

**GENERAL TERMS AND CONDITIONS OF THE ZINIA ISP PRODUCTIVITY MANAGEMENT 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 installation of the Productivity Management Application;
  - 1.1.2. "Agreement" shall mean this subscriber agreement and any annexures or schedules, as amended from time to time;
  - 1.1.3. "AGENT LICENCE" shall mean the software and intellectual property, as specified in this Agreement and its schedules, if applicable;
  - 1.1.4. "Monthly Licence Fee" shall mean the monthly charge for agent being loaded on the customer's choice of end user device, LAPTOP, PC, or any other device the customer may opt for.
  - 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. "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;
  - 1.1.7. "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;
  - 1.1.8. "Articles" shall mean any one of them, as the context may require;
  - 1.1.9. "Supplier" 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.
  - 1.1.10. "Subscriber" shall mean the client, Registration number XXXXXXXXXX, a private company duly incorporated in accordance with the company laws of the Republic of South Africa.
  - 1.1.11. "Tariff" shall mean the charges which Zinia shall charge for the Services as annexed hereto.

- 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. PROVISIONINGS OF THE ZINIA PRODUCTIVITY MANAGEMENT AGENT AND SOFTWARE**

- 2.1. Zinia shall install or provide the means to install the management agent on the customers device.
- 2.2. The Subscriber acknowledges that it will be liable for all charges for the services rendered through the subscriber
- 2.3. The Subscriber acknowledges and agrees upon the installation of the agent on the customers device, or upon Zinia providing the customer with ability to install the agent, that billing will commence as per the schedule of charges as per the subscriber agreement

**3. CHARGES**

- 3.1. Zinia ISP shall invoice the subscriber as per TABLE 1, Monthly charges and term, attached to this agreement.

- 3.1.1. Should any request be sent via email, by a duly authorized representative of the subscriber, to increase the subscription or agent licenses, then that email will be considered as a legally binding addition to the subscriber agreement, and to the terms of this agreement.

**4. PAYMENT**

- 4.1. Zinia will invoice the Subscriber every month between the 20th and the 25<sup>th</sup> day and the Subscriber agrees to pay Zinia all invoiced charges for services within 10 (ten) calendar days of the date of invoice.
- 4.2. 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.
- 4.3. 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.
- 4.4. 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.
- 4.5. Should any service be suspended for non-payment, Zinia requires a 24-hour administration period to re-activate the service.
- 4.6. The Subscriber shall be liable for all charges for the Service provided to the Subscriber whether the Subscriber utilises the Services or not.
- 4.7. 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.
- 4.8. The Subscriber agrees that early cancellation of the subscriber agreement will be allowed at a cancellation fee of 80% of the remaining term of the contract, which will be invoiced to the subscriber on receiving notice of the cancellation, and payment will be due 14 days from date of invoice.
- 4.9. The Subscriber will be liable for all fees incurred with respect to the following:
  - 4.9.1. unpaid or rejected debit orders;
  - 4.9.2. redirected debit orders; and/or
  - 4.9.3. no debit order signed or improperly completed.

**5. DURATION**

- 5.1. Notwithstanding the date of signature of this Document by the Parties, this Agreement shall commence on the Activation Date as per TABLE 1. Subject at all times to the provisions of clause 9 below, the duration of this Agreement will be for the fixed term, as set out in TABLE 1 of this Agreement under the section titled "TABLE 1 Monthly Charges and Term, 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.
- 5.2. This Agreement shall endure for the full duration of the agreement term, as contemplated in clause 5.1 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.

**6. LIMITATION OF LIABILITY**

- 6.1. 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 9 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.
- 6.2. 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.
- 6.3. The Subscriber acknowledges and agrees that 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.
- 6.4. The Software and Zinia productivity management agent 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.
- 6.5. The Subscriber indemnifies Zinia against any 3<sup>rd</sup> party claims for any reason relating to the use of any of Zinia's software or products.

**7. USE OF PRODUCTIVITY MANAGEMENT TOOL, STATUTORY AND REGULATORY PROVISIONS AND SUBSCRIBER APPARATUS**

- 7.1. 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 Software, from time to time. In addition, the Subscriber shall:
  - 7.1.1. comply with any instructions issued by Zinia which concerns the Subscriber's use of the Services, the software or any related matters;
  - 7.1.2. provide Zinia with all such necessary information that Zinia may reasonably request; and
  - 7.2. 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.

**8. MULTIPLE SERVICES**

- 8.1. Zinia may provide several related and/or unrelated products to the Subscriber in addition to the Software.
- 8.2. 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 8.3 below, continue to discharge their obligations in terms of this Agreement.
- 8.3. Notwithstanding the provisions of clause 8.2 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).

**9. TERMINATION**

- 9.1. Should the Subscriber:
  - 9.1.1. fail to meet any of its payment obligations in terms of this Agreement, as and when such payment becomes due;
  - 9.1.2. take steps to be wound up, liquidated (whether voluntarily or otherwise) or be placed under Business Rescue;
  - 9.1.3. commit an act of insolvency or compromise with any of its creditors;
  - 9.1.4. fail to comply with any written requests or directives issued by Zinia in terms of clause 7 above; or
  - 9.1.5. 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;
- 9.2. 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, but 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.
- 9.3. 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 rectify the issues.
- 9.4. 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 for the full term of this agreement.

**10. 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.

**11. CESSION**

- 11.1. 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:
  - 11.2. such third party shall be entitled to enforce all rights in terms of the cession as if it were Zinia;
  - 11.3. 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
  - 11.3. the subscriber hereby consents to any splitting of claims which may arise as a result of a cession of its rights.

**12. NOTICES**

All notices required to be given under this Agreement will be deemed to have been properly served if sent by hand, electronic mail, or 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.

**13. CONFIDENTIALITY**

- 13.1. The subscriber agrees to keep all information, electronic communication, supplier information, pricing that has been shared by Zinia ISP confidential, and may not share, distribute any of Zinia ISP's confidential information to any 3<sup>rd</sup> party without the written consent of Zinia ISP.
- 13.2. Each Party agrees not to directly or indirectly contact, deal with transact, or otherwise be involved with any corporation, partnership, proprietorships, trust, individuals, or other entities introduced by either Party without the specific written permission of the introducing Party

**14. GENERAL**

- 14.1. 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.
- 14.2. 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.
- 14.3. 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 estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 14.4. 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.
- 14.5. 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.