivity services offered by Zinia in order to assist the Subscriber with temporary connectivity.
- 6.3. The costs of the Rapid Deployment service shall be quoted by Zinia at the time same are requested by the Subscriber and based on the Subscriber's stated requirements, which amount (or any pro-rated portion thereof) are to be paid on a month to month basis for so long as the Rapid Deployment services are utilised by the Subscriber.
- 6.4. The Rapid Deployment services are, by their nature, temporary and dependent on numerous external elements beyond the reasonable control of Zinia. Zinia shall use reasonable commercial endeavours to ensure that the Rapid Deployment services meet the Subscriber's requirements however gives no warranties as to performance or reliability.
- 6.5. To the extent that the Rapid Deployment services are intermittent, inconsistent, or do not meet the Subscriber's connectivity requirements, this will not, in any way, constitute grounds for the termination of this Agreement and the Subscriber shall not be entitled to rely on the performance of the Rapid Deployment services to withhold payment of any amounts or place Zinia in breach.

7. LIMITATION OF LIABILITY

- 7.1. The Subscriber acknowledges and accepts that, as a result of concluding this Agreement, Zinia shall be required to secure various services from third party service providers to which Zinia shall owe various contractual obligations for the agreed duration of this Agreement. To the extent that the Subscriber terminates or attempts to terminate this Agreement prior to the expiry of the agreed duration of this Agreement, whether as a result of any of the circumstances envisaged in clause 11 below, or by repudiating the terms of this Agreement, the Subscriber indemnifies and holds Zinia harmless against any loss or damage which Zinia may suffer as a result of such termination including, but not limited to, payment to Zinia of any and all amounts which Zinia may be obliged to pay to any third party as a result of the conclusion of this Agreement.
- 7.2. Zinia gives no warranties, representations, guarantees or undertakings express or implied, concerning any Equipment and/or the Services.
- 7.3. The Subscriber acknowledges and agrees that the service quality and coverage available to the Subscriber shall be limited to that provided by the data, fixed line, wireless or GSM Network Providers and the Services may from time to time be adversely affected by physical features, damage and/or theft of third party equipment and/or infrastructure, failure by third parties to maintain equipment and/or infrastructure, as well as atmospheric conditions and other causes of interference.
- 7.4. The Services which Zinia offers shall be reliant on third party service providers indirectly chosen by the Subscriber. To the extent that such third party service provider ceases to provide the service, whether as a result of the third party service provider removing or discontinuing or not maintaining the equipment necessary to provide the required service, the Subscriber and Zinia shall meet and, in good faith, negotiate an alternative arrangement through an alternative service provider. For the avoidance of doubt, Zinia shall not, under any circumstances, be required to provide the same or similar Services at the same price, in circumstances where there is no third party service provider with a service offering at the same price as any previous service provider.
- 7.5. In circumstances contemplated in clause 7.4 above, Zinia shall, as a value-added service, assist the Subscriber with identifying possible alternative service providers and securing preferential terms and/or prices where possible, all without prejudice to Zinia's rights in terms of this Agreement.
- 7.6. The Services provided by Zinia expressly excludes problems caused by any misuse or unauthorized resetting, changes, tampering with or movement of hardware, software or equipment, electrical malfunction, any misuse, negligence or willful acts or defaults attributable to the Subscriber, its agents, employees or sub-contractors, any *force majeure*, and/or irregular or fluctuating electrical power supply.
- 7.7. Although all reasonable effort is made, Zinia makes no guarantee that Services will be rendered and transmitted error free or without virus, and further that the services are secure from unlawful access.
- 7.8. Zinia shall not be liable whether in contract, delict or otherwise for any indirect, special or consequential damages of any nature, or any loss of profit, loss of ability to conduct business or other special damages of any nature as a result of, relating to, or arising directly or indirectly in any manner whatsoever out of the terms of this Agreement or grossly negligent or willful acts or omission of Zinia, alternatively caused to the Subscriber though any breach of this agreement by Zinia or any matters arising under it, or for any defect, failure or suspension in the Services or the Subscriber Equipment, or any change in the Subscriber's service(s), phone system(s) or phone number(s).

8. USE OF THE SERVICE, STATUTORY AND REGULATORY PROVISIONS AND SUBSCRIBER APPARATUS

- 8.1. The Subscriber shall at all times comply with all statutory or other regulatory provisions relating to wireless telegraphy and telecommunications services applying to the provision and use of the Services, from time to time. In addition, the Subscriber shall:
 - 8.1.1. comply with any instructions issued by Zinia which concerns the Subscriber's use of the Services, the Equipment or any related matters;
 - 8.1.2. provide Zinia with all such necessary information that Zinia may reasonably request; and
 - 8.1.3. only use apparatus which is approved for use with the System by Zinia in writing.
- 8.2. Failure to comply with the above provisions shall be construed as a material breach of the Agreement and shall allow Zinia to terminate the Agreement without any further notice should the Subscriber fail to comply with such obligations.

9. PERFORMANCE AND TESTING

- 9.1. The Subscriber, when accepting the terms and conditions in the Agreement, represents and warrants to Zinia that the subscriber has sufficient internal network capacity on its local area network to accommodate the speeds and capacity of the Service provided by Zinia. Zinia shall not, in any way whatsoever, be liable for poor performance in circumstances where the Subscriber's own network lacks sufficient capacity to accommodate the Service provided by Zinia, nor will Zinia be obliged to cancel or amend the Services provided.
- 9.2. Zinia in no way guarantees the performance of the Services but shall use its reasonable commercial endeavors to ensure that the Services provided match the speeds requested by the Subscriber.
- 9.3. Should the Subscriber identify slow speeds, drops in connectivity, and/or general poor performance of the Service, the Subscriber is to immediately bring such performance issues to the attention of Zinia in order to enable Zinia to determine the cause of the problem and address any connectivity issues where possible.

- 9.4. Zinia shall first perform its own remote tests to determine line speed, synchronization and performance. If the performance issues remain unresolved, Zinia shall dispatch representatives to the Subscriber's premises to perform tests at the source of the Subscriber's router and these results shall be proof of the connectivity, speed and throughput.
- 9.5. Should Zinia determine that the source of any performance issues are not as a result of Zinia's conduct, Zinia shall charge a call-out and testing fee as per Zinia's current call out and standby rates.
- 9.6. For the avoidance of doubt, Subscriber shall not be entitled to rely upon any speed test results obtained from online speed testing websites (such as speedtest.net) regardless of whether such tests are performed using local or international servers, as such tests have been shown to provide unreliable and inaccurate results which are influenced by factors which may be unrelated to the Services provided by Zinia, such as a lack of capacity at a third party remote server outside of Zinia's control.
- 9.7. Zinia shall furnish to the Subscriber the results of the download speeds obtained for local and international file downloads, measured by Zinia at the source of the Subscriber's router and such results shall be deemed to be evidence of the speeds provided by Zinia.
- 9.8. Should Zinia identify that the cause of slow speeds and/or poor network performance are as a result of the Subscriber's internal local area network, Zinia shall provide suggestions to the Subscriber regarding specific improvements which can be made to improve overall network performance.

10. MULTIPLE SERVICES

- 10.1. Zinia may provide several related and/or unrelated products to the Subscriber in addition to the Services.
- 10.2. The Parties record and agree that should any other services rendered by Zinia to the Subscriber be terminated, whether by the Subscriber, Zinia or by mutual agreement, such termination shall not in any way impact on the Subscriber's obligations in terms of this Agreement and the Parties shall, save for as contemplated in clause 10.3 below, continue to discharge their obligations in terms of this Agreement.
- 10.3. Notwithstanding the provisions of clause 10.2 above, should the Subscriber be in breach of its obligations in terms of any other agreements which the Subscriber may have concluded with Zinia (or any Zinia group company), Zinia shall be entitled to suspend performance of its obligations in terms of this Agreement until such time as the Subscriber has remedied its breach in terms of any other agreements which it may have with Zinia (or any Zinia group company).

11. TERMINATION

- 11.1. Should the Subscriber:
 - 11.1.1. fail to meet any of its payment obligations in terms of this Agreement, as and when such payment becomes due;
 - 11.1.2. take steps to be wound up, liquidated (whether voluntarily or otherwise) or be placed under Business Rescue;
 - 11.1.3. commit an act of insolvency or compromise with any of its creditors;
 - 11.1.4. fail to comply with any written requests or directives issued by Zinia in terms of clause 8 above; or
 - 11.1.5. commit any breach of any other provision of this Agreement and fail to remedy same within 7 (seven) days of receipt of notice from Zinia calling on the Subscriber to remedy such breach;same shall constitute a material breach of this Agreement and, without prejudice to any other rights which Zinia may have in law, shall entitle Zinia, without providing any further notice to the Subscriber, to terminate this Agreement and recover any and all damages which it may have suffered as a result of such termination, specifically including, by not limited to, immediate payment of the balance of all outstanding amounts owing for the remainder of the term of the Agreement and shall entitle Zinia immediately to recover any Equipment supplied by Zinia to the Subscriber which the Subscriber has not paid for in full.
- 11.2. For the avoidance of doubt, the Subscriber shall not be entitled to cancel this Agreement for reasons relating to poor performance until such time as Zinia has been afforded a reasonable opportunity to perform the necessary speed and capacity tests at the Subscriber's router and has determined that the reasons for poor connectivity and/or capacity are in no way related to the third party service providers and/or the Subscriber's own internal network.
- 11.3. Should Zinia determine that it is at fault in the provision of the Services, the Subscriber shall afford Zinia a reasonable period of time, in any event no less than 10 (ten) business days, to rectify the Services, failing which the Subscriber shall be entitled to cancel this Agreement, subject to clause 7.8 above.
- 11.4. Should the subscriber cancel this agreement before the service or services are installed then the subscriber will be liable to pay Zinia a 50% cancellation fee.

12. VARIATION OF TARIFF

Zinia may vary any or all of the tariffs of this Agreement by publishing amended tariffs, such variation to take effect after 30 (thirty) days written notice to the Subscriber. Tariff increases shall be at Zinia's sole and absolute discretion in line with market related changes such as third party pricing increases, exchange rate fluctuation, inflation increases, interest rate increases and the like.

13. CESSION

The subscriber hereby agrees that Zinia shall be entitled to cede its rights in terms of the cession as security for any third party in respect of borrowings or other liabilities of Zinia and that, in such event:

- 13.1. such third party shall be entitled to enforce all rights in terms of the cession as if it were Zinia;

13.2. upon such rights being enforced; the indebtedness of the subscriber to Zinia in terms of this Agreement shall be reduced by an amount equal to the rights taken over by such third party; and

13.3. the subscriber hereby consents to any splitting of claims which may arise as a result of a cession of its rights.

14. NOTICES

All notices required to be given under this Agreement will be deemed to have been properly served if sent by hand or by pre-paid registered post to the party's address nominated in the information sheet, or to any address either party has provided in writing to the other for this purpose.

15. GENERAL

15.1. This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreement, representations or warranties between the Parties other than those set out herein are binding on the Parties.

15.2. This Agreement supersedes, novates and replaces all prior agreements, whether oral or in writing, as between the Parties with regard to its subject matter.

15.3. No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives. The provisions of the Electronic Communications and Transactions Act, No. 25 of 2002 are expressly excluded from this clause 15.3.

15.4. No latitude, extension of time or other indulgence which may be given or allowed by any Party to the others in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement, and no single or partial exercise of any right by any Party, shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

15.5. Notwithstanding anything to the contrary herein contained or implied by law, specifically any Prevailing Legislation, each and every term and condition of this Agreement shall be deemed to be separate and severable from the other terms hereof. If any term is found by any court of competent jurisdiction to be vague or invalid or unenforceable, that term shall be treated as *pro non scripto* and shall in no way affect the validity of the remaining terms and provisions hereof.

15.6. The validity of this Agreement, its interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of South Africa. The Parties hereby consent to the adjudication of any dispute, to the degree that such dispute is not otherwise regulated in terms of this Agreement, by any South African court of competent jurisdiction; in accordance with, and in amplification of which, the Parties hereby specifically consent to the exclusive jurisdiction of such court.

Subscriber (duly authorized)

Date