

MASTER SERVICE AGREEMENT

THIS MASTER SERVICE AGREEMENT (“AGREEMENT”) IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR AN ENTITY) AND ZIMFLY, INC. REGARDING YOUR ACQUISITION AND USE OF OUR SERVICES. CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY USING THIS SERVICES PROVIDED HEREUNDER, YOU ACCEPT THE TERMS AND CONDITIONS IN THIS AGREEMENT. IF YOU DO NOT ACCEPT THEM, DO NOT USE OUR SERVICES.

IF YOU REGISTER FOR A FREE OR BETA TRIAL FOR OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE OR BETA TRIAL.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring the Services’ availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on August 27, 2015. It is effective between You and Us as of the date of You accepting this Agreement.

1. DEFINITIONS

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Non-Zimfly Applications" means online applications and offline software products that are provided by entities or individuals other than Us and are clearly identified as such, and that interoperate with the Services, including but not limited to those listed on the Zimfly Applications (if any).

"Order Form" means the document(s) or online form(s) for placing orders hereunder, including addenda thereto, that are entered into between You and Us or any of Our Affiliates from time to time, including addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Order Forms shall be deemed incorporated herein by reference.

"Privacy Policy" means Zimfly’s Privacy Policy at www.bimanywhere.com/BIManywhere_PrivacyPolicy.pdf, which is incorporated herein by reference. You agree and consent to the information practices disclosed in the Privacy Policy.

"Purchased Services" means Services that You or Your Affiliates purchase under an Order Form, as distinguished from those provided pursuant to a free or beta trial.

"**Services**" means: (i) the server-based functionality that converts Your Data into one or more proprietary formats that facilitate rapid and efficient viewing on the Site or on your mobile device ("**Device**") using the Zimfly Application; and/or (ii) any other products and services that are ordered by You using the Order Form and made available by Us online via the customer login link at <http://www.bimanywhere.com> and/or other web pages designated by Us, including associated offline components. "Services" exclude Non-Zimfly Applications.

"**Service Description**" means the online service description for the Services, accessible via login at <http://www.bimanywhere.com>, as updated from time to time.

"**Site**" means the "Zimfly" and/or "BIManywhere" website used to upload and view Your Data in connection with the Services.

"**User**" means the named individual who is authorized by You to use the Services on a single Device, for whom a subscription (including, but not limited to, a subscription on a project basis) to a Service have been ordered, and who have registered for user identifications and passwords. Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with which You transact business.

"**We**," "**Us**," "**Our**" or "**Zimfly**" means the Zimfly, Inc., a Delaware corporation.

"**You**" or "**Your**" means either you as an individual if acting solely on your own behalf, or the company or other legal entity for which you are accepting this Agreement and Affiliates of that company or entity.

"**Your Data**" means all electronic data or information submitted by You to the Purchased Services, including all PDF files, data, text, images, and any other information, documents or materials uploaded by or on behalf of You to the Site or the Zimfly Application in connection with Your use of the Services.

"**Zimfly Applications**" means the applications that You subscribe to on the Order Form and that interoperate with the Services, including, without limitation, the Zimfly BIManywhere Application.

2. FREE, PILOT OR BETA TRIAL

If You register on our website for a free, pilot or beta trial ("Trial"), We will make one or more Services available to You on a Trial testing basis free of charge until the earlier of (i) the end of the Trial period for which you registered or are registering to use the applicable Service or (ii) the start date of any Purchased Services ordered by You. Additional Trial terms and conditions may appear on the Trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE, PILOT OR BETA TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, OR PURCHASE UPGRADED SERVICES, BEFORE THE END OF THE TRIAL PERIOD.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 9 (WARRANTIES AND DISCLAIMERS), DURING THE FREE, PILOT OR BETA TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

Please review the Service Description during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

3. PURCHASED SERVICES

3.1. Provision of Purchased Services. We shall make the Purchased Services available to You pursuant to this Agreement and the relevant Order Forms during a subscription term. Subject to your compliance with the terms and conditions of this Agreement, We grant to You a non-exclusive, non-transferable, revocable right to install the

Application on the designated number of Devices and to access and use the Services for the designated number of Users on such Devices, as purchased and subscribed by You on the Order Form. If You purchased a subscription on a project basis, You may only use the Services solely for the project for which you such subscription was purchased. To use on additional projects, additional User subscriptions must be purchased. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

3.2. User Subscriptions. Unless otherwise specified in the applicable Order Form, Services are purchased as User subscriptions (including without limitation, subscriptions on project basis) and may be accessed by no more than the designated number of Users and Devices or project for which You have purchased and subscribed on the Order Form. Each User subscription is for the designated User and Device only and cannot be shared or used by more than one User or on multiple Devices but may be reassigned to a new User and/or a new Device, replacing the former User and/or previous Device that no longer require ongoing use of the Services.

4. USE OF THE SERVICES

4.1. Your Responsibilities. You shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the Service Description and applicable laws and government regulations.

4.2. Prohibited Activities. You shall not (i) make the Services available to anyone other than Users, (ii) sell, resell, rent or lease the Services, (iii) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (iv) use the Services to store or transmit Malicious Code, (v) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (vi) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Zimfly Applications, or (vii) attempt to gain unauthorized access to the Services or their related systems or networks.

4.3. Your Data. We do not verify, endorse, or claim ownership of Your Data, and You retain all right, title and interest in and to Your Data. Your Data shall be stored and/or backed-up on Our servers or on servers of trusted third parties as necessary for Us to provide the Services, and in accordance with Our then-current storage practices. Aside from the rare exceptions identified in the Privacy Policy, We will not share Your Data with others without your permission. You represent and warrant that (i) You are the owner, licensor, or authorized user of Your Data; and (ii) You will not upload, record, publish, post, link to, or otherwise transmit or distribute Your Data that: (a) advocates, promotes, incites, instructs, informs, assists or otherwise encourages violence or any illegal activities; (b) infringes or violates the copyright, patent, trademark, service mark, trade name, trade secret, or other intellectual property rights of any third party or Zimfly, or any rights of publicity or privacy of any party; (c) attempts to mislead others about Your identity or the origin of a message or other communication, or impersonates or otherwise misrepresents Your affiliation with any other person or entity, or is otherwise materially false, misleading, or inaccurate; (d) promotes, solicits or comprises inappropriate, harassing, abusive, profane, hateful, defamatory, libelous, threatening, obscene, indecent, vulgar, pornographic or otherwise objectionable or unlawful content or activity; (e) is harmful to minors; (f) contains any viruses, Trojan horses, worms, time bombs, or any other similar software, data, or programs that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, personal information, or property of another; or (g) violates any law, statute, ordinance, or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination, or false advertising).

4.4. Access to Your Data. You acknowledge that the Services are automated (e.g., Your Data is uploaded and submitted using software tools) and that We may access Your Data to perform the Services, including but not limited to the following: (i) during a Service interruption, as necessary to restore the applicable data; (ii) to troubleshoot any issue with the Services or to help improve the Services; or (iii) as deemed necessary or advisable by Us to ensure compliance with this Agreement or to conform to legal requirements or comply with legal process. The Services provide features that allow You to share Your Data with others or to make it public. There are many things that users may do with Your Data (including copying it, modifying it, re-sharing it). We have no

responsibility for such activity. You should consider carefully what You choose to share or make public. In addition, Your Data may be converted into proprietary formats, and we may not be able to return Your Data or enable You to download Your Data.

4.5. Content Monitoring. We may review Your Data for compliance with community guidelines but you acknowledge that We have no obligation to monitor any information on the Site or the Zimfly Applications. We do not generally monitor user activity occurring in connection with the Services and while We disclaim any responsibility to do so, We reserves the right to (i) screen, by mechanical means or otherwise, for objectionable information transmitted or shared by user on individualized portions of the Site or the Zimfly Applications, (ii) monitor Your Data and, if considered objectionable in Our sole discretion, to remove Your Data and/or remove any portion of the Site or Zimfly Applications personalized by You, from the Site or Zimfly Application at any time without notice. If We become aware of any possible violations by you of Sections 4.1 and 4.2, or any other provision of this Agreement, We reserve the right to investigate such violations, and We may, at Our sole discretion, terminate Your use of the Services or change, alter or remove Your Data, in whole or in part, without prior notice to You.

4.6. Connection to the Internet. The Zimfly Application may cause your Device, without additional notice and on an intermittent or regular basis, automatically to connect to the Internet to facilitate your access to content and services that are provided to You by Us. In addition, the Zimfly Application may, without additional notice, automatically connect to the Internet to update downloadable materials from these online services so as to provide immediate availability of these services even when You are offline. Whenever the Zimfly Application makes an Internet connection and communicates with Our website, whether automatically or due to explicit user request, the Privacy Policy shall apply to that connection or communication. Additionally, unless you are provided with additional terms of use, this Agreement shall apply. Please note that the Privacy Policy allows tracking of website visits and it addresses in detail the topic of tracking and use of cookies, web beacons, and similar devices.

4.7. Usage Limitations. Services may be subject to other limitations, such as, for example, limits on disk storage space, bandwidth usage, processor usage, and/or number of collaborators using the Services. Other limitations may be specified in the Service Description. The Services provide real-time information to enable You to monitor Your compliance with such limitations.

4.8. Restrictions. You acknowledge that as between You and Us, We owns all right, title, and interest in the Services, the Zimfly Application, the Site and any other Zimfly products or services, and all graphics, logos, service marks, and trade names, including third-party names, product names, and brand names related to the Services. Except as expressly state herein, this Agreement does not grant you any intellectual property rights in the Services, the Zimfly Application or the Site and all rights not expressly granted are reserved for Us.

5. NON-ZIMFLY PROVIDERS

5.1. Acquisition of Non-Zimfly Products and Services. We or third parties may from time to time make available to You (e.g., through the Zimfly Applications) third-party products or services, including but not limited to Non-Zimfly Applications and implementation, customization and other consulting services. Any acquisition by You of such non-Zimfly products or services, and any exchange of data between You and any non-Zimfly provider, is solely between You and the applicable non-Zimfly provider. We do not warrant or support non-Zimfly products or services, whether or not they are designated by Us as “certified” or otherwise, except as specified in an Order Form. Subject to Section 5.3 (Integration with Non-Zimfly Services), no purchase of non-Zimfly products or services is required to use the Services except a supported computing device, operating system, web browser and Internet connection.

5.2. Non-Zimfly Applications and Your Data. If You install or enable Non-Zimfly Applications for use with Services, You acknowledge that We may allow providers of those Non-Zimfly Applications to access Your Data as required for the interoperation of such Non-Zimfly Applications with the Services. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Non-Zimfly Application providers. The Services shall allow You to restrict such access by restricting Users from installing or enabling such Non-Zimfly Applications for use with the Services.

5.3. Integration with Non-Zimfly Services. The Services may contain features designed to interoperate with Non-Zimfly Applications (e.g., Autodesk, Trimble, Sketchup, Tekla, Bentley, Google, Facebook or Twitter applications). To use such features, You may be required to obtain access to such Non-Zimfly Applications from their providers. If the provider of any such Non-Zimfly Application ceases to make the Non-Zimfly Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.

6. FEES AND PAYMENT FOR PURCHASED SERVICES

6.1. Fees. You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are based on services purchased, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of User subscriptions purchased cannot be decreased during the relevant billing cycle or subscription term stated on the Order Form.

6.2. Invoicing and Payment. You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 12.2 (Term of Purchased User Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Service will not commence until Your full payment for the Services in accordance with the applicable Order Form has been received by Us. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

6.3. Suspension of Service and Acceleration. If You do not pay Your invoices on a timely manner in accordance with Section 6.2, We may, without limiting Our other rights and remedies, suspend Our services to You until such amounts are paid in full and You will not get any credit for the time that You did not get access because of late payment.

6.4. Taxes. Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

7. PROPRIETARY RIGHTS

7.1. Reservation of Rights in Services. Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

7.2. Restrictions. You shall not (i) permit any third party to access the Services or the Zimfly Application except as permitted herein or in an Order Form, (ii) create derivative works based on the Services or the Zimfly Application except as authorized herein, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services or the Zimfly Applications, or (v) access the Services or the Zimfly Applications in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services or the Zimfly Applications.

7.3. Suggestions. We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

7.4. Federal Government End Use Provisions. We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

8. CONFIDENTIALITY

8.1. Definition of Confidential Information. As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

8.2. Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.

8.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

9. WARRANTIES AND DISCLAIMERS

9.1. Warranties. Each party warrants that it has validly entered into this Agreement and has the legal power to do so.

9.2. Disclaimer. You acknowledge that the Services and the Zimfly Applications rely on techniques that convert Your Data into proprietary formats in order to attempt to render images and/or 3 dimensional graphics more quickly and efficiently than do other formats. While We strive to ensure that its conversion techniques do not alter any part of Your Data, We do not guarantee that no alteration will ever occur or that what is displayed in the Zimfly Applications or on Our Site will at all times be a real-time exact rendering of Your Data given the effect of short time delays associated with Our conversion techniques. We are not responsible for the accuracy, completeness, appropriateness, or legality of Your Data, files, user posts, or any other information you may be able to access using

the Services. Ultimately it is your responsibility to check that Your Data, as displayed on the Site or the Zimfly Applications, are an accurate rendering of Your Data as originally uploaded. THE SERVICES AND THE ZIMFLY APPLICATION ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, "WITH ALL FAULTS" AND WITHOUT WARRANTY OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY LAW, WE, OUR AFFILIATES, CONTRACTORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, LICENSORS, AND OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICES, THE ZIMFLY APPLICATIONS AND THE SITE DISCLAIM ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPATIBILITY AND WORKMANLIKE EFFORT. WE SHALL NOT BE RESPONSIBLE FOR ANY HARM TO YOUR COMPUTER SYSTEM, LOSS OR CORRUPTION OF DATA OR CONTENT, OR OTHER HARM THAT RESULTS FROM YOUR ACCESS TO OR USE OF THE SITE, THE SERVICES OR THE ZIMFLY APPLICATIONS. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT OR REPRESENT THAT THE SERVICES WILL BE CONTINUOUS, SECURE, RELIABLE, ACCESSIBLE, UNINTERRUPTED OR ERROR-FREE, OR THAT OUR SERVERS, SITE OR ZIMFLY APPLICATIONS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT OUR SECURITY PROCEDURE AND MECHANISMS WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, PERSONAL INFORMATION BY THIRD PARTIES.

9.3. Non-GA Services. From time to time We may invite You to try, at no charge, Our products or services that are not generally available to Our customers ("**Non-GA Services**"). You may accept or decline any such trial in Your sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. NON-GA SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. We may discontinue Non-GA Services at any time in Our sole discretion and may never make them generally available.

10. INDEMNIFICATION

10.1. Indemnification by You. You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "**Claim Against Us**"), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us.

11. LIMITATION OF LIABILITY

11.1. Limitation of Liability. OUR TOTAL, CUMULATIVE, AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY YOU FOR THE PREVIOUS THREE-MONTH SUBSCRIPTION FOR THE SERVICES, IF ANY. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES). YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO USE OF THE SERVICES, THE SITE OR THE ZIMFLY APPLICATIONS MUST BE FILED WITHIN ONE YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED.

11.2. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL WE HAVE ANY LIABILITY TO YOU FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE THE SERVICES OR ACCESS YOUR DATA, LOSS OF BUSINESS, BUSINESS INTERRUPTIONS, OR THE LIKE) HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE

FAILED OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

12. TERM AND TERMINATION

12.1. Term of Agreement. This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated. If You elect to use the Services for a free, pilot or beta trial period and do not purchase a subscription before the end of that period, this Agreement will terminate either (i) at the end of the free, pilot or beta trial period provided on the Order Form, or (ii) 30 days from the beginning of your free, pilot or beta trial period if no termination date is provided.

12.2. Term of Purchased User Subscriptions. User subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. **Except as otherwise specified in the applicable Order Form, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 45 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.**

12.3. Termination for Cause. A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

12.4. Refund or Payment upon Termination. Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

12.5. Surviving Provisions. Section 4.3 (Your Data), 4.8 (Restrictions), 6 (Fees and Payment for Purchased Services), 7 (Proprietary Rights), 8 (Confidentiality), 9.3 (Disclaimer), 10 (Indemnification), 11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), 12.5 (Surviving Provisions), 13 (Notices, Governing Law and Jurisdiction) and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

13. NOTICES, GOVERNING LAW AND JURISDICTION

13.1. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You. Notice to Us shall be sent to the following:

Zimfly, Inc.
legal@zimfly.com
1141 Harbor Bay Parkway, Suite #260
Alameda, CA 94502

13.2. Agreement to Governing Law and Jurisdiction. This Agreement shall be governed under the laws of California, without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the courts in Santa Clara County, California.

14. GENERAL PROVISIONS

14.1. Export Compliance. The Services, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use Services in a U.S.-embargoed country (including Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

14.2. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

14.3. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

14.4. Waiver. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

14.5. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

14.6. Attorney Fees. You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 6.2 (Invoicing and Payment).

14.7. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.8. Entire Agreement. This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.