

1. **Terms and Conditions.**

These terms and conditions (“Terms and Conditions”) are an agreement (“Agreement”) or are included in the Agreement between Zinia and the customer of Zinia applications and services (“Customer”). Any Zinia applications or services provided by Zinia to Customer shall be governed by these Terms and Conditions. By downloading or using the applications or using the Services, CUSTOMER AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS. PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY.

2. **Definitions.**

- a. “Applications” means the software applications that run on individual servers, desktop computers, or other local operating systems of mobile or other devices, as well as any other software provided by Company through which the Service is accessed and any documentation, updates, or upgrades that are made available to you.
- b. “Cloud Failover Appliance Solution” or “CFA” means the Zinia enterprise disaster recovery and backup solution that backs up Customer Data and recovers systems and Customer applications, which sometimes works together with Zinia Service.
- c. “Customer Data” means data transmitted by Applications for backup and data recovery purposes, which may be hosted on the Service by Customer.
- d. “Data Protection Cloud Solution” or “DPC” means the Zinia enterprise backup application-based solution that backs up Customer Data, including FileLocker/file sharing and SOS Online Backup.
- e. “Data Protection Appliance Solution” or “DPA” means the Zinia enterprise backup solution that backs up Customer Data, which can work together a Zinia backup hardware appliance.
- f. “Service” means the backup, archiving, and/or failover service provided by the Company to Customer as part of the Cloud Failover Appliance Solution, Data Protection Appliance Solution, and/or Data Protection Cloud Solution, which, at Customer’s option, permits storage of Customer Data in a public cloud service, private cloud or a Zinia’s cloud service.
- g. “Use,” “Used,” or “Using” means to access, display, run, or otherwise utilize the functionality of the Applications or the Service.

3. **Grant of Rights to Use the Service.**

In consideration of the Customer's payment of the applicable fees for the Service to Zinia Online or one of its resellers and Customer's compliance with the terms of this Agreement, Customer will have a limited, non-exclusive, non-shared, non-transferable, and non-assignable right during the term of this Agreement to Use the Service selected by Customer for Customer's internal backup or disaster recovery purposes during the term of this Agreement.

4. **Hosting the Customer Data.** If Customer designates Zinia as a hosting provider, Zinia will host the Customer Data backed up by the Service on its servers.

5. **Application Limited License.** This Section applies to the Applications downloaded by Customer and its personnel on servers, desktop computers, or other local operating systems of mobile or other devices. Company grants to Customer a limited, non-exclusive, non-sublicensable, non-transferable, and non-assignable license to download, install, and Use as many copies of the Applications on such devices for Customer's internal backup or disaster recovery purposes during the term of this Agreement.

6. **Zinia's Online's Professional Services.** If agreed to by the parties, Zinia Online will provide certain professional services ("Professional Services") in accordance with the terms in Exhibit A and a statement of work signed by the parties. The Professional Services shall be deemed part of the Service.

7. **Restrictions on Use of the Service and Applications.**

a. Customer will not Use the Service or the Applications or the Service for purposes other than Customer's internal backup or disaster recovery purposes during the term of this Agreement.

b. Customer will not transfer its rights under this Agreement without Zinia's Online's advance written consent, which Zinia Online will not unreasonably withhold.

c. Customer will not resell the Service or Use the Applications to provide services to third parties.

d. Customer will not upload to the Service any data or information that:

i. May not be disclosed to others pursuant to any restrictions under a confidentiality agreement or trade secret law;

ii. Constitutes or may constitute a breach of, or threat to, the security of the Service or Applications, including but not limited to any electronic information containing

software designed to damage or disrupt a system, such as a virus, worm, or Trojan Horse

- iii. May not be transferred outside of Customer's jurisdiction under applicable law, including but not limited to export restrictions, privacy laws, or laws regulating the transfer of information or data concerning or comprising munitions or weapons (including without limitation International Traffic in Arms Regulations, 22 C.F.R. § 120-130) or equivalent foreign laws).
- iv. Constitutes information or data that may not lawfully be communicated, stored, or possessed under applicable law, including but not limited to child pornography.
- e. Customer will not interfere with the proper functioning of the Service.
- f. Customer will not attempt to obtain unauthorized access to the accounts of other customers or otherwise avoid any restrictions on the Service.

8. **Monitoring of the Service and Investigations.**

Customer acknowledges that Zinia Online is entitled to:

- a. Immediately suspend Customer's access to the Service if Zinia Online has reason to believe Customer has violated one of the restrictions in Section 7.
- b. Monitor Customer's use of the Service,
- c. Investigate possible violations of this Agreement or violations of applicable law, and
- d. Remove any data or information from the Service that violates this Agreement or applicable law.

9. **Further Restrictions.**

Customer may not, under any circumstances whatsoever, make any copies (or attempt any duplication), whether directly or indirectly, of the Applications for any reason other

than Customer's internal backup or disaster recovery purposes during the term of this Agreement. In addition, Customer shall not directly or indirectly, do any of the following: (a) remove any copyright, trademark, or other proprietary notices affixed to the Applications; (b) alter, change, repurpose, or modify the Applications or Service; (c) reverse engineer, disassemble, decompile, or attempt to derive source code from the Applications; (d) prepare derivative works, improvements or intellectual property based on the Applications or Service; (e) use the Applications or Applications for any unlawful purpose or activity; or (f) cause or intend the Applications or Applications to be used in any way or manner that may violate the intellectual property or other personal rights (including, but not limited to, privacy rights and ownership rights) of any other person or entity.

10. **Support.**

- A. Zinia Online will provide commercially reasonable support for the Service and Applications during the term of this Agreement by answering questions by email or phone, and incorporating periodic upgrades, error corrections, modifications, or enhancements to the Applications that are made generally available. Zinia is entitled to make any fixes, updates or upgrades available by automatic download, and Customer hereby agrees to accept fixes, updates, or upgrades upon Customer's automatic download of the same.
- b. It is Zinia goal to have its Service available to Customer twenty-four hours a day seven days a week, with the exception of planned downtime. Zinia will use commercially reasonable efforts to provide Customer with average annual availability that is equal to or greater than 99.99%. Zinia records and data shall be the basis for all service availability calculations and determinations.

11. **Fees.**

In consideration of the rights in these Terms and Conditions to Use the Service and Applications, and as a condition of maintaining Customer's access to the Service, Customer

will pay Zinia Online the subscription and usage fees set forth on an invoice provided to Customer by Zinia Online or the applicable reseller for the then-current period of Service.

12. **Privacy.**

Zinia Online's privacy practices regarding Customer Data is governed by Zinia Privacy Statement, which is incorporated by reference as if fully set forth herein. Zinia Online does not access or view the content of any Customer Data that Customer has uploaded to the Service except when Customer requests such access for support purposes, investigating security incidents or breaches of this Agreement, or in response to subpoenas, search warrants, governmental investigations, or other administrative or judicial legal process.

13. **Confidentiality.**

- a. "Confidential Information" means Customer Data exclusive of information that has:
 - (a) become generally known or available to the public other than by disclosure by Zinia Online;
 - (b) is in Zinia Online's possession without restrictions of confidentiality prior to receipt from Customer or to Zinia Online's access in connection with operation of the Service;
 - (c) became known to Zinia Online from a source other than Customer other than by the breach of an obligation of confidentiality owed to Customer, or
 - (d) been provided to Zinia Online by Customer a written statement that it is provided without restriction on disclosures.

- b. Zinia Online will hold all Confidential Information in confidence, Zinia Online may use the Confidential Information only to provide the Service or otherwise perform this Agreement, and Zinia Online will not disclose, directly or indirectly, any Confidential Information to a third party. Zinia Online will:
 - (i) use all reasonable precautions, consistent with Zinia Online's treatment of its own confidential information of a similar nature, but not less than a reasonable standard of care, to prevent the unauthorized access, use, and/or disclosure of the Confidential Information;
 - (ii) notify Customer upon discovery of any unauthorized access to, use or disclosure of Confidential Information, or any other breach of or noncompliance with this Agreement; and
 - (iii) subject to limits on access under Section 12, permit access to Confidential Information within Zinia Online only to those officers, directors, employees, and contractors with a need to know it.

- c. Nothing in this Section shall be deemed to preclude Zinia Online from preserving any information or data to the extent required by applicable evidence preservation law.

14. Requests for Customer Data.

In the event that Zinia Online is served with or otherwise subject to third party legal process (including a subpoena) requiring it to testify about, to produce, or otherwise to divulge Customer Data, to the extent permitted by applicable law, Zinia Online will immediately inform Customer and provide Customer with a copy of such subpoena or process. Zinia Online will make every other reasonable effort to prevent or limit disclosure of the Customer Data. To the extent reasonably possible, Zinia Online will provide Customer with the opportunity to intervene and assert objections to production of the materials. If Zinia Online complies with this Section, it shall be entitled to disclose Customer Data in response to administrative or judicial process.

15. Intellectual Property Ownership.

- a. Intellectual Property Rights. “Intellectual Property Rights” means all forms of intellectual property rights and protections, now known or hereafter established, that may be obtained for, or may protect, Company assets, which includes, but is not limited to, all right, title, and

interest in South African and foreign patents and patent applications; trade secret and nondisclosure rights; copyrights; moral rights; and trademarks, service marks, trade names, product names, and brand names.

- b. Intellectual Property Rights of Zinia. Customer acknowledges that (i) the Service and Applications are protected by copyright laws, international copyright treaties, and other intellectual property laws and treaties, (ii) Customer has a subscription to Use the Applications, but the Applications are not sold to Customer, (iii) the Applications and Service belong solely and exclusively to Zinia and its licensors, which own all right, title, and interest in and to the Applications and any Intellectual Property Rights associated therewith. This Agreement provides Customer no rights in connection with any of Zinia’s trademarks or service marks.
- c. Right to Process Customer Data. Customer hereby grants Zinia Online the right to process Customer Data for purposes of providing the Service or otherwise performing this Agreement.

16. Ownership of Customer Data.

Subject to Section 15(c) and applicable law, as between Zinia Online and Customer, Customer owns all right, title, and interest in and to Customer Data. Zinia Online will, upon expiration or termination of this Agreement for any reason and Customer's request, delete Customer Data from its Services and destroy any other Confidential Information within a reasonable time, except where preservation of Customer Data or other Confidential Information is required by applicable law. Prior to such expiration or termination, Customer will have access to its Customer Data and can make copies of Customer Data for its own backup or archival purposes using the Service. If Customer desires any other support regarding transition of Customer's Customer Data, Customer will pay for such support to be charged as Professional Services on a statement of work mutually agreed

17. Warranties, Disclaimer of Warranties and Limitations of Liability.

a. Zinia's Warranties.

i. Zinia warrants during the term of this Agreement ("Warranty Period") that the Applications and Service will operate substantially in accordance with its published documentation concerning the Applications or Service. If, during the Warranty Period, the Applications or Service fails to operate substantially in accordance with its published documentation concerning the Applications or Service, Zinia shall use commercially reasonable efforts to repair, correct, or replace the Applications or Service so that they perform substantially in accordance with its published documentation or, if Zinia is unable to do the foregoing, Zinia shall refund the applicable Subscription Fee. The foregoing warranty will be Customer's exclusive remedy and Zinia's entire liability for any breach of the warranty set forth in this subsection.

ii. Zinia warrants during Warranty Period that it uses industry-standard commercially reasonable administrative, technical, and physical safeguards to:

- i. Protect the confidentiality, integrity, and availability of the Customer Data from security threats it can reasonably anticipate and

- ii. Protect Customer Data from loss, misuse, and unauthorized access, use, disclosure, alteration, or destruction.

b. Disclaimer of Warranty. EXCEPT AS WARRANTED IN SECTION 17(a) OR SECTION 6 OF EXHIBIT A, THE APPLICATIONS, THE SERVICE, AND ASSOCIATED DOCUMENTATION ARE PROVIDED ON AN "AS-IS" BASIS, WITHOUT WARRANTY OF ANY KIND, AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INFRASCALE AND ITS LICENSORS HEREBY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

c. Limitation of Liability. Zinia ONLINE WILL NOT BE LIABLE TO CUSTOMER FOR LOST PROFITS, LOST DATA, OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES EVEN IF Zinia ONLINE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL Zinia ONLINE'S LIABILITY FOR ANY AND ALL CLAIMS, LOSSES, OR DAMAGES ARISING OUT OF OR RELATING TO, IN WHOLE OR IN PART, THIS AGREEMENT, THE SOFTWARE, OR THE SERVICE, WHETHER UNDER CONTRACT, TORT, NEGLIGENCE, STATUTE, OR OTHERWISE, EXCEED THE FEES PAID BY CUSTOMER TO Zinia ONLINE. Company and Zinia Online expressly acknowledge and agree that the limitations of liability set forth in this Section are an essential element of this Agreement, and in the absence of such limitations, the economic terms of this Agreement would have been substantially different than provided herein and/or the parties would not have entered into this Agreement.

18. **Specific Disclaimers.**

Customer understands and acknowledges that:

- a. Zinia ONLINE DOES NOT WARRANT THAT: (1) THE SERVICE AND APPLICATION ARE AVAILABLE 100% OF THE TIME OR PREVENT ALL ALTERATION OF DATA; (2) THE FUNCTIONS CONTAINED IN OR ACCESSIBLE THROUGH THE SERVICE OR APPLICATIONS WILL BE UNINTERRUPTED OR ERROR-FREE; OR (3) ANY DEFECTS WILL BE CORRECTED, OR THAT THE APPLICATIONS AND SERVICE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU HEREBY ACKNOWLEDGE THAT USE OF THE SERVICE AND APPLICATIONS IS AT YOUR SOLE AND ABSOLUTE RISK IN YOUR OWN DISCRETION.
- b. Zinia ONLINE HAS NO DATA SECURITY OBLIGATIONS OTHER THAN THOSE SET FORTH IN SECTION 12(b)(i).
- c. CUSTOMER IS SOLELY RESPONSIBLE FOR DETERMINING THAT THE SERVICE AND APPLICATIONS MEET ITS REQUIREMENTS, AND HAVE THE FEATURES THAT IT NEEDS, AND Zinia ONLINE DISCLAIMS ANY SUCH RESPONSIBILITY.
- d. WITHOUT LIMITING THE GENERALITY OF SUBSECTION (a), CUSTOMER IS SOLELY RESPONSIBLE FOR DETERMINING THAT THE SERVICE AND APPLICATIONS MEETS PRIVACY AND DATA SECURITY REQUIREMENTS THAT APPLY TO CUSTOMER. Zinia ONLINE DOES NOT GUARANTY THAT CUSTOMER'S USE OF THE SERVICE OR APPLICATIONS COMPLIES WITH ANY OR ALL PRIVACY OR DATA SECURITY REQUIREMENTS.

- e. THE CFA, DPC, AND DPA SOLUTIONS HELP TO DE-DUPLICATE DATA UPLOADED TO THE SERVICE. HOWEVER, NO SYSTEM OF DE-DUPLICATION

DATA IS 100% ACCURATE AND NO SYSTEM CAN ELIMINATE ALL DUPLICATES. MOREOVER, THESE SOLUTIONS DO NOT ATTEMPT TO STOP THE UPLOADING OF NEAR DUPLICATES TO THE SERVICE.

- f. CUSTOMER ACKNOWLEDGES THAT Zinia WILL NEED TO TAKE THE SERVICE OFFLINE FROM TIME TO TIME FOR REASONABLE PERIODS OF TIME TO UPGRADE AND MAINTAIN THE SERVICE, SUBJECT TO SECTION 10(b).

19. **Customer Warranties.**

Customer warrants:

- a. Its use of the Service and Applications will in all manners and respects comply with any and all applicable laws, rules, and regulations, and
- b. Customer has obtained the necessary consent from the relevant data subjects to collect and use any personal information contained in the Customer Data uploaded to the Service and that the processing operations of the Service fall within the scope of the purposes for which such consents were obtained.

20. **Indemnity.** Customer will indemnify, hold harmless, and defend Zinia Online, any parent, subsidiary, or affiliate of Zinia Online, and any of their respective officers, directors, members, employees, and agents (each of whom is referred to as an “Indemnified Party”) against all claims, demands, suits, losses, damages, liability costs, actions, judgments, and expenses (including reasonable attorney’s fees) arising from or in connection with:

- a. Customer’s breach of any warranty or provision in this Agreement;
- b. Any violation of law by Customer, or any of its officers, directors, members, partners, employees, contractors, or agents;
- c. Any information or data uploaded to the Service;

- d. Any and all third party claims based on allegations that Customer misappropriated the trade secrets of, violated the Intellectual Property Rights of, breached an obligation of confidentiality to, or violated the privacy rights of any third party; or
- e. Any and all third party claims relating to Customer's use, or acts or omissions during the use, of the Service.

Zinia Online shall be entitled to assume the exclusive defense and control of any matter otherwise subject to indemnification by Customer, in which event Customer will fully cooperate with Zinia Online in asserting any available defenses, and promptly reimburse Zinia Online's reasonable costs and expenses (including, without limitation, reasonable attorney and professional fees) in connection with, relating to or arising from its defense in such matter. No settlement, compromise or adjudication of any claim to which indemnity applies hereunder, shall be effective or permitted without the express and prior written consent of Zinia Online.

21. Intellectual Property Indemnity.

- a. Zinia will indemnify, hold harmless, and defend Customer and any of its officers, directors, members, employees, and agents (each of whom is referred to as a "Customer Indemnified Party") against all claims, demands, suits, losses, damages, liability costs, actions, judgments, and expenses (including reasonable attorney's fees) arising from or in connection with a third party allegation that the use of the Service, Applications, CFA, DPC, or DPA infringes any United States patent, copyright, or other Intellectual Property Rights of any third party, provided that Customer promptly notifies Zinia of such allegations, or any claim, suit, or action based on such allegations; permits Zinia exclusively to defend, compromise, or settle any such claim, suit, or action; and provides all necessary information and assistance regarding such allegations. Zinia Online will not be liable for any costs, damages, or fees paid by Customer on such claim, suit, or action unless authorized in writing by Customer.
- b. Should the Service, an Application, the CFA, the DPC, or the DPA become, or in Zinia opinion be likely to become, the subject of allegations of infringement for which Customer could seek indemnification under subsection (a), in addition to the rights provided under subsection (a), Zinia may, at its option, (i) procure for Customer the right to continue to use the allegedly infringing item, (ii) replace or modify the allegedly infringing item to make the same noninfringing, or (iii) if neither (i) nor (ii) is possible, terminate the Agreement and refund the fees paid by Customer under this Agreement.

- c. Zinia Online will have no liability for any claim to the extent it is based upon (i) the combination, operation, or use of the Service, an Application, the CFA, the DPC, or the DPA with equipment, devices, or software not supplied or specified by Zinia if no infringement would have occurred absent such combination, operation, or use (ii) the alteration or modification of the Service, an Application, the CFA, the DPC, or the DPA not made by Zinia if no infringement would have occurred absent such alteration or modification, or (iii) the failure by Customer to use the most current version of an Application.
- d. This Section 21 states the entire liability of Zinia Online with respect to any Intellectual Property Rights by the Service, an Application, the CFA, the DPC, or the DPA, and Zinia Online will have no additional liability with respect to any alleged or proven infringement

22. **Termination.**

- a. When this Agreement Terminates. This Agreement will become effective on the Effective Date and continue in force until the end of the initial term selected by Customer for the Service on the invoice provided to Customer by Zinia Online or the applicable reseller.
- b. Renewal. This Agreement will automatically renew for additional terms set forth on a new invoice provided to Customer by Zinia Online or the applicable reseller (each a “Renewal Term”) unless either party provides notice of nonrenewal least thirty (30) days prior to the commencement of the next Renewal Term.
- c. Termination for Breach. Either party terminate this Agreement upon thirty (30) days’ written notice to the other party in the event that the other party materially breaches, defaults, or fails to comply with any term or provision of this Agreement, provided that the other party fails to cure the same within such thirty (30) day period.
- d. Effect of Termination. Upon expiration or termination of this Agreement, Customer will no longer be entitled to, and shall not, access or Use the Applications or Service. The provisions of Sections 7, 8, 9, 12, 14, 15, 16, 17(b), 17(c), 18, 19, 20, 21, 22(d), 23, 25, and 27 will survive the expiration or termination of this Agreement. Expiration or termination of this Agreement for any reason will not affect any payment obligation incurred before such expiration or termination. Furthermore, upon termination, Customer shall immediately discontinue any and all use of the Applications and destroy, delete, or uninstall any and all copies of the Applications in your possession, whether on

a server, computer, mobile device, other computing device, or on any media or otherwise.

23. Dispute Resolution.

- a. Arbitrable Disputes. “Arbitrable Disputes” means any and all disputes, claims, or controversies Relating To this Agreement, whether under contract, warranty, tort, negligence, statute, product liability, strict product liability, or otherwise, including without limitation disputes, claims, or controversies Relating To (i) the Agreement’s existence, negotiation, performance, non-performance, interpretation, breach, validity, or termination, or (ii) the relationship among between Customer and Zinia Online.
- b. Relating To. “Relating To” means “relating to,” “arising out of,” or “in connection with.”
- c. Arbitration of Disputes. All Arbitrable Disputes between Customer and Zinia Online will be finally resolved by arbitration. Arbitration will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures (the “Rules”) by a single arbitrator appointed in accordance with the Rules. The arbitration will be conducted in the English language in Gauteng, South Africa. The arbitration will be binding. Judgment on the award rendered by the arbitrator may be entered by any court of competent jurisdiction.
- d. Arbitration Award. When rendering the arbitrator’s final award, the arbitrator will issue an opinion and award setting forth a summary of the issues, including the type(s) of dispute(s) before the arbitrator, the damages and/or other relief requested, the final award of damages and/or other relief, a statement of the findings, reasons, and conclusions upon which the final award is based, and a statement of any other issues resolved. The prevailing party will be awarded any fees and costs incurred by the prevailing party, including, but not limited to, reasonable attorney fees.
- e. Time Limit. ANY CLAIM BY CUSTOMER ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH CLAIM OR FOREVER BE BARRED.

24. Force Majeure.

In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement (other than a payment obligation) due to any act of God, fire, casualty, flood, tsunami, earthquake, war, terrorism, strike, lockout, epidemic,

destruction of production facilities, riot, insurrection, material unavailability, unavailability of Internet or other telecommunications services, or any other cause beyond the reasonable control of the party invoking this section, and if such party shall have used its best efforts to mitigate its effects, such party shall give prompt written notice to the other party, its performance shall be excused during, and the time for the performance shall be extended for, the period of delay or inability to perform due to such occurrences.

25. **Notices.**

Any notice or other communication to be given to Zinia Online hereunder shall be in writing, addressed as set forth below, and given by postal mail (postage prepaid and sent registered or certified mail return receipt requested) or national or international overnight courier service (e.g. Federal Express, DHL, UPS) that confirms delivery in writing. The date of receipt shall be deemed the date on which such notice is given. Notices to Customer hereunder may be provided by electronic mail to the electronic mail address provided by Customer to Zinia Online (and such notice shall be deemed given immediately upon transmission thereof by Zinia Online). Notice hereunder shall be directed to a party at the address for such party set forth in the preamble of this Agreement. Either party may change its address for notice purposes hereof on written notice to the other party in accordance with this section.

Zinia **PTY LTD.**

Hammets Crossing Office Park

Building 816/3 2 Selbourne Road

Fourways

Attn: Legal Notices

26. **Amendments.**

Zinia Online may, in its sole and absolute discretion, change any term of this Agreement on a prospective basis, and modify, add, or discontinue any aspect, content or feature of the Applications or Service, at its sole discretion by posting a new version at the following URL: [URL]. Customer's continued use of the Service or Applications after any such modifications or changes are posted will constitute Customer's complete and unequivocal acceptance of any such modifications or changes to the Agreement. Customer agrees to periodically review this Agreement to ensure that it is in compliance with any changes or modifications that are made to the Agreement.

27. **Miscellaneous.**

This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement. No waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by an authorized representative of each party. The failure of a party at any time to require performance of any obligation of the other party shall not affect its right to enforce any provision of this Agreement at a later time, and the waiver of any rights arising out of any breach shall not be construed as a waiver of any rights arising out of any prior or subsequent breach. Zinia Online may freely assign or transfer (in whole or in part) this Agreement with or without notice thereof to Customer. Zinia Online is entitled to subcontract portions of the Service to third parties, provided that Zinias Online will remain fully responsible for its obligations to deliver the Service under this Agreement. Customer may not assign this Agreement or delegate its duties hereunder without Zinia Online's prior written consent, which Zinia Online will not unreasonably withhold. Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of, the parties and their permitted successors or assigns. The unenforceability of any provision or provisions of this Agreement shall not render unenforceable or impair its remainder. If any provision of this

Agreement is deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision to render it valid, enforceable, and, insofar as possible, consistent with the original intent of the parties. The headings in this Agreement are solely for the convenience of reference and shall not be given any effect in the construction or interpretation of this Agreement. This Agreement shall be governed by the internal laws of South Africa exclusive of its conflicts-of-law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

EXHIBIT A

PROFESSIONAL SERVICE TERMS

1. Professional Services. This Exhibit sets for the terms and conditions by which Zinia Online provides Professional Services to the Customer as part of the Service, if any. Zinia Online shall perform the Professional Services for Customer identified and subject to the terms in a signed statement of work.

2. Manner of Performance. Zinia Online shall perform the Professional Services using the services of employees or contractors it designates. Zinia Online, in conjunction with its personnel, shall be entitled to determine the methods, details, and means of performing the Professional Services for Customer.
3. Contacts. Each party will designate a person to serve as a primary contact to oversee the performance of the Professional Services.
4. Providing Accurate Information. Customer shall provide accurate information to Zinia Online regarding its business, its information technology systems and facilities, and its goals and requirements regarding backup, archiving, and failover.
5. Use of Facilities or Systems. Customer shall provide reasonable access to its offices or facilities, systems and information technology facilitates, and other services or materials as needed to permit Zinia Online to perform the Professional Services and as reasonably requested by Zinia Online.
6. Warranty Regarding Professional Services. Zinia Online warrants that it will perform the Professional Services diligently and in a workmanlike and professional fashion by qualified Zinia Online personnel.