

**MASTER SERVICES AGREEMENT**

| CLIENT DETAILS                              |                                      |                |
|---------------------------------------------|--------------------------------------|----------------|
| Client Name:                                |                                      |                |
| Client Number:                              |                                      |                |
| Co. Reg. No. / ID No.                       | Vat No.                              |                |
| Telephone No.                               | Fax No.                              |                |
| Client Address:                             |                                      |                |
| <i>(Domicilium citandi et executandi)</i>   |                                      |                |
| Client Premises:                            |                                      |                |
|                                             |                                      |                |
| Postal Address:                             |                                      |                |
|                                             |                                      |                |
| Client Premises owned or leased?            |                                      |                |
| Name & Tel No. of Landlord (if applicable): |                                      |                |
| Date of Physical Site Survey:               |                                      |                |
| Installation Date:                          |                                      |                |
| Commencement Date:                          |                                      |                |
| Initial Period:                             |                                      |                |
| PRIMARY CLIENT CONTACT                      |                                      |                |
| Name:                                       | Email:                               | Office Tel No. |
| Department:                                 | Designation:                         | Fax No.        |
| Cell No.                                    |                                      |                |
| CLIENT'S BANKING DETAILS                    |                                      |                |
| Account Name:                               | Bank Name:                           |                |
| Account Number:                             | Type of Account:                     |                |
| Branch Code:                                | <i>(the "Client's Bank Account")</i> |                |

## MASTER SERVICES AGREEMENT

1. **DEFINITIONS AND INTERPRETATION**  
In this Agreement the following expressions, words or phrases, shall bear the meanings assigned to them below:
    - 1.1.1. **"Agreement"** shall mean this master agreement, as amended from time to time;
    - 1.1.2. **"Authority"** shall mean the Independent Communications Authority of South Africa, and its successors, established in terms of section 3 of the Independent Communications Authority of South Africa Act No. 13 of 2000, as amended from time to time, who governs and oversees the Telecommunications industry;
    - 1.1.3. **"Business Day"** shall mean any day that is not a Saturday, Sunday or an official public holiday in the Republic of South Africa, within the meaning of the Public Holidays Act No. 36 of 1994;
    - 1.1.4. **"Causal Event"** shall mean:
      - 1.1.4.1. a compromise, scheme of arrangement or composition by the Client with its creditors;
      - 1.1.4.2. liquidation of the Client, whether provisionally or finally;
      - 1.1.4.3. a default or cessation, or a reasonable prospect of default or cessation (as the case may be), of the Client's normal line of business;
      - 1.1.4.4. disposal by the Client of a material portion of its undertaking or assets; or
      - 1.1.4.5. any change in control of the Client;
    - 1.1.5. **"Charges"** shall mean the Installation Fee, Rental and the Tariff, and all other charges relating to the provision of the Services by Zinia to the Client or relating to the cancellation of the Agreement as more fully detailed in each Schedule;
    - 1.1.6. **"Client"** shall mean the contracted party, together with its affiliates, successors in title and assigns, as more fully detailed in the Schedules;
    - 1.1.7. **"Client Premises"** shall mean the premises specified in the Schedules at which the Services are to be provided;
    - 1.1.8. **"Commencement Date"** shall mean the date of commencement of the Services, as reflected in the relevant Schedule which will be marked by the delivery of a handover form by Zinia;
    - 1.1.9. **"Deliverables"** shall mean any tangible materials that are provided by Zinia to the Client pursuant to this Agreement, which are used by the Client to access, use or receive the Services, including, but not limited to the Software, Hardware, Peripherals, Telecops, Facilities and Telecommunication Services, which meets the requirements of the Services selected by the Client in the Schedule, which are leased or purchased by the Client from Zinia in terms of this Agreement;
    - 1.1.10. **"Hardware"** shall mean any hardware supplied by Zinia to and/or for the Client under this Agreement, and includes voice and/or data apparatus, together with all additions or accessories thereto, all Software components necessary for the proper functioning and operation of the hardware and all intellectual property;
    - 1.1.11. **"Initial Period"** means the number of months as agreed in the Schedule, as the minimum period for which such Services will be provided, commencing on the Commencement Date;
    - 1.1.12. **"Installation"** shall mean the physical act and labour of providing a System and Deliverables to the Client's Premises;
    - 1.1.13. **"Installation Date"** shall mean the appointment date on which the Installation is booked to take place and/or the date the Installation is completed, whichever is later;
    - 1.1.14. **"Installation Fees"** shall mean the one-off fees which are payable to Zinia by the Client for the Installation of the System and Deliverables, subject to clause 6.5;
    - 1.1.15. **"Internet Facilities"** shall mean such facilities relating to the Internet as may be provided by or maintained or supported by Zinia;
    - 1.1.16. **"Losses"** shall mean all losses (including special, consequential and indirect damages), liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection costs);
    - 1.1.17. **"Network Facilities"** shall mean such facilities relating to networks as may be provided, maintained or supported by Zinia;
    - 1.1.18. **"Network Provider"** shall mean an entity authorised to provide Telecommunication Services including, but not limited to, mobile operators, mobile operators, wireless operators or any other operator that provides access and Network Services (including value-added services);
    - 1.1.19. **"Network Services"** shall mean any services provided by a Network Provider and which are made accessible to the Client in terms of this Agreement;
    - 1.1.20. **"Parties"** shall mean the Client and Zinia collectively; and **"Party"** shall mean either one of them as the context may require;
    - 1.1.21. **"Prevailing Legislation"** shall mean any and all legislation which may be applicable between Zinia and the Client, including, but not limited to, the Consumer Protection Act No. 68 of 2008, and the National Credit Act No. 34 of 2005;
    - 1.1.22. **"Purchase Price"** shall mean the purchase price of the Deliverables specified in the Schedule;
    - 1.1.23. **"Rental"** shall mean the charges which Zinia shall charge for the rental of the Deliverables, as recorded in the relevant Schedule, which rental is subject to amendment from time to time by Zinia in its sole and absolute discretion;
    - 1.1.24. **"Schedules"** shall mean the individual schedules executed by the Parties in terms of this Agreement, detailing, *inter alia*, the Services and Deliverables to be supplied by Zinia to the Client;
    - 1.1.25. **"Schedule"** shall mean any one of them, as the context may require;
    - 1.1.26. **"Services"** shall mean the services, functions and responsibilities, as selected by the Client in the Schedule, including the provision, connectivity, maintenance and support of Hardware, Software, Telecommunication Services, Telecommunications Facilities, Network Facilities and any other Deliverables to the Client and any other services provided by Zinia to the Client as they may evolve during the continued duration of this Agreement and as they may be supplemented, enhanced, modified or replaced in accordance with the terms of this Agreement;
    - 1.1.27. **"Software"** shall mean any software, including the relevant documentation, provided to the Client by Zinia;
    - 1.1.28. **"Systems"** shall mean any access medium(s) in which the agreed connectivity is provided by Zinia to the Client which shall include, but will not be limited to, radio interfaces, fibre optics, terrestrial lines, GSM and microwave services;
    - 1.1.29. **"Tariff"** shall mean the charges which Zinia shall charge for the Services, which tariff is subject to amendment from time to time by Zinia in its sole and absolute discretion;
    - 1.1.30. **"Telecommunication"** shall mean the emission, transmission or reception of a signal from one point to another by means of electricity, magnetism, radio frequencies or other electromagnetic waves or an agency of a like nature;
    - 1.1.31. **"Telecommunication Services"** shall mean such services relating to Telecommunication as may be provided, maintained or supported by Zinia in terms of this Agreement;
    - 1.1.32. **"Telecommunications Facilities"** shall mean such facilities relating to Telecommunication as may be provided to the Client by a third party of Zinia and maintained or supported by Zinia in terms of this Agreement; and
    - 1.1.33. **"Zinia"** shall mean Zinia ISP (Pty) Ltd trading as Zinia, 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 action, remedy, proceeding, document, court, official, status, consent, 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. **RECORDAL**  
This Agreement is an enabling agreement in terms of which Zinia will supply the Deliverables and the Services to the Client.
  3. **APPOINTMENT**  
The Client hereby appoints Zinia, to supply the Services and Deliverables, as set out in the Schedules, to the Client for the Initial Period, which period shall commence on the Commencement Date, and Zinia hereby accepts such appointment, upon the terms and conditions contained herein.
  4. **COMMENCEMENT AND DURATION**
    - 4.1. Zinia undertakes to supply the Services and Deliverables to the Client for the duration of the Initial Period; provided that in the event that the Services and/or Deliverables are delayed in becoming certified as operational as a result of the actions or omissions of the Client, Zinia shall have the right to recover from the Client, the Charges stipulated in the relevant Schedule (or a *pro rata* portion thereof) payable by Client for the period of delay, together with any reasonable wasted costs incurred by Zinia, and the Client hereby indemnifies Zinia accordingly.
    - 4.2. Notwithstanding the Installation Date, this Agreement shall commence on the Commencement Date and, at the expiry of the Initial Period, unless notified in writing to the Client, continue thereafter indefinitely unless terminated by either Party at any time after the expiry of the Initial Period, in accordance with this Agreement.
    - 4.3. Should any new or additional services and/or Deliverables be provided by Zinia to the Client, from time to time, such Services and Deliverables shall be supplied subject to the terms contained herein.
  5. **SCHEDULES**
    - 5.1. The terms and conditions of this Agreement shall apply *mutatis mutandis* to each and every Schedule, which the Parties may enter into.
    - 5.2. Each Schedule executed under this Agreement will be deemed a part of this Agreement, as if fully included within its body.
    - 5.3. Unless otherwise agreed by the Parties, the Schedules record, *inter alia*, as applicable:
      - 5.3.1. the System to be installed;
      - 5.3.2. the Installation Date;
      - 5.3.3. the scope of the Services to be performed by Zinia hereunder;
      - 5.3.4. the Deliverables to be supplied in respect of the Services;
      - 5.3.5. the Commencement Date of the Schedule;
      - 5.3.6. details of the Charges payable by the Client to Zinia in respect of the Services;
      - 5.3.7. the Purchase Price of the Deliverables; and
      - 5.3.8. any other information or provisions the Parties agree to include.
  6. **SERVICES**
    - 6.1. Zinia shall use its best endeavours to make the Services available to the Client throughout the duration of this Agreement, subject to the terms and conditions of the Schedules.
    - 6.2. Zinia may perform the Services itself or retain third parties to perform any of the Services and the Client shall co-operate with Zinia or third parties performing such Services.
    - 6.3. The Client acknowledges that it will be liable for all Charges for the Services rendered through the System by Zinia at the agreed Tariff.
    - 6.4. The Client acknowledges and agrees that Zinia is providing the Services and deploying Deliverables into the Client's environment where both legacy and third party hardware which has been/is to be installed. As such, Zinia can only provide the Services requested by the Client if the other, either legacy or new third party hardware, 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.
    - 6.5. The Installation may be subject to feasibility, which can only be confirmed by a physical site survey of the Client's Premises after the signing of the Agreement. In this event, Zinia may:
      - 6.5.1. refuse to provide the System and/or Deliverables in that environment or any part thereof until the Client has made, at its own cost, the necessary modifications to allow Zinia to provide the System and/or Deliverables;
      - 6.5.2. quote the Installation Fee in respect of the required modifications, and if accepted by the Client, effect Installation of the required modifications at the Client's cost;
      - 6.5.3. apply additional Charges in respect of the Installation of the System, subject to the results of the physical site survey. The Client will be informed of any such Charges before Installation takes place; and
      - 6.5.4. in the event that the Telecommunication Service reflected in the Schedule is not feasible, at its election, provide a different Telecommunication Service to that reflected in a Schedule and/or provide the same Telecommunication Service at a different Purchase Price, subject the alternative being within a 30% (Thirty Percent) price range.
  7. **INSTALLATION OF THE SYSTEM AND DELIVERABLES**
    - 7.1. The Client shall allow Zinia or its approved representative to carry out such work at the Client's Premises as is necessary to effect Installation and/or implementation and provision of the Services.
    - 7.2. Nothing in this Agreement confers, or shall be deemed to confer, on the Client any rights in, or license to use, any intellectual property of Zinia. The Client shall not make copies of manuals, Software, computer programs or similar intellectual property without the prior written consent of Zinia, nor shall the Client use or display the Zinia brand or logo on any document or Deliverables without Zinia's prior written consent.
    - 7.3. The Client hereby expressly acknowledges that Installation timetables provided by Zinia are guidelines only and cannot be guaranteed as various elements of the Installation and/or implementation process are dependent on third party service providers and government departments. Accordingly, the Client acknowledges and agrees that it shall not be entitled to cancel this Agreement as a result of any delay in Installation and/or implementation. Zinia undertakes to provide regular updates to the Client in order to ensure the Client is aware of any delays and/or hindrances in the installation process.
    - 7.4. Zinia shall make reasonable endeavours to meet the Installation Date requested by the Client; however, Zinia gives no undertakings that it will be able to meet any Installation Date, the Client accepting that Zinia will install the System and Deliverables when it is in a position to do so.
    - 7.5. Zinia shall install the Deliverables required for the use of the System at the Client's Premises against the payment of the Purchase Price, as agreed in the relevant Schedule, and thereafter, subject to payment of the Purchase Price of the Deliverables in full by the Client to Zinia.
    - 7.6. The Client must at its own cost and expense provide suitable and adequate electrical power supply as may be required for the proper functioning of the Services and/or Deliverables.
  8. **RENTAL OF DELIVERABLES**
    - 8.1. The Deliverables described in the Schedule shall be rented in accordance with the terms of this Agreement as if the terms and conditions of this Agreement were incorporated in such Schedule.
    - 8.2. Rental of the Deliverables shall be levied on a monthly basis, in respect of the use and availability of the Services and Internet Facilities, Telecommunication Services, Telecommunications Facilities, and Deliverables to be provided in terms of the Schedules, as at the Commencement Date of such Schedule.
    - 8.3. The Rental shall be adjusted automatically on each anniversary of the Commencement Date subject to clause 10.5.
  9. **RISK AND OWNERSHIP IN DELIVERABLES**
    - 9.1. Unless otherwise agreed in a Schedule, the risk in and to the System and/or Deliverables shall only pass to the Client upon the Installation Date, including risk of loss, theft, destruction or damage.
    - 9.2. Ownership of the System shall remain vested in Zinia.
    - 9.3. Subject to clause 9.4, the Client agrees:
      - 9.3.1. to ensure that the Deliverables are maintained in clean, serviceable and good working order;
      - 9.3.2. to adequately insure the Deliverables for the full replacement value thereof;
      - 9.3.3. upon termination of this Agreement, to return all Deliverables in good working order and in the same condition as at the Installation Date, fair wear and tear excepted; and
      - 9.3.4. that any Deliverables supplied by Zinia pursuant to this Agreement is movable property and that notwithstanding any Installation thereof at the Client's Premises, the Deliverables shall at all times remain the property of Zinia.
    - 9.4. Unless otherwise agreed in a Schedule, ownership in and to the Deliverables shall only pass to the Client upon payment of the full Purchase Price thereof to Zinia.
  10. **CHARGES**
    - 10.1. In return for the supply of an access to the Services and the provision of Deliverables, the Client undertakes to pay to Zinia the Charges in terms of the Schedules.
    - 10.2. Unless otherwise specified, all Charges set out in the Schedules are exclusive of Value Added Tax.
    - 10.3. Unless otherwise specified in a Schedule, all Charges are exclusive of any export and import tax applicable to the Client in respect of the Client's Premises, Internet Facilities, Telecommunications Facilities, and Deliverables to be provided in terms of the Schedules, as at the Commencement Date of such Schedule.
    - 10.4. Where Charges are not quoted in South African Rand, any foreign currency risk shall be borne by the Client.
    - 10.5. Zinia may vary any or all of the Charges of this Agreement and the relevant Schedule hereto by publishing amended Charges, such variation to take effect 30 (Thirty) days after written notice of such increase to the Client. Charge 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.
    - 10.6. The Client shall have the right to terminate this Agreement without penalty or charge where it is not in agreement with any such increases, provided that it gives Zinia 20 (Twenty) Business Days' notice of its election to cancel this Agreement. Where the Client terminates this Agreement as per its rights under this clause 10.6, such termination will be without penalty; save where the Client has been given or has purchased but not yet paid for Deliverables. In such case, the Client will have a legal duty and Zinia will have a legal right to demand from the Client, full payment in respect of the Deliverables, less any Rental that has already been paid to Zinia in respect thereof prior to such termination.
  11. **PAYMENT**
    - 11.1. Zinia reserves the right to require a deposit from the Client before commencement or extension of any Services. Such deposit may be retained and appropriated, in whole or in part, by Zinia, in its sole and absolute discretion, towards payment of any Charges, which are due, owing and payable to Zinia by the Client from time to time.
    - 11.2. Zinia will invoice the Client every month in advance between the 20th (Twentieth) and the 25th (Twenty Fifth) day of the month and the Client agrees to pay Zinia all invoiced Charges within 10 (Ten) calendar days of the date of invoice.
    - 11.3. Payments shall be made by means of debit order or any other means agreed to in writing by Zinia. For all payment methods, excluding direct debit order, an additional R250.00 (Two Hundred and Fifty Rand) will be charged to the Client to offset the additional administration charges.
    - 11.4. The Client further agrees and accepts that the Services will automatically be suspended on non-payment of any monies due by it to Zinia and a re-connection fee of no less than R750.00 (Seven Hundred and Fifty Rand) will become due and payable before recommencement of the Services will occur.
    - 11.5. The Client agrees that payment shall only have been made to Zinia when the monies remitted by the Client have been credited to Zinia's nominated bank account.
    - 11.6. Should any Services be suspended for non-payment, Zinia requires a 24 (Twenty Four) hour administration period to re-activate the Services.
    - 11.7. The Client shall be liable for all Charges for the Services and Deliverables provided to the Client whether or not the Client utilises the Services and/or Deliverables.
    - 11.8. The Client shall not be entitled to claim any deduction, set-off, exchange or counterclaim, howsoever arising, in respect of Deliverables supplied and/or Services rendered.
    - 11.9. The Client will be liable for all Charges incurred with respect to the following:
      - 11.9.1. unpaid or rejected debit orders;
      - 11.9.2. redirected debit orders; and/or
      - 11.9.3. no debit order signed or improperly completed.
    - 11.10. In the event that the Client does not pay by debit order and any electronic payment is not made on due date, the Client hereby irrevocably instructs and authorises Zinia or its assignees to draw against its account with the bank noted above (or any other bank or branch to which the Client may transfer its account). All overdue amount shall bear interest at 10% (Ten Percent) compounded monthly in advance from the date on which any such amounts became payable to the date of payment thereof (both dates inclusive).
  12. **INDEMNITIES**
    - 12.1. Without in any way detracting from the rights of Zinia in terms of the Schedules, the Client hereby indemnifies and holds Zinia harmless from any and all Losses which may be suffered as a result of:
      - 12.1.1. any breach of the provisions of the Schedules by the Client; and/or
      - 12.1.2. the Installation and/or implementation of the Services and/or Deliverables; and/or
      - 12.1.3. the removal of the System and/or the Deliverables from the Client's Premises on termination of this Agreement and/or the expiry of the Schedules.
    - 12.2. The Parties agree that, in the event of a breach of any of the provisions of the Schedules by the Client, the Client shall be liable to Zinia for all Losses which constitute direct, general, indirect, special and/or consequential damages.
    - 12.3. The Client 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.
    - 12.4. To the extent that the Client cancels or varies any of the Services and/or Deliverables, which cancellation is not as a result of any breach on the part of Zinia, in whole or in part, Zinia will have the right to charge the Client all Charges, which Zinia has incurred as a result of the cancellation or variation, which amount shall be payable by the Client on demand.
    - 12.5. Zinia gives no warranties, representations, guarantees, or undertakings, express or implied, concerning any Deliverables and/or the Services.
    - 12.6. The Client acknowledges and agrees that the Services quality and coverage available to the Client shall be limited to that provided by the Network Providers and the Services may from time to time be adversely affected by physical features, damage and/or theft of third party Deliverables and/or infrastructure, failure by third parties to maintain Deliverables and/or infrastructure, as well as atmospheric conditions and other causes of interference.
    - 12.7. The Services shall be reliant on third party service providers indirectly chosen by the Client. To the extent that such third party service provider ceases to provide the Services, whether as a result of the third party service provider removing or discontinuing or not maintaining the Deliverables necessary to provide the required Services, the Client 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 Services offering at the same price as any previous service provider.
    - 12.8. In circumstances contemplated in clause 12.7 above, Zinia shall, as a value-added service, assist the Client with identifying possible alternative service providers and securing preferential terms and/or prices where possible, without prejudice to Zinia's rights in terms of this Agreement.
    - 12.9. The Services provided by Zinia expressly excludes problems caused by any misuse or unauthorised resetting, changes, tampering with or movement of Deliverables, electrical malfunction, any misuse, negligence or willful acts or defaults attributable to Client's agents, employees or sub-contractors, any force majeure, and/or irregular or fluctuating electrical power supply.
    - 12.10. 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.
    - 12.11. 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 negligent or willful acts or omission of Zinia, alternatively caused to the Client though any breach of this

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Agreement by Zinia or any matters arising hereunder, or for any defect, failure or suspension in the Services or the Deliverables, or any change in the Client's Service(s), phone system(s) or phone number(s).

12.12. The liability of Zinia and/or its employees in terms of any action, loss, or damage as a result of or in connection with this Agreement shall be limited to the lower of the net amount recovered in terms of any insurance policy to which Zinia may be a party to from time to time, (less the amount of any excess or deduction payable to or made by the relevant insurer) or the aggregate of the fees actually paid by the Client to Zinia for the 3 (Three) months preceding the date upon which Zinia became so liable, provided Zinia shall use all reasonable endeavours to prosecute any claim against its insurers.

12.13. Having regard to the nature of the System and/or the Deliverables, in the event of cancellation, variation or termination of this Agreement, resulting in the removal of the System and/or the Deliverables from the Client's Premises, the Client acknowledges and agrees that Zinia is not under any obligation to mitigate damages in respect thereof and, accordingly, waives any claim to any Losses arising as a result thereof.

13. **RAPID DEPLOYMENT**

13.1. As a value-added service to the Client, the Client shall be entitled to request temporary connectivity services offered by Zinia in order to assist the Client with temporary connectivity ("Rapid Deployment Services") pending the Installation and implementation of the System.

13.2. The costs of the Rapid Deployment Services are to be paid on a month-to-month basis for so long as the Rapid Deployment Services are utilised by the Client, as reflected in the relevant Schedule.

13.3. 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 Client's requirements; however, Zinia gives no warranties as to performance or reliability.

13.4. To the extent that the Rapid Deployment Services are intermittent, inconsistent, or do not meet the Client's connectivity requirements, this will not, in any way, constitute grounds for the termination of this Agreement and the Client shall not be entitled to rely on the performance of the Rapid Deployment Services to withhold payment of any amounts owing to Zinia or place Zinia in breach.

14. **USE OF THE SERVICES, PREVAILING LEGISLATION AND DELIVERABLES**

14.1. The provision of any System to the Client does not confer on the Client any right to use the Services, the Deliverables or any element thereof until the conclusion of the relevant Schedule.

14.2. The Client shall at all times comply with all Prevailing Legislation relating to wireless telegraphy and Telecommunications Services applying to the provision and use of the Services and Deliverables, from time to time. In addition, the Client shall:

14.2.1. comply with any instructions issued by Zinia which concerns the Client's use of the Services, the Deliverables or any element thereof;

14.2.2. provide Zinia with all such necessary information that Zinia may reasonably request;

14.2.3. allow Zinia access to the Client's Premises during reasonable hours to install, inspect, maintain or remove the System and/or Deliverables;

14.2.4. only use Deliverables which are approved for use with the System by Zinia in writing;

14.2.5. only use the Services and Deliverables approved by the Authority and to comply with all Prevailing Legislation applicable to the use of the Services and Deliverables;

14.2.6. not use the System and Deliverables for improper, immoral and unlawful purposes;

14.2.7. not do anything or omit to do anything or allow anything to be done or omitted which infringes or may infringe Zinia's rights as set out under Prevailing Legislation and Zinia's license conditions; and

14.2.8. not resell capacity on any Telecommunications Facility obtained from Zinia including the Services, System and Deliverables or cede or assign his/her/its rights to use the Services and/or Deliverables or any element thereof or otherwise part control of the, without Zinia's written consent.

14.3. 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 Client fail to comply with such obligations.

15. **RISK, THEFT, AND LOSS OF SYSTEM AND DELIVERABLES**

15.1. Whenever any System and/or Deliverables are lost, stolen or destroyed, the Client must immediately notify Zinia and any police station in writing that the System and/or Deliverables have been lost, stolen, misplaced or destroyed.

15.2. Risk in and use of the Zinia Services, System and Deliverables will pass to the Client on the Installation Date.

15.3. Zinia reserves the right to hold the Client liable for the cost to replace the System and/or the Deliverables, regardless of the cause of any such loss or destruction.

16. **CHANGE OF PREMISES**

16.1. In the event that the Client decides to move and/or relocate to a different location and/or premises, Zinia shall, subject to the terms and conditions of this Agreement, move the Client's System and/or Deliverables to the new premises in which case the Installation Fees will be payable.

17. **PERFORMANCE AND TESTING**

17.1. The Client represents and warrants to Zinia that it has sufficient internal network capacity on its local area network to accommodate the Services provided by Zinia. Zinia shall not be liable for any loss or damage, in any way whatsoever, be liable for poor performance in circumstances where the Client's own network lacks sufficient capacity to accommodate the Services provided by Zinia, nor will Zinia be obliged to cancel or amend the Services provided.

17.2. Zinia in no way guarantees the performance of the Services but shall use its reasonable commercial endeavours to ensure that the Services provided match the speeds requested by the Client.

17.3. Should the Client identify slow speeds, drops in connectivity, and/or general poor performance of the Services, the Client 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.

17.4. Zinia shall first perform its own remote tests to determine line speed, synchronisation and performance. If the performance issues remain unresolved, Zinia shall dispatch representatives to the Client's Premises to perform tests at the source of the Client's router and these results shall be proof of the connectivity, speed and throughput. 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 at the then current Zinia call-out rate.

17.6. For the avoidance of doubt, the Client shall not be entitled to rely upon any speed test results obtained from online speed testing services or other third party speed testing services, 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 of a third party remote server outside of Zinia's control.

17.7. Zinia shall furnish to the Client the results of the download speeds obtained for local and international file downloads, measured by Zinia at the source of the Client's router and such results shall be deemed to be evidence of the speeds provided by Zinia.

17.8. Should Zinia identify that the cause of slow speeds and/or poor network performance are as a result of the Client's internal local area network, Zinia shall provide suggestions to the Client regarding specific improvements which can be made to improve overall network performance.

18. **MULTIPLE SERVICES**

18.1. Zinia may provide several related and/or unrelated services to the Client.

18.2. The Parties record and agree that should any other services rendered by Zinia to the Client under a Schedule be terminated, whether by the Client, Zinia or by mutual agreement, such termination shall not in any way impact on the Client's obligations in terms of other Schedules executed under this Agreement and, the Parties shall, save for as contemplated in clause 18.3 below, continue to discharge their obligations.

18.3. Notwithstanding the provisions of clause 18.2 above, should the Client be in breach of its obligations in terms of a Schedule, Zinia shall be entitled to suspend performance of its obligations in terms of this Agreement until such time as the Client has remedied its breach in terms of the relevant Schedule.

19. **TERMINATION**

19.1. In the event of the termination of this Agreement prior to the Installation of the Deliverables, Charges by Zinia in terms of this Agreement and any additional expenses incurred by Zinia, on a full indemnity basis, relating to the ordering, delivery, supply and/or installation in terms of this Agreement shall be payable by the Client.

19.2. On or subsequent to the Installation Date, should:

19.2.1. the Client commit any breach of any provision of this Agreement and fail to remedy same within 7 (Seven) days of receipt of notice from Zinia calling on the Client to remedy such breach; or

19.2.2. a Causal Event occur in respect of the Client, Zinia shall be entitled but not obliged, without prejudice to any other

rights which Zinia may have in law, on written notice to the Client, to:

19.3.1. terminate this Agreement and/or all Schedules; and

19.3.2. recover;

19.3.2.1. all overdue Charges; plus

19.3.2.2. any and all damages which it may have suffered as a result of such termination, specifically including, but not limited to, immediate payment of the balance of all outstanding Charges owing for the remainder of the Initial Period of the Agreement; plus

19.3.2.3. interest on all amounts which are not paid by the Client on due date which interest shall be compounded monthly in advance from the date on which any such amounts became payable to the date of payment thereof (both dates inclusive) at the prime overdraft lending rate being charged from time to time by ABSA Bank Limited plus 2% (Two Percent), in the event of a dispute as to the prime overdraft lending rate being charged at any time by ABSA Bank Limited, a certificate under the hand of any manager of ABSA Bank Limited, whose appointment it shall not be necessary to prove, shall be final and binding; plus

19.3.2.4. all costs and Charges including legal costs, party-and-party, attorney-and-client and attorney's collection commission incurred by Zinia in exercising its rights under this Agreement, or in collection of any sums payable by the Client under this Agreement, which shall be payable on demand; and

19.3.2.5. immediately recover any and all Deliverables supplied by Zinia to the Client, which the Client has not paid the Purchase Price.

19.4. Notwithstanding anything to the contrary herein contained:

19.4.1. no termination of a Schedule will result in the termination of any other Schedule; and

19.4.2. no termination of this Agreement by the Client shall be of any force or effect for so long as a Schedule agreed to and between the Parties, is in force and of effect.

20. **FORCE MAJEURE**

20.1. No Party shall be liable to the other for any Losses which are a result of any default or delay in the performance of its obligations under the Schedules if and to the extent such default or delay is caused, directly or indirectly, by: floods, earthquakes, elements of nature or acts of God, riots, civil disorders, rebellions, revolutions, prohibitive legislation or regulations, inability to secure materials or Services and failure of power or utility supplies (including electronic communications) or any other cause beyond the reasonable control of such Party; provided that (i) the non-performing Party is without fault in causing such default or delay; and (ii) such default or delay could not have been prevented by reasonable precautions; and (iii) such default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources or other means.

21. **CESSION**

21.1. The Client hereby agrees that Zinia shall be entitled to cede its rights in terms of this Agreement for any reason whatsoever.

21.2. The Client hereby consents to any splitting of claims, which may arise as a result of a cession of Zinia's rights.

21.3. The Client may not cede or assign this Agreement or any part thereof to any third party without the written consent of Zinia.

22. **NOTICES**

22.1. The Client hereby selects the *domicilium citandi et executandi* as per the relevant Schedule as its address for the purposes of receiving notices as contemplated in this clause (the "*domicilium*").

22.2. All notices, requests, demands, and determinations under the Schedules (other than routine operational communications), shall be valid and effective only if in writing and if delivered by hand or mail. In this regard, a notice, request, demand and determination under the Schedules (i) delivered by hand shall be deemed duly given when delivered by hand during business hours as evidenced by a receipt declaration by a member of the addressee's staff or a delivery declaration by a person authorised to deliver the notice, request, demand and determination by the addressee; (ii) delivered by mail shall be deemed duly given when mailed in a properly addressed envelope to the Client's domicilium by registered mail, which delivery shall be evidenced by the registered mail receipt. For the avoidance of doubt, notice shall be deemed to have been given upon receipt of such delivery confirmation whether or not such notice has actually been read.

22.3. After the termination of the Agreement for whatsoever reason Zinia may, on reasonable notice and in the Client's presence enter the Client's Premises to remove the System.

23. **AUTHORITY**

23.1. The Client warrants that it has the necessary legal capacity and authority to conclude this Agreement.

23.2. The Signatory of the Client warrants that he/she is authorised to sign on behalf of the Client.

23.3. The Client confirms that it has been given an adequate opportunity to read and has read and understood this Agreement.

23.4. Where the physical Installation of the Deliverables is required, the Client warrants that it has obtained all of the necessary consents from the landlord or landowner of the Client's Premises, as the case may be.

24. **VARIATION AND AMENDMENT**

24.1. Subject always to the rights of the Client to terminate this Agreement in accordance with the provisions hereof, Zinia frequently modifies and seeks to modify and improve the Services, which it provides to its Clients and, as such, reserves the right to amend the terms and conditions of this Agreement and/or the Schedules from time to time, subject to Prevailing Legislation, in so far as these amendments relate to the Client. Zinia will give written notice to each Client of such amendments and will place the amended terms on the Zinia website [www.zinia.co.za](http://www.zinia.co.za) and file such amended terms and conditions with the Authority, which amendment will be deemed to be incorporated into the Agreement and bind the Client from the date that the amendment has been filed with the Authority, if required by law, or published on Zinia's website.

24.3. Zinia shall in its sole discretion have the right to amend this Agreement and to change and/or discontinue any feature or component of the Services, as it may deem necessary.

24.4. Subject to and save where the right to amend the Agreement and Schedules thereto, has been specifically mentioned under this Agreement, neither Party may vary the terms of this Agreement unless the other Party agrees to such variation and the variation is reduced to writing and signed by both Parties.

25. **GENERAL**

25.1. This Agreement, read with the Schedules, 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.

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

25.3. 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 stop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

25.4. 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.

25.5. 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.

25.6. The rule of interpretation that a written agreement shall be interpreted against the Party responsible for the drafting or preparation of that agreement shall not apply.

25.7. The Client is entitled to refer any dispute between itself and Zinia relating to the availability of Services to Authority.

25.8. The Client consents to allow Zinia to monitor the Client payment behaviour by researching its profile at one or more of the credit bureaus and to the use of the information and data obtained from credit bureaus in respect of the Client's future credit application.

**DEBIT ORDER INSTRUCTION**

The Client hereby instructs and authorises Netcash (Pty) Ltd, as agent for and on behalf of Zinia, to draw direct debits from the Client's Bank Account, from the Commencement Date / in the circumstances contemplated in clause 11.10 [DELETE INAPPLICABLE].

The Client understands that the withdrawals authorised in terms of this Agreement will be processed by Bankserv. The Client also understands that details of each withdrawal will be printed on its statement. It agrees to pay any banking charges relating to this debit order instruction. It shall not be entitled to any refund of amounts, which it has withdrawn whilst this authority is in force if such amounts were legally owing to Zinia.

**Additional documents required**  
Provide copies of all the signatories' IDs and a letter from the bank listing the authorised signatories on the account.

Date: ..... Name: ..... Signature: .....

For the Client (who warrants his authority to sign)

Date: ..... Name: ..... Signature: .....

For Zinia ISP (Pty) Ltd. (duly authorised thereto)