



ZSD

Standard Terms

Version: 1.01
Date: 3 May 2012

IMPORTANT NOTICE

By ordering, installing, connecting or making use of ZSD's goods or services, or by indicating your acceptance of this Agreement in any other way, you agree to be bound by ZSD's Standard Terms as well as ZSD's Acceptable Use Policy and the Service Specifications applicable to the good or service concerned.

Your attention is drawn in particular to clauses rendered in capitals in the ZSD Standard Terms. What follows is a summary for your convenience and does not form part of the agreement between you and ZSD. It is your responsibility to read the clauses referred to.

- You consent to a credit check (clause 7.1.).
- You are responsible for own actions using the services provided by ZSD (clause 10.1.).
- You are responsible for all hardware and software required to make use of the services provided by ZSD unless otherwise agreed (clause 10.2.).
- You agree to comply with ZSD's Acceptable Use Policy (clause 10.3.).
- You warrant that you have the right to use any material transmitted, accessed, stored, displayed or reproduced using the service provided by ZSD (clause 11.6.).
- You consent to ZSD monitoring your traffic data for accounting purposes and to ensure that the ZSD system is operating properly (clause 14.1.).
- As soon as equipment provided by ZSD leaves ZSD's possession, risk passes to you (clause 18.4.).
- If any equipment owned by ZSD is located on premises you do not own, you must reimburse ZSD if the landlord attaches the equipment as part of a rental dispute (clause 18.6.2.).
- ZSD will not be liable to you if you suffer loss as a result of your use of the services provided by ZSD or which arises from the agreement between you and ZSD (clause 19.).
- You indemnify ZSD against any claim made against ZSD as a result of any unlawful act that you may commit, or your use of the goods or services provided by ZSD other than as allowed in the agreement (clause 19.).

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1. Introduction

- 1.1. The purpose of these Standard Terms is to regulate the relationship between ZSD and the Customer.
- 1.2. The Standard Terms apply to all goods and services that ZSD may provide to the Customer, which may also be subject to their own particular terms.

2. Parties

- 2.1. "ZSD" is Zomerlust Systems Design CC, a close corporation incorporated in terms of the company laws of the Republic of South Africa with registration number 1997/001363/23.

Address: **Unit D11, Clareview Business Park, 236 Lansdowne Rd, Claremont, Cape Town.**

Facsimile number: **021-674-1106**

Email: **support@zsd.co.za**

- 2.2. "The Customer" or "You" is the party described as such on any Service Order executed between you and ZSD with contact details entered thereon.

3. Definitions

- 3.1. "Acceptable Use Policy" means the document so entitled available at the ZSD Website, as amended from time to time.
- 3.2. "Affiliate" means, in relation to a Party, the Party's holding company, its subsidiaries, the subsidiaries of its holding company and any other companies which, directly or indirectly, is controlled by the Party, controls the Party or is under common control with the Party.
- 3.3. "Agreement" means these Standard Terms and Conditions, as well as the relevant Service Orders, Service Specifications and any schedules or annexures relating to them or to this document, which are all deemed to form part of the Agreement.
- 3.4. "Bank Rate" means the rate publicly declared by ZSD's then current bankers as its prime overdraft rate, over the relevant period and for these purposes a certificate issued by any Manager of the bank whose authority need not be proved, will constitute prima facie proof of the rate applicable from time to time.
- 3.5. "Business Day" means any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa.
- 3.6. "Business Hour" means a period of 60 minutes between the hours of 08h30 and 17h00 South African Time, on a Business Day.
- 3.7. "CPA" means the Consumer Protection Act No. 68 of 2008.
- 3.8. "Customer Data" means Data:
 - 3.8.1. transmitted to the Customer using the ZSD System (or the Customer System as the case may be),

- 3.8.2. stored by the Customer on the ZSD System (or on the Customer System as the case may be), or
- 3.8.3. transmitted by the Customer via the ZSD System,
in the day-to-day utilisation of a Service.
- 3.9. "Customer Equipment" means the equipment including without limitation servers, peripherals, routers, switches, Software, Databases, Data cables, and uninterruptible power supplies installed at the Premises by the Customer;
- 3.10. "Customer System" means the Customer Equipment operated together by the Customer as a system;
- 3.11. "Data" means electronic representations of information in any form.
- 3.12. "Database" means the collection of related data including, but not limited to, text, images sound and video, all of which have been created and integrated using a method of connecting and displaying the data into a collection of interrelated independent files or data which are stored together.
- 3.13. "Database Structure" means the field values, relationships, and other technical measures put in place to organise Data in a Database.
- 3.14. "Domain" means an Internet subdomain duly registered with an authorised registrar appropriate to its top-level domain ("TLD") and comprising its constituent domain name server records including, but not limited to, host names, aliases and mail exchange ("MX") records.
- 3.15. "Effective Date" of a Service Order means the date on which the Parties agree to the terms of a Service Order by their conduct or as set out in clause 5..
- 3.16. "Fee" means the fees and charges to be paid by the Customer to ZSD in respect of a Service provided by ZSD to the Customer in terms of this Agreement.
- 3.17. "Good" means any and all goods (including, without limitation, any and all, equipment (including ZSD Equipment), hardware or third party software) to be provided by ZSD to the Customer in terms of a Service Order.
- 3.18. "Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced service provider engaged in the provision of similar Services seeking in good faith to comply with its contractual obligations, complying with all applicable laws, codes of professional conduct, relevant codes of practice, relevant standards, and all conditions of planning and other consents.
- 3.19. "Intellectual Property" means and includes:
- 3.19.1. rights in and in relation to any patent, design, trade mark, trade or business name (including all goodwill associated with any trade mark, or any trade or business name), copyright, database, domain name, circuit topography design, and/or utility model, and including the benefit of all registrations or applications to register and the right to apply for registration of any of the foregoing items

and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable;

- 3.19.2. all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may subsist anywhere in the world.
- 3.20. "Malicious Code" means anything that contains any back door, time bomb, Trojan horse, worm, drop dead device, computer virus or other computer software routine or code intended or designed to:
 - 3.20.1. permit access to or the use of a computer system by an unauthorised third party, or
 - 3.20.2. disable, damage, erase, disrupt or impair the normal operation of a computer system.
- 3.21. "Party" means either of the parties to this Agreement and "Parties" means both of them collectively and will be deemed to mean and include their respective successors and permitted assigns.
- 3.22. "Personnel" means any director, employee, agent, consultant, contractor or other representative of a Party.
- 3.23. "Premises" means the physical space or spaces not owned or occupied by the Customer where the equipment used by ZSD to provide the Services is located.
- 3.24. "RICA" means the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2003.
- 3.25. "Service" means a service provided by ZSD to the Customer in terms of this Agreement.
- 3.26. "Service Order" means a goods, license, services and / or work order agreed to by both the Parties in terms of this Agreement describing the specific Goods or Services to be provided by ZSD to the Customer, whether the order is placed verbally, signed in hard copy (in counterparts or not), entered into via the ZSD Website, per email or by another method.
- 3.27. "Service Specification" means a document describing one or more Goods or Services and containing the terms of provision of such Goods or Services, as amended from time to time.
- 3.28. "Standard Terms" or "ZSD Standard Terms" means this document.
- 3.29. "Software" means any computer programme (whether source- or object code), as well as any database structure or content, artistic work, screen layout, cinematograph film, sound recording, preparatory material, user or technical documentation or any other work created in connection therewith and any modifications, enhancements or upgrades thereto.
- 3.30. "Supplier" means a supplier of goods and / or services to ZSD.
- 3.31. "Time and Materials Rate" means ZSD's standard time and materials fees and charges applicable from time to time, including all expenses reasonably and actually incurred by ZSD, including for travel, accommodation and subsistence.

- 3.32. "ZSD Equipment" means any equipment supplied or possessed by ZSD which is not owned by the Customer.
- 3.33. "ZSD System" means the equipment under the control of ZSD including without limitation servers, peripherals, routers, switches, Software, Databases, cables, generators, and uninterruptible power supplies which are operated together as a system by ZSD in providing a Service.
- 3.34. "ZSD Website" means the website published at URL www.zsd.co.za or such other URL as ZSD may from time to time advise.

4. Appointment and Term

- 4.1. The Customer appoints ZSD to provide the Goods and / or Services as described in the Service Order (and Service Specifications if relevant), and ZSD accepts the appointment subject to the terms of this Agreement.
- 4.2. The Agreement will commence on the Effective Date of the first Service Order, and will continue indefinitely until terminated in terms of this Agreement, or until no active Service Orders have existed between the Parties for a period of 6 (six) months, whichever occurs later.
- 4.3. Unless otherwise agreed, either Party may terminate a Service Order on one calendar months' notice to the other, which cancellation will take effect on the first day after the expiry of the notice period.

5. Orders

- 5.1. Orders for Goods or Services will be dealt with as follows, as will amendments to Service Orders:
- 5.1.1. The Customer may request ZSD to provide Goods and / or Services telephonically, by email, via the ZSD Website, by way of hard-copy order, or otherwise.
- 5.1.2. ZSD will be deemed to have accepted the order when ZSD commences provision of the Good or Service, or when it provides the Customer with a Service Order as set out in clause Error: Reference source not found, whichever takes place first.
- 5.2. The provision of any Good or Service will be subject to the Service Specifications applicable to the Good or Service concerned.
- 5.3. ZSD may confirm the terms of a Service Order with the Customer in writing (which includes confirmation by email), and the Customer will be deemed to have accepted the terms if no objection is received by ZSD within 5 (five) Business Days of receipt by the Customer. Despite such confirmation the Effective Date will remain unchanged.

6. Structure and Precedence

- 6.1. These Standard Terms apply to the provision of all Goods and Services by ZSD to the Customer, unless the parties exclude them in writing.
- 6.2. If there is any conflict between the terms of any of these documents, the following documents will prevail in descending order of precedence: Service Order, Service Specifications, then Standard Terms.

7. Preliminary Matters

- 7.1. THE CUSTOMER CONSENTS TO ZSD CARRYING OUT A CREDIT CHECK IN RESPECT OF THE CUSTOMER AT ANY APPLICABLE CREDIT BUREAU, AND MAY MAKE THE PROVISION OF THE GOODS OR SERVICES DEPENDANT ON ITS SATISFACTION WITH THE RESULTS THEREOF.
- 7.2. In the event that the Customer is a juristic person, ZSD may at its sole instance require that one or more of its officers should stand surety for the Customer's obligations under this Agreement. Notwithstanding the signature of this Agreement or any Service Order, ZSD may withhold provision of the Goods or Services until such surety has been signed.
- 7.3. The Customer notes in particular that it will be required to provide certain information to ZSD as contemplated in Chapter 7 of RICA, and that ZSD may withhold or suspend provision of the Goods or Services to the Customer until such time as the Customer has provided such information to ZSD's satisfaction.
- 7.4. If ZSD elects to exercise any of its rights set out in this clause 7., this will act as a suspensive condition to the Agreement, and ZSD may consequently suspend providing the Goods or commencing with provision of the Services until it is satisfied with the results thereof. Should it not be satisfied, ZSD may terminate the Agreement in respect of those Goods or Services and will not be liable for any damage that the Customer may suffer as a consequence.

8. Amendment of Terms

- 8.1. ZSD may amend the Standard Terms and Service Specifications at any time. The amended versions will be posted on the ZSD Website, and ZSD will as soon as possible after posting the amendments make reasonable efforts to advise the Customer of them. The Customer also has a duty to keep itself informed of the latest version of the above documents by accessing the ZSD Website on a regular basis.
- 8.2. ZSD must give at least one calendar month's notice for the amendments, which will become effective at the beginning of the first calendar month after the notice period has expired.
- 8.3. If the Customer objects to any amendment, it may terminate the Agreement, and the termination will become effective at the end of the notice period.

9. Fees and Payment

- 9.1. The Customer will be liable for and will pay the Fees in respect of Goods and Services supplied in terms of this Agreement on the basis set out in the Service Orders, without deduction or set-off.
- 9.2. Unless otherwise agreed:
 - 9.2.1. While payment may be required in advance in certain circumstances, billing will commence on the date that Service provision commences.
 - 9.2.2. Invoices in respect of the purchase of Goods are payable on presentation, and ZSD may delay delivery until payment has been made.

- 9.2.3. Fees for software installation and configuration, domain registrations and ad hoc Services are payable within 5 (five) Business Days of the date of ZSD's invoice.
- 9.2.4. Fees for DSL and access Services and all other Fees payable in advance must be paid by the Customer in advance by the first Business Day of the relevant calendar month.
- 9.2.5. All other invoices must be paid by the Customer within 10 (ten) calendar days of the date of ZSD's invoice.
- 9.2.6. All Fees and other amounts payable are quoted exclusive of VAT.
- 9.3. ZSD may from time to time introduce payment terms in respect of particular payment options. Such terms will form part of this Agreement and may be accessed at the ZSD Website.
- 9.4. Any amount which remains unpaid beyond the date upon which it becomes owing will attract interest at a rate of 3% (three percent) above the Bank Rate, up to a maximum of 2% per month. Such interest will be calculated from the due date of payment to the date of actual payment, both days inclusive, compounded monthly in arrears and the Customer agrees and undertakes to pay such interest.
- 9.5. ZSD may at its sole discretion suspend the provision of Services in respect of which any amount is outstanding:
 - 9.5.1. Immediately where a debit order fails due to insufficient funds, or
 - 9.5.2. on 5 (five) Business Days written notice (including notice by email) to the Customer in any other case,unless the amount is the subject of a billing complaint by the Customer. Such suspension will not relieve the duty upon the Customer to make payment of subsequent Fees for that service or any other amounts due to ZSD.
- 9.6. Reconnection of any Service suspended in terms of clause 9.5. will be subject to a R150 reconnection fee.
- 9.7. ZSD may at its sole instance require the Customer to make payment by way of debit order. If some Services are paid by debit order and others not, ZSD will on request provide the Customer with a statement detailing the respective payment methods.
- 9.8. Should any amount be outstanding by more than 60 Business Days, ZSD may refer the matter to a debt collection agency or attorney for collection. Should it do so, the Customer will be liable for an administration fee of R250, as well as any legal costs arising from collection of the debt.
- 9.9. ZSD may increase or decrease the Fee for any Service from time to time, and an increase in Fees will be dealt with in the same way as an amendment under clause 8., save that the Customer must give ZSD a full calendar months' notice of termination if it wishes to terminate.
- 9.10. The Customer will reimburse all reasonable expenses that are necessarily and actually incurred by ZSD and ZSD's Personnel in fulfilling ZSD's obligations pursuant to this Agreement. Such expenses include, but are not limited to, travelling, subsistence, goods and services purchased on

the Customer's behalf, communications, stationery, report and presentation material. Travelling and subsistence expenses will be agreed between the parties from time to time.

- 9.11. The Parties agree that in the event of any dispute in respect of monies owing to ZSD which have not been paid by the due date, ZSD:
- 9.11.1. may retain any Customer Equipment which is in its possession in pursuance of any Service Order as security for payment of any disputed amount, and
- 9.11.2. will be entitled, but not obliged, to dispose of such Customer Equipment in order to recover any amounts so owing should such amounts have been outstanding for a period of more than 60 (sixty) days from due date.
- 9.12. Foreign domain registrations and other services specified as such, are subject to foreign currency fluctuations. The Rand amount invoiced will be adjusted to reflect the exchange rate prevailing at the time ZSD makes these foreign payments. Application of these adjustments may be waived, at ZSD's discretion, if the adjustment is less than 10%. The Customer will be liable for all bank charges associated with foreign currency transactions and payments from foreign banks.
- 9.13. Where the Customer has paid for Services in advance, ZSD will refund any amounts that are to the credit of the Customer on Termination, unless ZSD has a claim against the Customer.
- 9.14. ZSD may allocate all amounts received from the Customer as follows: firstly towards interest and reimbursement of expenses, secondly to Fees payable for Services rendered, and thirdly to Fees payable to purchase Goods.

10. Use of Services

- 10.1. THE CUSTOMER ACCEPTS THAT IT IS RESPONSIBLE FOR ALL OF THE CONSEQUENCES OF ITS OWN ACTIVITIES AND THOSE OF ITS EMPLOYEES, OFFICERS, AGENTS, INDEPENDENT CONTRACTORS AND ALL OTHERS UNDER ITS CONTROL WHEN USING THE SERVICES.
- 10.2. UNLESS OTHERWISE AGREED IN WRITING, THE CUSTOMER IS RESPONSIBLE FOR ACQUIRING, INSTALLING AND MAINTAINING ALL HARDWARE AND SOFTWARE REQUIRED TO ACCESS THE ZSD SYSTEM AND MAKE USE OF THE SERVICES.
- 10.3. ZSD IMPOSES RULES FOR THE USE OF THE SERVICE WHICH ARE CONTAINED IN THE ACCEPTABLE USE POLICY. THE CUSTOMER MUST ABIDE BY THE ACCEPTABLE USE POLICY AND ENSURE THAT ANYONE UNDER ITS CONTROL THAT USES THE SERVICES ALSO DOES SO. FURTHER, DUE TO THE FLUID NATURE OF NETWORK SECURITY THREATS AND EVOLVING TECHNOLOGY, ZSD WILL AMEND THE ACCEPTABLE USE POLICY FROM TIME TO TIME. THE ACCEPTABLE USE POLICY AS AMENDED IS AVAILABLE FOR VIEWING ON THE ZSD WEBSITE.
- 10.4. For the avoidance of doubt, the Acceptable Use Policy contains reasonable rules for conduct, which are not themselves material terms of this Agreement; the Customer's duty under this Agreement is to abide by such reasonable rules as ZSD may include in the Acceptable Use Policy from time to time. An amendment to the Acceptable Use Policy is hence not an

amendment to this Agreement so long as it does not effect a material term.

- 10.5. ZSD may use upstream Suppliers in providing certain Services, which may maintain their own acceptable use policies. ZSD will make links available to these acceptable use policies on the ZSD Website and the Customer agrees to abide by these policies. ZSD may treat a breach of a Supplier's acceptable use policy as if it were a breach of one of ZSD's Acceptable Use Policy.

11. Intellectual Property

- 11.1. Unless agreed between the Parties in writing, nothing in this Agreement will be interpreted as granting either Party a license to deal in any way with any Intellectual Property owned by the other, nor will anything be construed as an assignment of Intellectual Property to the other.
- 11.2. If ZSD provides the Customer with Software of which it is the copyright owner as part of providing a Service, it grants the Customer a non-exclusive, non-transferable licence to use that Software:
- 11.2.1. only for its own purposes;
 - 11.2.2. for the purposes of making use of the Services; and
 - 11.2.3. for the duration of and subject to this Agreement.
- 11.3. As part of the provision of the Services, the Customer may be provided with Software owned by a third party and / or subject to a license from a third party. The Customer agrees to comply with all license terms imposed by such third parties in its use of such Software, including any such license terms appended to a Service Order.
- 11.4. The Customer is specifically prohibited from reverse engineering, disassembling, decompiling or otherwise using any method to discover the source code of any Software provided pursuant to this Agreement (or attempting to do so), where the Intellectual Property is not owned by the Customer.
- 11.5. The Customer undertakes to comply with all intellectual property laws, and to do nothing related to or connected with this Agreement or its use of the ZSD System which may infringe the Intellectual Property rights of ZSD or any third party.
- 11.6. THE CUSTOMER WARRANTS THAT ANY INTELLECTUAL PROPERTY RIGHT IN RESPECT OF WORKS TRANSMITTED, ACCESSED, STORED, DISPLAYED OR REPRODUCED USING THE ZSD SYSTEM ARE EITHER OWNED BY IT OR THAT IT HAS THE PERMISSION OF THE OWNER OF SUCH INTELLECTUAL PROPERTY TO MAKE SUCH USE OF THOSE WORKS.
- 11.7. Notwithstanding any other provision of this Agreement, ZSD will have the right to make copies of the Customer Data if such copies are required to provide a Service.
- 11.8. During provision of the Services, ZSD may allocate or procure that one or more Internet Protocol ("IP") addresses are allocated to the Customer.

- 11.8.1. The Customer will put the assigned IPs to the use specified or implied in the Service Order, and will not put same to another use without the express written consent of ZSD.
- 11.8.2. The Customer acknowledges that IP addresses are not property and are not capable of being the subject of ownership. Consequently neither the Customer nor ZSD acquires any right or expectation of a right thereto by virtue of an allocation of IP Address(s) to either of them.
- 11.8.3. On termination of this Agreement or the relevant Service Order, any IP Addresses assigned to the Customer may be removed from the Customer, and the Customer will have no recourse against ZSD or any third party as a result of any loss sustained as a result.

12. Security

- 12.1. ZSD will implement measures commensurate with Good Industry Practice to ensure the security of the ZSD System and the physical security of the Premises, but gives no warranty that breaches of security will not take place.
- 12.2. In the event that the Customer discovers a security violation, or reasonably considers that a security violation is imminent, it must immediately advise ZSD thereof.
- 12.3. The Customer will be liable for any damage sustained by the Customer which is occasioned by the loss of Customer Data arising from or attributable to a security violation arising due to the fault of the Customer.
- 12.4. The Customer will not do anything that may have the effect of prejudicing the security of the ZSD System, and will take all reasonable measures necessary to ensure that:
 - 12.4.1. No unlawful access is gained to the Premises, the ZSD System, or the Customer System,
 - 12.4.2. The Customer Data is safeguarded, and
 - 12.4.3. Any Internet Protocol ("IP") address range assigned to the Customer cannot be attacked by third parties.
- 12.5. In the event of a security violation, or in the event that ZSD at its sole discretion determines that a security violation is imminent, ZSD may take whatever steps it deems necessary to maintain the proper functioning of its ZSD System including without limitation:
 - 12.5.1. changing the Customer's access codes and passwords or those of any user of the ZSD System,
 - 12.5.2. preventing access to the Customer System, and
 - 12.5.3. preventing access to the ZSD System.
- 12.6. ZSD takes reasonable measures to provide disaster recovery but does not specify any recovery time.
- 12.7. The Customer must give its full cooperation to ZSD in any investigation which may be carried out by ZSD relating to a security violation.

- 12.8. In the event of the Customer providing any service to third parties which makes use of the ZSD System, the Customer will contractually bind such third parties to the same terms with respect to security as set out in this clause 12., with the appropriate changes having been made.
- 12.9. ZSD may on prior written notice to the Customer inspect the Customer's installation and Customer Equipment located on the Premises to ensure compliance with the building regulations and restrictions agreed between the parties.

13. Suspension of Service

- 13.1. ZSD is entitled to suspend provision of the Services to the Customer under the following circumstances:
- 13.1.1. where the Customer is found to be in breach of the Acceptable Use Policy,
- 13.1.2. where the Customer has not made payment of monies owing to ZSD by due date, subject to clause 9.5.,
- 13.1.3. where such suspension is necessary to maintain security as set out in clause 12.5.,
- 13.1.4. where such suspension is necessary for the maintenance of the ZSD System, as set out in clause 15.,
- 13.1.5. where the Customer has failed to co-operate in an investigation as set out in clause 12.7. or otherwise has breached its duties set out in clause 12. such that its continued access to the ZSD System constitutes a threat to security, and / or
- 13.1.6. where so ordered by a court having jurisdiction over ZSD.
- 13.2. ZSD is entitled to suspend Services as set out in clause 13.1. immediately and without notice; however, if it is possible for ZSD to provide the Customer with reasonable notice of such suspension, ZSD will do so.
- 13.3. The period of suspension will be that which is reasonable under the particular circumstances which gave rise to the suspension.

14. Data & Content

- 14.1. WHILE ZSD RECOGNISES THE CUSTOMER'S RIGHT TO PRIVACY OF ITS DATA, THE CUSTOMER AGREES THAT ZSD MAY MONITOR THE CUSTOMER'S TRAFFIC DATA USING THE ZSD SYSTEM FOR ACCOUNTING PURPOSES AND SO AS TO ENSURE THAT THE ZSD SYSTEM IS OPERATING PROPERLY.
- 14.2. The Customer undertakes not to upload to, store on or allow third parties to access from the ZSD System any data or content that is unlawful or harmful as more fully set out in the Acceptable Use Policy.
- 14.3. Where the Customer's use of the Service leads to the transmission of data to or from the Republic of South Africa, the Customer acknowledges that it has a duty to comply with any relevant statutory provisions dealing with data privacy either in the Republic of South Africa or in any foreign country to which such data is transmitted.

- 14.4. ZSD has no knowledge of or interest in the data transmitted to, stored on or accessed from the ZSD System by the Customer, subject to the further terms of this Agreement. ZSD has moreover no duty to monitor any content made available or published through the ZSD System, subject to the provisions of clause 17..

15. Maintenance

- 15.1. ZSD may be required to suspend access to certain Services in order to carry out routine maintenance, provided that such routine maintenance will:
- 15.1.1. be subject to at least 20 hours' prior notice on the ZSD Website if the anticipated downtime is greater than two (2) hours;
 - 15.1.2. if possible be conducted only outside of Business Hours;
 - 15.1.3. be undertaken in accordance with Good Industry Practice so as to keep downtime to a minimum.
- 15.2. Notwithstanding the above, ZSD may suspend access to the Service without notice should maintenance be necessary in an emergency.
- 15.3. Where ZSD makes use of the services of third parties to provide the Services and those third parties undertake maintenance on their systems, ZSD will make best efforts to ensure that those third parties meet the provisions of clauses 15.1. and 15.2..

16. Loss of License

- 16.1. If ZSD cannot continue with provision of any Service because any license, permit, certificate consent, exemption or other necessary legal requirement is withdrawn, ZSD must make best endeavours to provide an alternative service to the Customer within 10 (ten) Business Days. It may do this either by utilising another of its own services, or by having a Supplier or third party provide the service in its place.
- 16.2. If the Customer is not satisfied with the steps taken by ZSD in clause 16.1., ZSD must cease provision of the Service in question and reduce the fee accordingly.
- 16.3. If ZSD cannot provide the other Services provided under this Agreement because they depend upon a Service that has been terminated in terms of clause 16.2., the Customer may terminate this Agreement with immediate effect.
- 16.4. Notwithstanding the provisions of this clause 16., ZSD will provide the Customer with timely notice of the circumstances described in clause 16.1. if reasonably possible.

17. Statutory Compliance

- 17.1. ZSD is obliged to comply with certain statutory provisions including, but not limited to, those set out in the following Acts (and their associated regulations):
- 17.1.1. the Film and Publications Act 65 of 1996;

17.1.2. the Electronic Communications and Transactions Act 25 of 2002

17.1.3. the Regulation of Interception of Communications and Provision of Communication-related Information Act (Act 70 of 2003) ("RICA"), and

17.1.4. the Electronic Communications Act 36 of 2005.

17.2. ZSD's compliance with these statutory provisions may include measures that would otherwise constitute infringements of the Customer's privacy, such as interception of the Customer's communications or the examination of Customer Data. The Customer agrees that no action will lie against ZSD for any damages howsoever arising as a result of such measures.

18. Ownership and Risk in Goods and Equipment

18.1. The Customer may purchase Goods (including ZSD Equipment) by agreeing to do so in a Service Order or by way of a separate agreement, in which case:

18.1.1. ownership in the Goods (including ZSD Equipment) will pass to the Customer only once payment has been made for it in full;

18.1.2. the balance of this clause 18. will not apply to the Goods (including ZSD Equipment) once ownership has passed to the Customer.

18.2. Other than as set out in clause 18.1., ownership of all ZSD Equipment is at all times and without exception retained by ZSD (or the Supplier as the case may be) and nothing in this Agreement should be construed creating any expectation with regard to the transfer of ownership to the Customer.

18.3. The Customer may not rent, sell, mortgage or otherwise encumber the ZSD Equipment without the prior written consent of ZSD; and

18.4. NOTWITHSTANDING CLAUSE 18.2., ALL RISK IN THE ZSD EQUIPMENT WILL PASS TO THE CUSTOMER:

18.4.1. WHEN POSSESSION OF THE ZSD EQUIPMENT PASSES TO THE CUSTOMER;

18.4.2. ON ITS DELIVERY TO ANY LOCATION INDICATED BY THE CUSTOMER WHERE IT IS NOT UNDER THE CONTROL OF ZSD, OR

18.4.3. ON ITS DELIVERY TO A PERSON AUTHORISED BY THE CUSTOMER TO TAKE DELIVERY OF THE ZSD EQUIPMENT, INCLUDING AN EMPLOYEE OF A COURIER OR SHIPPING AGENT,

AND THE CUSTOMER WILL FROM THAT TIME ONWARDS BE LIABLE FOR ANY LOSS, THEFT OR DAMAGE TO THE ZSD EQUIPMENT, HOWEVER IT OCCURS.

18.5. Where risk has passed to the Customer as contemplated in clause 18.3., it is the responsibility of the Customer to:

18.5.1. ensure that the ZSD Equipment is insured at a reasonable price against any damage or loss;

- 18.5.2. ensure that the ZSD Equipment remains in a safe environment that is conducive to its continued operation;
 - 18.5.3. provide reasonable access to the ZSD Equipment by ZSD or its agents (upon request) for maintenance and/or repairs; and
 - 18.5.4. reimburse ZSD for any repairs and/or maintenance needed to the ZSD Equipment at the Time and Materials Rate, provided that the Customer authorises the cost of such repairs and/or maintenance prior to implementation.
- 18.6. Where ZSD Equipment is installed or stored on or at a premises which is leased from a third party or otherwise not owned by the Customer then:
- 18.6.1. the Customer undertakes to obtain all such consents and permissions as may be necessary so as to allow the installation and maintenance of the ZSD Equipment; and
 - 18.6.2. THE CUSTOMER UNDERTAKES TO IN THE CASE OF A DISPUTE WITH THE LANDLORD OR OWNER, INFORM THE LANDLORD OR OWNER OF THE PREMISES IN WRITING OF THE FACT THAT THE ZSD EQUIPMENT IS THE PROPERTY OF ZSD AND DOES NOT BELONG TO THE CUSTOMER. THE CUSTOMER SPECIFICALLY INDEMNIFIES AND HOLDS HARMLESS ZSD IN RESPECT OF ANY BREACH OF THIS CLAUSE.
- 18.7. Under no circumstances is the Customer permitted to authorise or carry out technical maintenance on any ZSD Equipment without the prior written permission of ZSD. Any modification or re-configuration carried out or attempted by the Customer or any third party authorised to do so by the Customer without the express prior written approval of ZSD is strictly prohibited and ZSD specifically reserves its right to claim damages should this clause be breached.
- 18.8. On termination of this Agreement, for whatever reason, the ZSD Equipment must be returned to ZSD as soon as possible at the Customer's expense.
- 18.9. Risk in the Customer Equipment will at all times vest in the Customer, which will be responsible for insuring same.
- 18.10. If any third party disposes of Customer Equipment as a result of the Customer's breach or termination of this Agreement, no liability will attach to ZSD.
- 18.11. ZSD will tender return of the Customer Equipment immediately upon termination of the Service Order to which it pertains, subject to the provisions of clause 9.11..

19. LIMITATION OF LIABILITY AND INDEMNITY

- 19.1. ZSD WILL NOT BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY IN RESPECT OF ANY DAMAGES, LOSS, CLAIMS OR COSTS, OF WHATEVER NATURE AND INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES, SUFFERED BY THE CUSTOMER OR THIRD PARTY, WHETHER THROUGH THE ACT OR OMISSION OF AN ZSD EMPLOYEE, BREACH OF CONTRACT, VICARIOUS OR STRICT LIABILITY OR ANY OTHER CAUSE.

- 19.2. WITHOUT LIMITING THE PROVISIONS OF CLAUSE 19.1. IN ANY WAY, ZSD WILL NOT BE LIABLE TO THE CUSTOMER FOR DAMAGE ARISING FROM:
- 19.2.1. THE FAILURE OF ZSD FOR ANY REASON WHATSOEVER TO SUPPLY AND/OR DELIVER AND/OR PROVIDE INSTALLATION OF ANY EQUIPMENT EITHER ON THE REQUIRED DATE OR AT ALL;
 - 19.2.2. TERMINATION OF THE AGREEMENT BEFORE COMMENCEMENT OF A SERVICE, DUE TO TECHNICAL INFEASIBILITY;
 - 19.2.3. ANY ACT OR OMISSION RELATING TO THE TRANSMISSION OF DATA TO AND FROM THE ZSD SYSTEM, ITS STORAGE ON THE ZSD SYSTEM OR ITS PUBLICATION USING THE ZSD SYSTEM TO THIRD PARTIES, INCLUDING FALSE POSITIVES IN SPAM FILTERING;
 - 19.2.4. ANY ACTION TAKEN BY ZSD IN TERMS OF CLAUSE 12. (SECURITY) OR CLAUSE 13. (SUSPENSION OF SERVICE);
 - 19.2.5. COMPLIANCE WITH ANY STATUTE AS SET OUT IN CLAUSE 17. (STATUTORY COMPLIANCE);
 - 19.2.6. THEFT, LOSS OR DAMAGE TO CUSTOMER EQUIPMENT WHETHER LOCATED AT THE PREMISES OR ELSEWHERE;
 - 19.2.7. THE INTERRUPTION, SUSPENSION OR TERMINATION OF THE SERVICES FOR WHATEVER REASON; AND/OR
 - 19.2.8. LOSS OF DATA (INCLUDING FAILURE IN BACKUP OR DISASTER RECOVERY), DAMAGED OR CORRUPTED DATA OR A DELAY OR FAILURE IN TRANSMISSIONS.
- 19.3. WITHOUT IN ANY WAY LIMITING OR DEROGATING FROM THE ABOVE PROVISIONS, THE PARTIES AGREE THAT THE TOTAL AMOUNT OF ZSD'S LIABILITY RELATING TO OR ARISING FROM THIS AGREEMENT, WHETHER IN CONTRACT, DELICT, OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF THE FEES PAID BY THE CUSTOMER FOR THE SERVICE FROM WHICH THE DAMAGE AROSE IN THE 3 (THREE) MONTH PERIOD IMMEDIATELY PRECEDING THE DAMAGE-CAUSING EVENT.
- 19.4. THE CUSTOMER WILL INDEMNIFY, DEFEND, AND HOLD ZSD HARMLESS FROM ALL THIRD PARTY DEMANDS AND CLAIMS (INCLUDING LEGAL COSTS ON THE SCALE AS BETWEEN ATTORNEY AND OWN CLIENT AND ANY ADDITIONAL LEGAL COSTS) RELATING TO OR ARISING DIRECTLY OR INDIRECTLY OUT OF:
- 19.4.1. ACCESS TO OR USE OF THE ZSD EQUIPMENT, SERVICES, ZSD SYSTEM OR INFORMATION OBTAINED THROUGH THE USE THEREOF;
 - 19.4.2. BREACH OF PRIVACY RIGHTS, INCLUDING INFRINGEMENT OF ANY LAW (WHETHER SOUTH AFRICAN OR FOREIGN) GOVERNING CROSS-BORDER DATA FLOWS;
 - 19.4.3. THE INFRINGEMENT OF ANY RIGHT IN INTELLECTUAL PROPERTY, INCLUDING WITHOUT LIMITATION THOSE SET OUT IN CLAUSE 11.; AND
 - 19.4.4. ANY OTHER CAUSE FOR WHICH THE LIABILITY OF ZSD IS EXCLUDED IN TERMS OF THIS AGREEMENT.

- 19.5. ZSD will promptly notify the Customer in writing of any claims covered by this indemnity. Promptly after receipt of such notice, the Customer will assume the defence of such claim with counsel reasonably satisfactory to ZSD. If the Customer fails, within a reasonable time after receipt of such notice, to assume the defence with counsel reasonably satisfactory to ZSD or, if in the reasonable judgement of ZSD, a direct or indirect conflict of interest exists between the Parties with respect to the claim, ZSD will have the right to undertake the defence, compromise and settlement of such claim for the account and at the expense of the Customer. Notwithstanding the foregoing, if ZSD in its sole judgement so elects, ZSD may also participate in the defence of such action by employing counsel at its expense, without waiving the Customer's obligation to indemnify and defend. The Customer will not compromise any claim (or portions thereof) or consent to the entry of any judgement without an unconditional release of all liability of ZSD as to each claimant or plaintiff.
- 19.6. Nothing contained in this clause 19. will limit the Customer's liability in respect of charges incurred for Services.
- 19.7. These limitations on liability and indemnities apply to the benefit of ZSD and ZSD's Affiliates, directors, officers, employees, contractors, agents and other representatives, as well as any third parties whose networks are connected to the ZSD System.
- 19.8. In the case of ambiguity, this clause 19. will take precedence over any expression of the Parties' intention, whether express or implied, that may be contained elsewhere in this Agreement.

20. Assignment, Subcontracting and Reselling

- 20.1. Neither Party will be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed.
- 20.2. ZSD may sub-contract its obligations in terms of this Agreement to a third party, provided that:
- 20.2.1. such sub-contracting will not absolve ZSD from responsibility for the provision of the Service or complying with its obligations in terms of this Agreement; and
- 20.2.2. ZSD will at all times remain the sole point of contact for the Customer.
- 20.3. The Customer may not resell the Service, or otherwise provide the Service to a third party for consideration, unless otherwise specified in a Service Order.

21. Relationship between the Parties

- 21.1. The Parties agree that the relationship between them is one of commissioner and independent contractor, and nothing in this Agreement will be construed as giving rise to a relationship of employer and employee, whether between Customer and ZSD or between Customer and any officer, employee or agent of ZSD.
- 21.2. This Agreement does not give rise to a relationship of Principal and Agent. Neither Party will not be entitled to conclude any agreement on behalf of

the other, nor to sign any document on behalf of the other, unless so specifically authorised in writing by the other.

- 21.3. ZSD's right to terminate this Agreement will be regulated by the law of contract alone and neither ZSD or its employees, officers or agents is "an employee" of the Customer as defined in the Labour Relations Act 66 of 1995, s1 of the Basic Conditions of Employment Act 75 of 1997 or any similar statute.
- 21.4. The relationship between the Parties will not be an exclusive one and both parties will be free to enter into agreements similar to this one or any Service Order with third parties.
- 21.5. Both Parties to this Agreement (including the employees, officers and agents of the Parties) undertake to use their best endeavours and exercise good faith in implementing the provisions of this Agreement according to its intent and purpose and they further undertake to pass such resolutions and do all such acts and deeds as may be necessary, to this end.
- 21.6. In order to facilitate the effective provision of the Services, the Customer will:
 - 21.6.1. allow ZSD reasonable access to its premises in order for ZSD to provide the Services, and the Customer will procure that its employees, officers and agents co-operate with and give ZSD any necessary assistance in the provision of the Services;
 - 21.6.2. comply with any reasonable instructions given by ZSD relating to the provision of the Services, as well as ZSD's relevant policies and procedures, which will be made available to the Customer on request;
 - 21.6.3. enter into any agreement with a Supplier necessary to allow ZSD to provide the Services; and
 - 21.6.4. respond to any request for information, access or authorisation as soon as reasonably possible, having regard to the circumstances of the request.

22. No Solicitation

- 22.1. Both Parties undertake that they will not employ any employee of the other, or any person who was an employee of the other during the previous 12 (twelve) months. This restriction applies during the term of this Agreement and for a period of 6 (six) months after its termination for any reason. "Employ" includes persuading, encouraging or procuring the employee to be employed by or through the guilty Party or any of its subsidiaries, and by doing so directly or indirectly. The restriction also applies to inducing an employee to terminate his or her employment.
- 22.2. The provisions of clause 22.1. do not prohibit either of the Parties from considering any application for employment submitted on an unsolicited basis or in response to a general advertisement of employment opportunities.

23. Application of the Consumer Protection Act

- 23.1. Whether the CPA applies to this Agreement depends on whether certain values in the Customer's business (the "Threshold Values") are above or below a threshold.
- 23.2. The Threshold Values are the Customer's asset value or annual turnover. If either of these values exceed R2 000 000 (two million rand) on the date the Parties agree that ZSD will provide a Service, the CPA not will apply to this Agreement.
- 23.3. The values measured and the threshold itself may be amended from time to time, in which case the Parties agree that the new measurements will apply to this Agreement from the date of amendment.
- 23.4. ZSD's duties under this Agreement may vary depending upon whether the CPA applies to it, and ZSD will act upon the information given by the Customer in this regard. Consequently:
 - 23.4.1. the Customer warrants that any statement made to ZSD in respect of its Threshold Values is accurate.
 - 23.4.2. If the Customer claims that all the Threshold Values are below R 2 000 000 (two million rand), or otherwise that the CPA applies to this Agreement, ZSD may at its instance require the Customer to provide it with financial statements as proof thereof.
 - 23.4.3. If the Customer misstates the Threshold Values (whether negligently or otherwise) in such a way that ZSD believes that this Agreement is subject to the CPA when it is not, then ZSD may retroactively apply any provisions of this Agreement that were not applied as a result of this belief.
 - 23.4.4. The Customer will be liable for any costs or damage sustained by ZSD resulting from such misstatement.
- 23.5. If the CPA is applicable to this Agreement, the provisions of the CPA will be applied and take precedence where they contradict any provision of this Agreement.

24. Warranties

- 24.1. ZSD warrants that:
 - 24.1.1. it has the facilities, infrastructure, capacity and capability to provide the Services;
 - 24.1.2. it will employ a sufficient number of suitably trained staff to provide the Services;
 - 24.1.3. it will provide the Services:
 - 24.1.3.1. with promptness and diligence and in a workmanlike manner and in accordance with the practices and professional standards of well-managed companies performing services similar to the Services;
 - 24.1.3.2. in accordance with all applicable laws and regulations.

- 24.2. Save as expressly set out in this clause and elsewhere in this Agreement or in any Service Level Agreement and to the maximum extent permitted by law, ZSD does not make any representations nor does it give any warranties or guarantees of any nature whatsoever in respect of the ZSD Equipment or Services, which are provided on a “reasonable effort” basis, and all warranties which are implied or residual at common law are hereby expressly excluded.
- 24.3. For the avoidance of doubt, ZSD does not warrant any of the following:
- 24.3.1. connection quality (including throughput, availability, jitter, latency and packet loss);
 - 24.3.2. the confidentiality, integrity and / or availability of any Customer Data;
 - 24.3.3. the correctness of the identification of any email as spam; or
 - 24.3.4. the success of any backup or disaster recovery service offered.
- 24.4. If the CPA is applicable to this Agreement or to the relevant Service Order, the provisions of this Agreement or of this clause 24. will not be interpreted so as to exclude the Customer’s rights under sections 54, 55, and 56 of the CPA, which are admitted only to the minimum possible extent. Unless the contrary is stated elsewhere in this Agreement, the Customer will have no rights in respect of quality of service, safe & good quality goods or implied warranty of quality beyond those explicitly stated in the aforementioned sections.

25. Breach and Termination

- 25.1. If the Customer:
- 25.1.1. fails to comply with any of its obligations or commit a breach of this Agreement and fails to remedy the default or breach within 5 (five) Business Days after having received a written notice to do so,
 - 25.1.2. resolves to begin business rescue proceedings as contemplated in chapter 6 of the Companies’ Act 71 of 2008,
 - 25.1.3. is placed in provisional or final liquidation or sequestration, or judicial management,
 - 25.1.4. enters into any compromise arrangements with its creditors,
 - 25.1.5. fails to satisfy a judgement taken against it within ten (10) Business Days,
 - 25.1.6. falls under the controlling interest or ownership of a competitor of ZSD (for the purpose of this clause, the Party who makes this allegation will carry the burden to prove same), or
 - 25.1.7. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Customer

ZSD will be entitled either:

- 25.1.8. to hold the Customer to the Agreement; or

25.1.9. to cancel the Agreement.

25.2. The provisions of this clause will not affect the rights of ZSD to claim damages in respect of a breach of any of the provisions of this Agreement.

26. Domicilium & Notices

26.1. The Parties choose their addresses where they will accept service of any notices/documents for all purposes arising from or pursuant to this agreement:

26.1.1. in the case of ZSD, as set out in clause 2.1. of this document,
and

26.1.2. in the case of the Customer the addresses set out in the first application form executed in terms of this Agreement.

26.2. Any Party will be entitled from time to time by written, notice to the other(s), to vary its given address to any other address within the Republic of South Africa which is not a post office box or to vary its other domicilium contact details.

26.3. Any notice given in terms of this Agreement will be in writing and any notice given by any Party to another ("the addressee") which:-

26.3.1. is delivered by hand or transmitted by telefax will be deemed to have been received by the addressee on the first business day after the date of delivery or transmission, as the case may be; or

26.3.2. is transmitted by email will be deemed to have been received upon confirmation of receipt (not automated receipt) thereof by the addressee; or

26.3.3. is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at its domicilium address for the time being will be deemed to have been received by the addressee on the 7th (seventh) day after the date of such posting.

26.4. Despite the above:

26.4.1. any notice that ZSD successfully sends by email to an email account hosted on the ZSD System by the Customer will be deemed to have been received by the Customer on the date of transmission; and

26.4.2. if a written notice or communication is actually received by one of the Parties from the other, this will be adequate written notice or communication to that Party.

27. Applicable Law & Jurisdiction

27.1. This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

27.2. Where ZSD employs the services of attorneys or other debt-recovery agencies in respect of any outstanding debt or amount then the Customer undertakes to pay on demand all legal costs incurred on the scale as

between attorney and own client and including related costs such as collection commission and tracing fees.

28. Disputes

- 28.1. In the event of any dispute arising between the Parties under this Agreement or any Service, the Parties will act in good faith to attempt to settle the dispute through discussions between senior representatives (which may include the respective CEO's) of the Parties within 30 (thirty) days of a Party giving the other Party notice of the issue in dispute.
- 28.2. Any dispute which cannot be resolved by the Parties within the 30 (thirty) days period, as provided in this clause 28., will be resolved by arbitration in the English language by a single arbitrator appointed by the Arbitration Foundation of South Africa and in accordance with the Rules of the Arbitration Foundation of South Africa.
- 28.3. Notwithstanding the provisions of this clause 28., either Party will have the right to seek relief by way of interim relief from any court of competent jurisdiction.
- 28.4. Pending final settlement or determination of a dispute, the Parties will continue to perform their subsisting obligations hereunder.
- 28.5. Notwithstanding the above, the Customer consents to the jurisdiction of the Magistrate's Court in respect of any action initiated for the recovery of overdue payments, notwithstanding that the amount summonsed for exceeds such jurisdiction, the decision on which Court to proceed being in the sole discretion of ZSD.
- 28.6. This clause is separate from the rest of the agreement and will remain effective between the parties if this agreement is terminated.

29. Force Majeure

- 29.1. Neither Party will be liable for any delay in performing or any failure to perform any obligations under this Agreement due to any cause beyond their reasonable control, including but without being limited to any of the following: strikes, lock outs or other industrial action, sabotage, terrorism, civil commotion, riot, invasion, war, threat of or preparation for war, fire, explosion, failure of electrical supply, storm, flood, subsidence, epidemic or other natural physical disaster, impossibility of the use of railways, shipping aircraft, motor transport or other means of public or private transport; any act or policy of any state or government or other authority having jurisdiction over either Party, sanctions, boycott or embargo.
- 29.2. Upon the occurrence of any delay or failure referred to in clause 29.1., the provisions of this Agreement affected will be suspended for as long as the cause in question continues to operate, provided that if that cause has not ceased to operate within 3 (three) months from when it first arose, this Agreement may be terminated by either Party.

30. Survival

- 30.1. For the avoidance of doubt, any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement will survive any termination or expiration of this Agreement and continue in full force and effect.

31. Interpretation

- 31.1. In this Agreement, unless the context requires otherwise: - words importing any one gender will include the other gender; the singular will include the plural and vice versa; a reference to natural persons will include created entities (corporate or unincorporate) and vice versa;
- 31.2. Words and expressions defined in any clause will, for the purposes of that clause, bear the meanings assigned to such words and expressions in such clause;
- 31.3. If any provision is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in a definitions clause, effect will be given to it as if it were a substantive provision in the body of the agreement.
- 31.4. Clause headings have been inserted for convenience only and will not be used for nor assist or affect its interpretation; where a clause number is cited, it will be deemed to include reference to all subclauses of that numbered clause.
- 31.5. The rule of construction that an agreement will be interpreted against the Party responsible for its drafting or preparation (*contra preferentum*) will not apply.

32. General

- 32.1. This Agreement constitutes the whole of the agreement between the parties hereto relating to the subject matter hereof and the parties will not be bound by any terms, conditions or representations whether written, oral or by conduct and whether express or tacit not recorded herein; no addition to, variation, consensual cancellation or novation of this agreement, including this clause, will be of any force or effect unless reduced to writing and signed by both parties or by their duly authorised representatives.
- 32.2. The signatories hereto acting in representative capacities warrant that they are authorised to act in such capacities, and accept personal liability under this Agreement should they prove not to be so authorised.
- 32.3. The failure by any Party to enforce any provision of this agreement will not affect in any way that Party's right to require performance of the provision at any time in the future, nor will the waiver of any subsequent breach nullify the effectiveness of the provision.
- 32.4. No variation, addition to or cancellation of this agreement and no waiver of any right under this agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the parties to this agreement.
- 32.5. If the whole or any part of a provision of the agreement is void or voidable by either party or unenforceable or illegal, the whole or that part (as the case may be) of that provision, shall be severed, and the remainder of the agreement shall have full force and effect, provided such severance does not alter the nature of the agreement between the parties.
- 32.6. If a provision of this agreement is reasonably capable of an interpretation which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid or otherwise

unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down to the extent necessary to make it valid and enforceable.

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