



PLEASE READ THIS CLOUD SERVICES SUBSCRIPTION AGREEMENT (“AGREEMENT”) CAREFULLY BEFORE PURCHASING OR USING THE ZPE SYSTEMS (“ZPE”) SUBSCRIPTION SERVICES.

BY PURCHASING OR USING THE ZPE SUBSCRIPTION SERVICES, YOU (“CUSTOMER”) ARE CONSENTING TO BE BOUND BY THIS AGREEMENT.

The following terms govern Customer’s use of the ZPE Subscription Services:

1. Subscription Services.

- 1.1. Subscription Based Services. Customer may purchase a subscription to the Subscription Services (as defined in Section 1.2) by issuing a purchase order (“**Order**”) to ZPE or an ZPE authorized reseller. The Order will specify the Subscription Services being purchased, quantity of devices authorized to receive the Subscription Services (“**Device Limit**”), term of the Subscription Services (“**Subscription Period**”), applicable fees, and may provide for any additional conditions or limitations on usage of the Subscription Services. Other conditions or limitations on usage (Device Limit, applicable fee, Subscription Period and usage framework terms collectively “**Customer Specific Terms**”). Orders are must be accepted by ZPE and any terms contained in the Order that conflict with or are in addition to terms of ZPE’s acceptance or this Subscription Agreement, are rejected by ZPE.
- 1.2. Services. So long as Customer is in compliance with the terms of this Subscription Agreement and the Customer Specific Terms, during the Subscription Period, ZPE shall use commercially reasonable efforts to make available to Customer the Subscription Services identified on the accepted Order, solely for Customer’s internal business purposes and subject to the following limitations on availability: (1) planned downtime provided ZPE notifies Customer in advance; and (2) any circumstances outside ZPE’s control, including but not limited to acts of God, coronaviruses and other widespread disease, act of government, earthquake, fire, flood, civil unrest, labor stoppages or shortages, or Customer’s inability to access the internet or the Subscription Services. “**Subscription Services**” means the software services hosted by ZPE and purchased by Customer pursuant to an Order or made available as Evaluation Services (defined below) by ZPE, subject to any Customer Specific Terms, and includes any user guides or manuals for installation or use of the Subscription Services that ZPE has made available to Customer in connection with the Subscription Services (“**Documentation**”). During the Subscription Period, ZPE may unilaterally make changes or updates to the Subscription Services, including changes to reflect changes in technology, industry practices, security, and use patterns.
- 1.3. Service Limitations. Customer shall not, directly or indirectly, do any of the following: (1) use or access the Subscription Services in an unauthorized manner, for an unauthorized purpose, or to discover the underlying structure, ideas, know- how or technology relevant to the Subscription Services for the purpose of developing similar services, features or technologies that compete with the Subscription Services or circumventing the other restrictions contained in this Section 1.3; (2) disassemble, decompile or otherwise reverse engineer any of the software used to provide the Subscription Services; (3) modify or create derivative works based on the Subscription Services except as expressly authorized by the Documentation; (4) remove any notices or labels from the Documentation or any other ZPE software, technology, items or materials; (5) tamper with, interrupt or otherwise access the Subscription Services; (6) interfere with ZPE’s ability to provide, and other customers to receive, access to the Subscription Services; (7) use the Subscription Services in violation of the Customer Specific Terms; (8) sell, license, provide access to, or allow, encourage or assist any third parties (except for third party Authorized Users) to use the Subscription Services (or any portion thereof) for third-party training, commercial time-sharing or service bureau use, or use the Subscription Services on behalf of a third party; and (9) use the Subscription Services in a manner that violates applicable laws. If Customer violates this Section 1.3, or if ZPE determines in good faith that Customer’s use of the Subscription Services is causing harm to ZPE or third parties, ZPE may immediately suspend Customer’s use of and access to the Subscription Services and ZPE will not have any liability to Customer or any other

third party for such suspension. Customer shall be liable to ZPE for any damages, injury or harm caused to ZPE as a result of Customer's violation of this Section 1.3.

- 1.4. ZPE Access. During the Subscription Period, Customer grants to ZPE the right to access Customer's network, computer systems and Customer Data (as defined below) as needed to provide the Subscription Services. Customer acknowledges and agrees that ZPE and its affiliates may use the Customer Data, Device Information and User Identities to provide the Subscription Services to Customer as well as to develop and improve ZPE's Subscription Services. Customer grants to ZPE a worldwide, fully paid-up, royalty-free, non-exclusive license to access, host, reproduce, perform, transmit, display and otherwise use any software, Customer data (including without limitation Customer Data), or any other Customer-related materials to the extent necessary for ZPE to provide the Subscription Services to Customer.
- 1.5. Evaluation Services. ZPE may make the Subscription Services available to Customer for evaluation, training, beta testing or for other non-commercial purposes ("**Evaluation Services**"). Customer may use the Evaluation Services without paying ZPE, subject to the following conditions: (i) Customer may use the Evaluation Services for evaluation purposes only in a non-production environment; (ii) use of any Software provided to Customer, either embedded on hardware or separately, as part of the Evaluation Services is subject to ZPE's MLA (defined below) as an evaluation license; (iii) NOTWITHSTANDING ANY EXPRESS WARRANTIES OR INDEMNITIES PROVIDED HEREIN BY ZPE, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE EVALUATION SERVICES ARE PROVIDED "AS IS" WITH NO WARRANTIES OF ANY KIND AND ZPE HAS NO INDEMNIFICATION OBLIGATION WITH RESPECT TO THE EVALUATION SERVICES; and (iv) upon the termination or expiration of the Evaluation Services, Customer will return any hardware made available as part of the Evaluation Services to ZPE, in a manner agreed to by the parties. ZPE may revoke or suspend Customer's access to the Evaluation Services at any time for any reason. ZPE has no obligation to retain Customer data held by ZPE in the course of providing the Evaluation Services
- 1.6. Authorized Users. Customer may designate a reasonable number of employees and independent third-party contractors (provided such third party contractor use is strictly on Customer's behalf and Customer ensures such third party contractor complies with the restrictions contained in this Subscription Agreement) to receive access to the Subscription Services ("**Authorized Users**"). Customer shall limit access to the Subscription Services to Authorized Users and shall require Authorized Users comply with terms of this Subscription Agreement. Further, Customer shall ensure each Authorized User maintains the security of their Subscription Services access credentials and does not allow other individuals (regardless of whether such individuals are Authorized Users) to access the Subscription Services with their credentials. Customer accepts responsibility for all actions performed while the Subscription Services are accessed under an Authorized User's credentials. ZPE reserves the right to terminate or suspend any Authorized User at any time and for any reason.

2. ZPE Equipment and Commercial Software.

- 2.1. Genuine ZPE Equipment. Except as otherwise expressly stated in the Documentation, Customer's use of the Subscription Services requires use of ZPE equipment, running a properly licensed copy of ZPE Software, purchased by Customer from ZPE or from an ZPE authorized reseller ("**Genuine ZPE Product**"). Use of the Subscription Services with any non-Genuine ZPE Product is at Customer's sole risk and ZPE makes no warranties, guarantees, or representations regarding the performance of the Subscription Services in combination with any products, services or software not provided by ZPE.
- 2.2. ZPE Commercial Software. This Subscription Agreement does not extend to any downloaded or installed software, or firmware provided by ZPE that runs on Customer's equipment ("**Software**"); any such Software is licensed under ZPE's Master License Agreement ("**MLA**") available at

www.zpesystems.com/legal-documents and such other agreement(s), if any, between ZPE and Customer regarding Customer's use of the Software.

- 2.3. **Government Rights.** The Software and Documentation are "commercial items" as defined at FAR 2.101 comprised of "commercial computer software" and "commercial computer software documentation" as those terms are used in FAR 12.212. Consequently, regardless of whether Customer is United States Government or a department or agency thereof, Customer shall acquire only those rights with respect to the Software and Documentation that are set forth in this Subscription Agreement.
3. **Payment and Taxes.** In the event Customer purchases the Subscription Services directly from ZPE, ZPE will invoice Customer on the commencement date of the Subscription Period as specified on the Order and each monthly, quarterly or yearly anniversary date, as applicable (or as otherwise set forth in the Order). If Customer's use of the Subscription Services exceeds the Device Limit set forth on the Order or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. ZPE reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then current renewal term, upon thirty days prior notice to Customer (which may be sent by email). Customer shall pay ZPE the amount specified in any such invoice within thirty days from the date of invoice. Any sum not paid by Customer when due shall bear interest until paid at a rate of 1.5% per month (18% per annum) or the maximum rate permitted by law, whichever is less. Customer shall be responsible for all taxes associated with Subscription Services other than U.S. taxes based on ZPE's net income.

4. **Intellectual Property Ownership.**

- 4.1. **ZPE Property.** ZPE owns all right, title and interest in and to the Subscription Services and Software and all associated intellectual property rights, including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property and proprietary rights, except for the limited permissions expressly granted to Customer in this Subscription Agreement, and no rights or licenses shall be deemed or interpreted to be granted or transferred hereunder, whether by implication, estoppel, or otherwise. All rights not expressly granted by ZPE to Customer are hereby reserved to ZPE. There are no implied rights.
- 4.2. **Customer Property.** "**Customer Data**" means any information or data provided by Customer to enable the provision of the Subscription Service or otherwise input by Customer into the Subscription Service or collected through Customer's use of the Subscription Services, including Device Information and User Identities (as defined below), and excluding any Feedback (as defined below). Customer Data shall remain the exclusive property of Customer and, except as expressly provided herein, no rights or licenses shall be deemed or interpreted to be granted or transferred hereunder, whether by implication, estoppel, or otherwise.

5. **Data Protection and Application Information.**

Protection of Customer Data. ZPE will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data consistent with generally accepted industry standards. The terms of ZPE's data processing addendum are hereby incorporated by this reference and shall apply to the extent Customer Data includes Personal Data. ZPE uses cloud service providers to manage Customer Data and the list of such cloud service providers can be requested at the address listed on the ZPE website at www.zpesystems.com. Customer expressly authorizes the use of such service providers to process Customer Data to provide the Subscription Services and Personnel Contact Information to manage ongoing communications between Customer and ZPE. Upon request by Customer made within thirty days after the effective date of termination or expiration of this Agreement, ZPE will make Customer Data available to Customer for export or download. ZPE will have no obligation to maintain or provide any Customer

Data for more than 30 days. If requested by Customer, ZPE will delete Customer Data within ninety days of such request.

- 5.1. Feedback. During the Subscription Period, Customer may inform ZPE of problems encountered using the Subscription Services and may provide feedback to ZPE concerning the functionality and performance of the Subscription Services, and ideas for improvements and enhancements thereto and new product and service offerings (collectively, “**Feedback**”). All Feedback will be the sole property of ZPE (including without limitation any intellectual property rights therein). ZPE may use and disclose and exploit all Feedback.
- 5.3. Information about Devices. ZPE may collect the following information from use of the Subscription Services: (a) information about devices in and around Customer’s network, including, but not limited to, Media Access Control (MAC) addresses and Internet Protocol (IP) addresses of devices in Customer’s network(s) and/or of devices that are in the radio frequency (RF) proximity of location(s) for ZPE Cognitive WiFi; and (b) additional information about these devices such as information about device activity, host name, configuration, operating system, and login identities used from the devices ((a) and (b), collectively “**Device Information**”). In the case of ZPE Cognitive WiFi, the collection of Device Information is enabled by default and is essential to provide wireless connectivity, monitoring and security for Customer’s network. Customer may choose not to give ZPE Device Information by not using the Subscription Services or, to some extent, through Customer’s configuration of the Subscription Services.
- 5.4. Information about Users. In addition to information described in Section 5.3 above, the Subscription Services have the ability to capture additional information depending on which features Customer chooses to enable. If Customer chooses to enable any optional functionality in Subscription Services that takes as input or collects information about users accessing Customer’s network (“**User Identities**”), ZPE will receive and store such information in accordance with the data entry and/or configuration settings Customer makes. By way of example and not limitation, if Customer chooses to enable captive portal functionality along with guestbook, social media, SMS or web form plugins in ZPE’s Cognitive WiFi Platform, ZPE will receive and store User Identities input by Customer or configured by Customer to be collected from users of Customer’s wireless network. ZPE will receive and may store User Identities utilizing data protection tools and techniques in accordance with industry practices. ZPE will correlate User Identities with Device Information, including, but not limited to, the identity of a user’s device, time stamps of a user’s wireless access to/presence near/location with respect to a wireless network, data volume transacted through the wireless network by a user and websites accessed by a user.
- 5.5. Consent. Although ZPE receives and stores User Identities as input by Customer, or configured by Customer to be collected from users of Customer’s wireless network and correlates User Identities and Device Information, the parties acknowledge and agree that Customer owns the Customer Data. Customer is solely responsible for ensuring, and Customer hereby represents and warrants, that Customer’s provision of Customer Data to ZPE, and the collection, processing, and use of Customer Data by ZPE as contemplated by this Subscription Agreement, will (and for so long as Customer uses the Subscription Services will continue to) comply with applicable laws and third party terms and conditions of use, and privacy and security best practices. Customer hereby agrees to indemnify and hold ZPE harmless for any actual or threatened loss, damage, expense, cost or claim (including reasonable attorneys’ fees), arising from Customer’s failure to comply with this provision or applicable laws. ZPE will not disclose such Customer Data without Customer’s consent except to third party service providers who perform services on ZPE’s behalf and who have a duty of confidentiality to ZPE. ZPE may also disclose this information if ZPE believes disclosure is appropriate: (a) to comply with the law; (b) enforce this Subscription Agreement; or (c) protect the rights, property, or safety of ZPE, ZPE’s users, or others. Customer acknowledges and agrees that any information that is collected by, or provided to ZPE may be stored, accessed and processed in the United States, India, or in any country in which ZPE, its, affiliates, subsidiaries or agents maintain facilities.

- 6 **Warranty.** ZPE warrants to Customer, during the applicable Subscription Period, the Subscription Services will perform materially in accordance with the applicable the Documentation. The sole and exclusive remedy of Customer, and the entire liability of ZPE, under this limited warranty is described below in this Section 6. EXCEPT AS SPECIFIED IN THIS SUBSCRIPTION AGREEMENT, ZPE MAKES NO WARRANTIES AND HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT AND THOSE ARISING FROM A COURSE OF DEALING, USAGE OF TRADE. CUSTOMER MUST NOTIFY ZPE IN WRITING PROMPTLY OF ANY CLAIMED BREACH OF ANY WARRANTIES DURING THE WARRANTY PERIOD. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE, AT ZPE'S OPTION, CORRECTION OF THE SUBSCRIPTION SERVICES, OR TERMINATION OF THE APPLICABLE SUBSCRIPTION SERVICES AND RETURN OF THE UNEARNED PORTION OF THE FEES PREPAID TO ZPE BY CUSTOMER FOR SUCH NON-CONFORMING SUBSCRIPTION SERVICES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE. ZPE and its licensors do not warrant that (a) the Subscription Service will meet Customer's needs or requirements, (b) access to or the operation of the Subscription Service will be uninterrupted or error-free, (c) the Subscription Service will be always available or available at any particular time, or (d) defects in the Subscription Service will be corrected.
- 7 **Third Party Software.** Customer's use of the Subscription Services with any third-party software or hardware shall be used solely at Customer's risk and shall be governed by the terms and conditions of the agreement under which Customer purchased such software licenses or hardware from the third party. ZPE is not responsible for and will not provide maintenance and support for any third party products or services.

8 **Infringement Indemnification.**

- 8.1 Infringement Indemnity. ZPE will defend Customer against any claim, suit or proceeding brought against Customer by a third party during the Subscription Period alleging that the Subscription Services infringe upon a United States copyright or an existing United States patent issued as of the commencement of the Subscription Services (a "**Claim**") and pay any amounts finally awarded or agreed to in settlement of any such Claim. ZPE's obligation specified in this paragraph will be conditioned on Customer notifying ZPE promptly in writing of the Claim or threat thereof and giving ZPE full and exclusive authority for, and information for and assistance with, the defense and settlement thereof.

If such a Claim has occurred, or in ZPE's opinion is likely to occur, Customer agrees to permit ZPE, at its option and expense, either to: (a) procure for Customer the right to continue using the Subscription Services; or (b) replace or modify the same so that the Subscription Services become non-infringing; or (c) if neither of the foregoing alternatives is reasonably practicable, immediately terminate ZPE's obligations and Customer's rights under this Subscription Agreement with regard Subscription Services, refund to Customer a prorated amount of the unearned prepaid fees paid by Customer to ZPE for the Subscription Services based on the remainder of the term left in the applicable Subscription Services term.

Notwithstanding the foregoing, ZPE has no indemnification obligation or other liability for any Claim arising out of or based upon (i) the combination, operation, or use of the Subscription Services provided hereunder with hardware, equipment, devices, or software not supplied by ZPE or in manner not authorized by this Agreement or the Documentation; (ii) services offered or used by Customer through the use of the Subscription Services or revenue received by Customer from such services; (iii) Customer's alteration or

unpermitted use of the Subscription Services.

THE FOREGOING STATES THE ENTIRE OBLIGATION OF ZPE AND ITS SUPPLIERS, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. THE FOREGOING IS GIVEN TO CUSTOMER SOLELY FOR ITS BENEFIT AND IN LIEU OF, AND ZPE DISCLAIMS, ALL WARRANTIES OF NON- INFRINGEMENT. THERE ARE NO IMPLIED INDEMNITIES.

9 CONFIDENTIAL INFORMATION.

- 9.1 Each party hereby acknowledges that, in connection with the performance of this Subscription Agreement, it may receive from the other party certain confidential or proprietary technical and business information and materials that it knows or reasonably should know is confidential to the disclosing party (“**Confidential Information**”). Without limiting the generality of the foregoing, Confidential Information shall include but is not limited to: (a) with respect to ZPE, the Subscription Services, Software, and accompanying documentation, data produced by the Subscription Services or Customer’s use of the Subscription Services, test results or other outputs of the Subscription Services, and the existence of this Subscription Agreement and its terms; and (b) with respect to Customer, the Customer Data. Each party (“**Discloser**”) may provide Confidential Information to the other party (“**Recipient**”). During the term of this Subscription Agreement and for a period of three years thereafter, Recipient agrees to hold and maintain in confidence all Confidential Information of Discloser and not to use any Confidential Information of Discloser except as permitted by this Subscription Agreement or as may be necessary to exercise rights under or perform its obligations under this Subscription Agreement. Recipient will use at least the same degree of care to protect the Discloser’s Confidential Information as it uses to protect its own Confidential Information of like importance, and in no event shall such degree of care be less than reasonable care. Recipient shall only provide Confidential Information to its personnel who have a need to know such Confidential Information for the purposes of this Subscription Agreement and who are bound by confidentiality obligations as restrictive as these. Recipient will use and maintain reasonable administrative, physical and technical security measures designed to protect Discloser’s Confidential Information from unauthorized access or disclosure. Confidential Information does not include any information that is (i) already known to the receiving party at the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the receiving party; (iii) subsequently disclosed to the receiving party on a non-confidential basis by a third party not having a confidential relationship with the other party hereto that rightfully acquired such information; or (iv) is independently developed by the receiving party without reference to, or use of, the Confidential Information of the disclosing party.
- 9.2 **Mandatory Disclosure.** If a Recipient is required by applicable law, judicial order, subpoena, discovery request or other governmental order to disclose any Confidential Information, Recipient may make the disclosure and will use commercially reasonable efforts to provide the Discloser with notice of such request or requirement so that the Discloser may seek a protective order or other confidential treatment.

10 Limitation of Liability and Damages

10.1 LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF ZPE, ITS SUPPLIERS OR ITS SUBCONTRACTORS FOR CLAIMS ARISING UNDER THIS SUBSCRIPTION AGREEMENT OR OTHERWISE SHALL BE LIMITED TO THE MONEY ACTUALLY PAID BY CUSTOMER TO ZPE FOR THE SUBSCRIPTION SERVICES UNDER THIS SUBSCRIPTION AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT HOWEVER, THE FOREGOING SHALL NOT LIMIT CUSTOMER’S OBLIGATION TO PAY ZPE ANY AMOUNTS DUE UNDER THIS AGREEMENT. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF

LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND TAXES" SECTION ABOVE.

10.2 CONSEQUENTIAL DAMAGES WAIVER.

IN NO EVENT SHALL ZPE, ITS SUPPLIERS AND ITS SUBCONTRACTORS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST REVENUE, LOST PROFITS, LOST OR DAMAGED DATA, INTERRUPTION OF BUSINESS, LOST OPPORTUNITY, LOSS OF GOODWILL OR LOSS OF REPUTATION WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF ZPE, ITS SUPPLIERS OR ITS SUBCONTRACTORS HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF. THESE LIMITATIONS SHALL APPLY UNDER ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM THE USE OF ANY ZPE PRODUCTS AND/OR ZPE SERVICES PURCHASED (INCLUDING WITHOUT LIMITATION THE SUBSCRIPTION SERVICES), OR THE FAILURE OF SUCH ZPE PRODUCTS, ZPE SERVICES OR THE SUBSCRIPTION SERVICES TO PERFORM, OR FOR ANY OTHER REASON, AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY.

11 Subscription Term and Termination.

11.1 Term. Each Subscription Period will commence on the date ZPE makes the Subscription Services available to Customer and shall continue for the Subscription Period specified on the Order unless terminated sooner pursuant to this Section 11 or as otherwise permitted in this Agreement.

11.2 Termination. The Subscription Services may be terminated immediately upon written notice by a party if (i) the other party has failed to cure a breach of any material term or condition under this Subscription Agreement within thirty (30) days after receipt of notice from the other party, including a detailed description of such breach, or (ii) the other party ceases to carry on business as a going concern, becomes the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets. Notwithstanding the foregoing, the cure period for non-payment is five days and the Agreement may be terminated immediately upon written notice for nonpayment after five days notice.

11.3 Effect of Termination. Upon the termination or expiration of the Subscription Services, Customer's right to use the Subscription Services shall immediately terminate. Both parties shall, to the extent practicable, return the other party's Confidential Information to such party or destroy it and, if requested, certify to its destruction. Notwithstanding the foregoing, a Recipient (a) shall not, in connection with the foregoing obligations, be required to identify or delete any Confidential Information held electronically in archive or backup systems in accordance with general systems archiving and backup policies and (b) may, where necessary, retain a copy of the Confidential Information for its business records and to establish its compliance with this Agreement; on condition that, in each instance, all retained Confidential Information remains subject to the provisions herein. If Customer terminates the Subscription Services under Sections 11.2, ZPE shall refund to Customer a prorated amount of the fees prepaid by Customer to ZPE for the Subscription Services based on the remainder of the term left in the applicable Subscription Period. If ZPE terminates this Subscription Agreement or the Subscription Services under Section 11.2 Customer shall pay ZPE all amounts owed within fifteen days of such termination. All sections of this Subscription Agreement which by their express terms or nature are to continue and survive termination shall survive any termination, cancellation or expiration of this Subscription Agreement, including, without limitation, accrued rights to payment, obligations to pay taxes, confidentiality obligations, warranty disclaimers, and limitations of liability.

12 General.

- 12.1 Choice of Law and Jurisdiction. The laws of the State of California, USA govern all matters arising out of this Subscription Agreement, without reference to its conflicts of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Subscription Agreement. Any dispute, claim or controversy arising out of or relating to this Subscription Agreement, including whether the claims asserted are arbitrable, will be referred to and resolved by final and binding arbitration pursuant to JAMS Comprehensive Arbitration Rules and Procedures or similar rules in effect at the time of arbitration. The place of the arbitration shall be San Jose, California, USA. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Judgement on any arbitration award may be entered in any court having jurisdiction.
- 12.2 No Waiver. No waiver of rights under this Subscription Agreement by either party shall constitute a waiver any other right under this Subscription Agreement or any subsequent breach. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.
- 12.3 Assignment. Customer shall not, voluntarily, by operation of law, or otherwise, assign its rights under this Subscription Agreement without the prior written consent of ZPE, and any attempted assignment in violation of the foregoing is void. Subject to the foregoing, this Subscription Agreement is binding on, and will inure to the benefit of, the parties of this Subscription Agreement and their respective successors and permitted assigns.
- 12.4 Entire Agreement. This Subscription Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral, with respect to such subject matter.
- 12.5 Force Majeure. ZPE will not be liable hereunder by reason of any failure or delay in the performance of this Subscription Agreement on account of strikes, shortages, riots, acts of terrorism, insurrection, fires, wide-spread disease or illness, flood, storm, explosions, acts of nature, war, governmental action, labor conditions, power outages, earthquakes, failures of service providers, or any other cause which is beyond its reasonable control, whether similar or not to the foregoing.
- 12.6 Export Compliance. The Subscription Services, Software and associated ZPE products may be subject to U.S. export control laws and regulations. Customer will not allow any Authorized User to access the Subscription Services in U.S. embargoed countries or in violation of any U.S. export law or regulation. Customer may not remove or export from the United States or allow the export or re-export of the Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.
- 12.7 Attorneys' Fees. In the event of any dispute or claim arising out of this Agreement or in any way pertaining to this Agreement and/or any modification thereof, the prevailing party shall be entitled to recover from the other party all reasonable costs, charges and expenses, including but not limited to reasonable attorneys' fees and costs, incurred or expended in connection with any action or proceeding, whether or not there is a lawsuit. This includes, subject to any limits under applicable law, attorneys' fees legal costs, and related expenses (such as expert witness fees, investigation fees, inspection fees, and the like) incurred in state court actions and proceedings under Title 11 of the United States Code (including efforts to modify or vacate any automatic stay, objections to claims, or injunctions), and appeals. The recovery of such fees and costs shall be in addition to any other relief to which it may be entitled and shall be due and payable on demand.

- 12.8 Modification. This Agreement may only be changed, modified, or amended by a statement in writing expressly agreed to by the party against who enforcement of the change, modification, or amendment is sought to be enforced.
- 12.9 Interpretation. Each party agrees, represents, and warrants that it has been represented by its own lawyer in the negotiation and preparation of this Agreement and that it has carefully read and understands each and every term hereof. Each party agrees that it has agreed to use of the particular language in this Agreement and contributed to the terms hereof. The parties agree that this Agreement shall not be construed or interpreted against either party.
- 12.10 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 12.11 Independent Contractor. ZPE is an independent contractor and the parties to this Agreement agree that no partnership, joint venture, or agency relationship exists between them. Each party is responsible for paying their own employees, including employment related taxes and insurance. Customer shall demand and indemnify ZPE against liability arising under any applicable laws, ordinances, or regulations related to Customer's termination or modification of the employment in connection with any Subscription Services under this Agreement.