

MASTER SERVICES AGREEMENT - *Effective January 1, 2015*

This Master Services Agreement ("MSA") constitutes a written contract between Zinc, Inc., with offices located at 55 New Montgomery Street, Suite 888, San Francisco CA, 94105 ("Zinc" "we" "us" and "our"), and Customer ("Customer" "you" and "your"). If you are entering into this agreement on behalf of a company or entity, you represent that you have the authority to bind such entity and its Affiliates, in which case the terms Company and Customer's shall refer to such entity. By signing this agreement and applicable Order Form, you have agreed to be bound by all the terms and conditions of this MSA and any other terms set forth in the Order Form, which is hereby made a part of this MSA. This MSA replaces and supersedes any prior terms and conditions or agreements between Customer and Zinc with respect to Customer and Customer's Authorized Users' use of the Service.

1. DEFINITIONS

"Administrator" shall mean the individual identified on the Order Form as the Network Administrator and any other individuals designated as Administrators by an authorized customer representative.

"Affiliate" shall mean 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.

"Authorized User" shall mean any employees, affiliates, agents, independent contractors or consultants of Customers who have email addresses provided by Customer and are authorized or permitted by Customer to access and use the Services pursuant to the Agreement and such individuals as are invited by Company to be part of Customer's Zinc Organization.

"Customer's Data" means any text, images, data or other content transmitted by Customer or your Authorized Users to Zinc in connection to Customer's and/or Customer's Authorized Users' use of the Services.

"Customer Interface" means the mobile, desktop and web-based interfaces and APIs hosted by Zinc by which Customer and its Authorized Users may access the Services.

"Customer Zinc Organization" shall mean the Authorized Users with email addresses associated with Customer's first and second level domain name(s) set forth on the Order Form.

"Enhancement" means any correction, modification, customization, revision, enhancement, improvement, update, upgrade, new release or other change that is released generally by Zinc for similarly situated customers of the Services.

"Order Form" means the documents for placing orders, including addenda, that are entered into between Customer and Zinc from time to time. By entering into an Order Form, Customer agrees to be bound by the terms of this Agreement. Order Forms shall be deemed incorporated herein by reference.

"Renewal Term" means each subsequent additional Term after the Initial Term.

"Service Level Agreement" means Zinc's commitments for the performance and availability of the Services and applicable remedies, as set forth in the attached **Schedule 1**.

"Services" means the management of a communication system using Software run on Zinc's hosting servers or those of Zinc's hosting service provider(s) intended to enable Customer and Customer's Authorized Users to interact with the same via the worldwide web as such Services may be revised as provided herein.

"Software" means the software application(s) used by Zinc to provide the Services and any Enhancements thereto made available by Zinc to Customer and your Authorized Users from time to time, including any desktop or mobile device application provided to Authorized Users by Zinc to facilitate Zinc's provision of the Services. Zinc shall not be obligated to provide Enhancements that include new features or functionality for which Zinc generally charges a separate fee.

"Term" means the Initial Term and any applicable Renewal Terms.

"User Identification" means the unique user identification name and password issued or otherwise assigned by Customer to each Authorized User for access to and use of the Services through the Customer Interface.

"Zinc Technology" means the Software and any know-how, processes, methodologies, specifications, designs, inventions, functionality, graphics, techniques, methods, applications, user manuals, online documentation, products or other technology and materials of any kind, or any Enhancement thereto, used by Zinc in connection with the performance of the Services or made available by Zinc to Customer, any Authorized User or any third party.

2. THE SERVICES

2.1 Services. Subject to the terms and conditions of this Agreement, Zinc will perform the Services on behalf of Customer and your Authorized Users during the Term according to the Service Level Agreement. Promptly after the Effective Date set forth on the Order Form, Zinc will send instructions to the Administrator regarding the Administrator tools made available to Customer together with appropriate administrator credentials. The administrator tools allow the Administrator to authorize Zinc to take a variety of actions, including, for example, to create an official group, and all such actions using the administrator tools will be deemed approved by Customer and covered by this Agreement. Zinc may delegate the performance of certain portions of the Services to third parties, provided Zinc remain primarily responsible to Customer for the delivery and performance of the Services. Zinc will provide Customer and your Authorized Users access to Customer's Interface pursuant to password protected user accounts. Zinc may in our sole discretion modify, enhance or otherwise change the Software and/or Customer's Interface without materially decreasing the functionality of the Services. Customer agrees that its 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 Zinc regarding future functionality of features.

2.2 Restrictions on Use of Services. Customer shall (i) be responsible for Customer's Authorized Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Customer's Data and for the means by which Customer acquired Customer's Data, and (iii) warrant Customer's Data does not and will not violate third-party rights of any kind, including without limitation any intellectual property rights or rights of publicity and privacy. Customer agrees that you will prohibit Users from uploading material to our servers in violation of the intellectual property rights of any party or entity and will maintain and enforce a policy that complies with the Digital Millennium Copyright Act ("DMCA") and will act promptly to remove any infringing material if Customer or Zinc receive a notice qualifying under the DMCA. Customer agrees not to use or launch any automated system, including without limitation, "robots," "spiders," "offline readers," etc., that overburdens Zinc's servers or ability to deliver the Services. Customer agrees not to collect or harvest any personally identifiable information, including account names, from the Services nor to use the communication systems provided by Zinc for any commercial solicitation purposes. Customer agrees not to use any portion of the Services as a destination linked from any unsolicited bulk messages or unsolicited commercial messages. In addition, Customer agrees not to engage in any of the following prohibited actions: (i) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Services; (ii) taking any action that imposes, or may impose in Zinc's sole discretion an unreasonable or disproportionately large load on Zinc's infrastructure; (iii) uploading invalid data, viruses, worms, or other software agents through the Services; (iv) impersonating another person or otherwise misrepresenting Customer's affiliation with a person or entity, conducting fraud, hiding or attempting to hide Customer's (or an Authorized User's) identity; (v) interfering with the proper working of the Services; or (vi) bypassing the measures that Zinc may use to prevent or restrict access to the Services.

Customer agrees to take commercially reasonable steps to ensure that Authorized Users do not post Customer's Data that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to an Authorized User, or any other person or entity; (ii) may create a risk of any other loss or damage to any person or property; (iii) may constitute or contribute to a crime or tort; (iv) contains any information or content that is unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, or otherwise objectionable. Zinc is not responsible for any public display or misuse of Customer's Data, except in the case of gross negligence or intentional misconduct by Zinc or Zinc's employees.

3. LICENSE, RESTRICTIONS ON USE

3.1 License to Customer. Subject to the restrictions and limitations set forth in this Section 3 of this MSA and elsewhere in the Agreement, Zinc hereby grants to Customer a nonexclusive, nontransferable, limited license, during the Term of the Agreement, to enable Authorized Users to access and use the Services through Customer's Interface, subject and according to this MSA solely for the Authorized Users' use in the regular course of Customer's business.

3.2 General Restrictions and Limitations. Section 3.1 sets forth the entirety of Customer's right to access and use the Services and to make the Services available to Authorized Users. The License does not include the right to (a) enable any person or entity other than Authorized Users to access and use the Services or Zinc Technology; (b) modify or create any derivative work based upon the Services or Zinc Technology; (c) engage in, permit or suffer to continue any unauthorized copying, reselling or distribution of the Services or Zinc Technology; (d) grant any sublicense or other rights to the Services or Zinc Technology; (e) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, any Software; or (f) remove, obscure or alter any Intellectual Property Rights notice related to the Software, the Services or the Zinc Technology. Customer will ensure, through proper instructions and enforcement actions, that all access to and use of the Services by Customer and your Authorized Users', or otherwise through Customer's facilities, equipment, identifiers or passwords, will be in accordance with the terms of this Agreement and will be made and used solely for proper and legal purposes, and will be conducted in a manner that does not violate any law or regulation, or the rights of any third party.

3.3 License to Zinc. Subject to the Agreement, Customer hereby grants Zinc a worldwide, non-exclusive, royalty-free license during the Term to use, reproduce, electronically distribute, transmit, have transmitted, perform, display, store, archive, and index Customer's Data in order to provide the Services. Zinc shall have no right to sub-license or resell Customer's Data or any component thereof.

3.4 Reservation of Rights. Subject to the limited rights expressly granted hereunder, (a) Zinc reserves all right, title and interest in and to the Services including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein; and (b) Customer reserves all right, title and interest in and to the Customer Data including all related intellectual property rights. No rights are granted to Zinc hereunder other than as expressly set forth herein.

3.5 Identification Of Other Party as Customer/Service Provider. Nothing contained herein shall be deemed to grant either party any right, title or interest in or to the other's trademarks other than the limited rights granted herein. Upon termination of this Agreement, each Party shall promptly cease to use all the other party's trademarks except as permitted pursuant to another agreement between the parties.

4. ACCESS TO THE SERVICES

4.1 Password. Customer will issue a User Identification to enable each Authorized User to access and use the Services through Customer's Interface. Customer is solely responsible for tracking the User Identifications to specific Authorized Users and for ensuring the security and confidentiality of all User Identifications. Customer acknowledges that it is fully responsible for all liabilities incurred through the use of any User Identification and that any transaction under a User Identification will be deemed to have been performed by Customer. Customer will immediately notify Zinc of any unauthorized use of any User Identification or any other breach of security known to it. Use of any User Identification, other than as provided in the Agreement, will be considered a breach of the Agreement by Customer.

4.2 Hours of Operation; Scope of Services. Pursuant to the terms of the Service Level Agreement, Zinc reserves the right at any time with reasonable advance notice to Customer to temporarily change the Service hours of operation or to limit Customer's and your Authorized Users' access to and use of the Services in order to perform repairs, make modifications, or to do so without advance notice as a result of circumstances beyond Zinc's reasonable control. Zinc may alter or modify all or part of the Services from time to time. Such alterations and modifications, or both, may include, without limitation, the addition or withdrawal of features, products, services, software or changes in instructions, provided that this does not result in material decrease in the functionality of the Services.

5. FEES AND PAYMENTS

5.1 Fees. Customer shall pay Zinc the fees set forth on the Order Form. Except as otherwise specified herein or in an Order Form, (i) fees are based on services purchased, and (ii) payment obligations are non-cancelable and fees paid are non-refundable. Zinc will invoice Company with respect to Additional Authorized Users (in excess of the number of Authorized Users set forth in the Order Form) who register for and use the Services, payable for the number of months remaining in the Initial Term or then current Renewal Term, in advance.

5.2 Invoicing and Payment Terms.

Zinc will invoice Customer in advance, in accordance with the billing frequency stated on the applicable Order Form. Unless otherwise stated on the Order Form, Customer shall pay all amounts invoiced within thirty (30) days of the date of invoice. In the event of any action by Zinc to collect any amount not paid when due, Customer will pay or reimburse Zinc's costs of collection (including, without limitation, any attorneys' fees and court costs). If the Order Form specifies payment by credit card, Customer will provide Zinc with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Zinc. If Customer provides credit card information to Zinc, Customer authorizes Zinc to charge such credit card for all Services listed in the Order Form for the initial subscription term and any Renewal Term.

5.3 Overdue Charges. If any charges are not received from Customer by the due date, then at Zinc's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the day such payment was due until the date paid, and/or (b) Zinc may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2.

5.4 Taxes. All fees are net. Customer will pay or reimburse all taxes, duties and assessments, if any due, based on or measured by amounts payable to Zinc in any transaction between Customer and Zinc under the Agreement (excluding taxes based on Zinc's income) together with any interest or penalties assessed thereon, or furnish Zinc with evidence acceptable to the taxing authority to sustain an exemption therefrom.

6. OWNERSHIP

6.1 Customer's Data. Subject only to the limited license expressly granted hereunder, as between Customer and Zinc, Zinc acquires no right, title or interest from Customer or your Authorized Users under this Agreement in or to Customer's Data, including any intellectual property rights therein. Customer is solely responsible for Customer's Data that Authorized Users upload, publish, display, link to or otherwise make available (hereinafter, "post") on the Service, and Customer agrees that Zinc is only acting as a passive conduit and Data Processor for the online distribution and publication of Customer's Data which Customer controls. Zinc will not review, share, distribute, or reference any of Customer's Data except as provided herein to provide the Services or as may be required by law.

6.2 Security. Zinc has implemented commercially reasonable technical and organizational measures designed to secure Customer's Data from accidental loss and from unauthorized access, use, alteration or disclosure. However, Zinc cannot guarantee that unauthorized third parties will never be able to defeat those measures or use Customer's Data for improper purposes. Customer acknowledges that all of Customer's Data is provided at Customer's and its Authorized Users' own risk.

6.3 Suggestions. Customer may choose to, or Zinc may invite Customer and/or Authorized Users to, submit comments or ideas about the Services, including without limitation how to improve the Services or products. Zinc shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Company or Authorized Users relating to the operation of the Services.

6.4 Right to Monitor. Zinc will have the right to review and monitor all use of the Services to ensure compliance with all of the terms of the Agreement and evaluate performance of the Services. Zinc will also have the right to analyze user behavior to evaluate use of our applications, website and emails, both on an individual basis and in the aggregate, and otherwise to collect, create and analyze metadata about Customer's use of the Services, provided that such metadata is never disclosed to any third party other than in an anonymized and aggregate format.

7. PRIVACY POLICY

The terms and conditions of the Zinc Privacy Policy (which may be viewed at <https://www.Zinc.com/legal/privacy>) shall apply to Customer's Data, to Customer, and its Authorized Users' use of the Services, and Customer hereby acknowledges and agrees to the terms thereof. The Zinc Privacy Policy may be amended from time to time, which amendments shall be effective upon posting at the above URL. Customer acknowledges that Zinc's employees may contact Customer and/or certain Authorized Users to assist them in realizing the maximum benefit from the Services.

8. TERM AND TERMINATION

8.1 Term. The Term of the Agreement will commence as of the Effective Date set forth in the Order Form and will automatically renew for successive annual periods, unless earlier termination is exercised in accordance with Sections 8.2 or 8.3 below.

8.2 Termination by Customer. The Agreement may be terminated by Customer (i) in the event of a material breach by Zinc of any provision of the Agreement and Zinc fails to cure such breach within thirty (30) days of written notice; (ii) upon Zinc's bankruptcy, reorganization or assignment for the benefit of creditors; or upon written notice pursuant to the terms of Section 14.2 of this Agreement, at least thirty (30) days prior to the annual anniversary of the Effective Date of this Agreement.

8.3 Termination by Zinc. Zinc may terminate this agreement (i) if Customer defaults in the timely payment of any amounts due Zinc and fails to cure within ten (10) days of receipt of written notice; (ii) immediately if Customer breaches any provisions of Section 2.2 or fails upon written notice to remove content in violation of the DMCA pursuant to Section 2.2 of this Agreement; (iii) in the event of a material breach by Customer of any other provision of this Agreement and Customer fails to cure such breach within thirty (30) days of written notice; or (iv) upon Customer's bankruptcy, reorganization or assignment for the benefit of creditors.

8.4 Effect of Termination. If the Agreement is terminated pursuant to this Section 8, then, unless otherwise specifically provided for in writing by the parties, the following will apply: (a) any license rights granted to Customer with respect to the Services, the Software and/or the Zinc Technology will terminate as of the effective date of the termination; (b) Customer will return to Zinc any and all technical or business information of Zinc's in Customer's possession or control; (c) unless otherwise agreed upon by the parties, Zinc will have no obligation to provide the Services to Customer or your Authorized Users after the effective date of the termination; (d) Customer will pay Zinc any amounts payable for Customer's and your Authorized Users' use of the Services through the effective date of the termination; and (e) Customer may request a downloaded copy or the deletion of Customer Data. No refunds of prepaid fees shall be made to Customer in connection with any termination pursuant to Section 8.3.

9. DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH HEREIN, ZINC DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY ERROR, DEFECT, DEFICIENCY, INFRINGEMENT OR NONCOMPLIANCE IN THE SERVICES, THE SOFTWARE, THE ZINC TECHNOLOGY OR ANY OTHER ITEMS PROVIDED BY, THROUGH OR ON BEHALF OF ZINC, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

ZINC DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE OFFERED BY A THIRD PARTY THROUGH THE SERVICES AND ZINC WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN CUSTOMER AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

10. PUBLICITY/PRESS

Each Party shall be allowed to refer to the other as a customer of or service provider to (as the case may be) on its website and in marketing materials, including but not limited to case studies, blog posts and webinars, provided that such reference shall not imply an affiliation, sponsorship, or endorsement of the other. Other than as provided in the foregoing sentence, neither Party shall issue any public announcement regarding the subject matter herein without the prior written approval of the other.

11. MUTUAL INDEMNIFICATION

11.1 Indemnity by Zinc. Zinc shall defend, indemnify and hold Customer and your subsidiaries, agents, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, harmless from and against any and all third party claims that the Services as provided by Zinc infringe a copyright or misappropriate a trade secret of a third party; provided, that Customer (a) promptly give Zinc written notice of the Claim; (b) give Zinc sole control of the defense and settlement of the Claim (provided that Zinc may not settle any Claim without Customer's prior written consent unless the settlement unconditionally releases Customer of all liability); and (c) provide to Zinc all reasonable assistance, at Zinc's expense.

If the Software and/or the Services become, or, in Zinc's opinion are likely to become, the subject of such a claim, Zinc shall have the right to (i) obtain for Customer the right to continue using the Software and the Services, (ii) replace or modify the Software and/or the Services so that they become non-infringing, or (iii) terminate the Services and the license granted hereunder to the Software and provide a pro rated refund to Customer of the fees paid for the Services for the portion of the Term remaining at the time of such termination. THE FOREGOING STATES ZINC'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

Zinc will have no liability for any infringement claim to the extent it (i) is based on modification of the Services or Software by or at the direction of Customer or its Authorized User; (ii) results from Customer's failure to use an updated version of the Services or Software made available to Customer; (iii) is based on the combination or use of the Software or the Services with any other software, program or device not provided or specified by Zinc if such infringement would not have arisen but for such use or combination; or (iv) results from Customer's operation of the Software or the Service in a manner that is inconsistent with its intended use.

11.2 Indemnity by Customer. Customer shall defend, indemnify and hold Zinc and our subsidiaries, agents, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, harmless from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) Customer's and your Authorized Users' use of and access to the Service, including any data or work transmitted or received by Customer or your Authorized Users; (ii) Customer's or an Authorized User's violation of any term of the Agreement; (iii) Customer's or an Authorized User's violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (iv) Customer's or an Authorized User's violation of any law, rule or regulation of the United States or any other country; (v) any claim or damages that arise as a result of the posting, transmission or storage of any of Customer's Data that is submitted via Authorized User accounts; or (vi) any other party's access and use of the Service with Customer's or an Authorized User's unique username, password or other appropriate security code; provided, that Zinc (a) promptly give Customer written notice of the Claim; (b) give Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any claim without Zinc's prior written consent unless the settlement unconditionally releases Zinc of all liability); and (c) provide to Customer all reasonable assistance, at Customer's expense.

12. CONFIDENTIALITY

12.1 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. Customer's Confidential Information shall include Customer's Data; Zinc's 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 Customer's 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 as evidenced by contemporaneous written records.

12.2 Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, (i) 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) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its 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.

12.3 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 written 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.

13. LIMITATIONS OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY, THEIR RESPECTIVE DIRECTORS, EMPLOYEES OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THIS SERVICE OR ANY OTHER ASPECT OF THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN, INCLUDING BUT NOT LIMITED TO ANY BREACH OF SECTION 12.

YOUR EXCLUSIVE REMEDIES FOR ANY INTERRUPTION OR CESSATION OF ACCESS OR TRANSMISSION TO OR FROM THE SERVICE ARE SET FORTH IN THE SERVICE LEVEL AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE ASSUME NO LIABILITY OR RESPONSIBILITY FOR (I) ANY PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR OR YOUR AUTHORIZED USERS' ACCESS TO AND USE OF THE SERVICES; (II) ANY ERRORS OR OMISSIONS IN, OR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF, ANY MATERIALS POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; (III) DAMAGE CAUSED BY THE POSTING, TRANSMISSION OR STORAGE OF YOUR DATA SUBMITTED VIA AUTHORIZED USER ACCOUNTS; OR (IV) THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY AUTHORIZED USER OR THIRD PARTY. IN NO EVENT SHALL ZINC, ITS DIRECTORS, EMPLOYEES, OR LICENSORS BE LIABLE TO CUSTOMER OR YOUR AUTHORIZED USERS FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AGGREGATE AMOUNT CUSTOMER PAID OR PAYABLE TO Zinc HEREUNDER DURING THE 12 MONTHS PRECEDING THE CLAIM. THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF Zinc HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

14. MISCELLANEOUS

14.1 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, which shall not be unreasonably withheld or delayed.

Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent, of the other party, 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.

14.2 Notices. 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 or (ii) written verification of receipt by established overnight courier. Notices to Customer shall be sent to the respective addresses set forth in the Order Form, Attention: Legal, or such new address as Customer specify to Zinc by written notice.

Notices to Zinc shall be sent to:

Zinc, Inc.
Legal Department
55 New Montgomery Street, Suite 888
San Francisco CA, 94105

14.3 Applicable Law; Binding Arbitration. With respect to any claim arising out of or related to this Agreement, the parties agree to submit any dispute to binding arbitration administered by a single arbitrator with the American Arbitration Association in accordance with its Commercial Arbitration Rules including optional rules for Emergency Measures of Protection, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties shall attempt to agree on the selection of a single arbitrator, however if the parties cannot agree, an arbitrator will be appointed as provided in the AAA Commercial Arbitration Rules. The place of arbitration shall be San Francisco, California. The Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of California, without reference to its choice of law principles. The United Nations Convention on contracts for the International Sales of Goods shall not apply.

14.4 Entire Agreement. The Agreement is the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of the Agreement, including the online Zinc Terms of Use Agreement with respect to Customer's and your Authorized Users' use of the Services, which is hereby terminated. Any terms and conditions of any purchase order or other instrument issued by Customer in connection with the Agreement which are in addition to, inconsistent with or different from the terms and conditions of the Agreement, including any confidentiality agreement to the extent it purports to cover Customer's Data or other information provided by Customer or your Authorized Users in connection with this MSA, shall be of no force or effect. The Agreement may be modified only by a written instrument duly executed by authorized representatives of the parties. Any waiver by either party of any condition, term or provision of the Agreement shall not be construed as a waiver of any other condition, term or provision. If any provision of the Agreement is held invalid or unenforceable, such provision shall be replaced with an enforceable provision with as similar import as is legally permissible and the remainder of the Agreement shall continue in full force and effect.

14.5 Counterparts. The Agreement may be executed in two or more counterparts, including execution evidenced by Customer's "clicking" on the "button" on Zinc's website in connection with the acceptance of the Services, in which event Zinc's execution will be deemed to occur at the same time, each of which shall be deemed to be an original and each of which together shall constitute a single instrument.

SCHEDULE 1

SERVICE LEVEL AGREEMENT

1.1 1. Introduction

This Service Level Agreement (this “SLA”) is made by Zinc in connection with, and is a part of, your Zinc Enterprise license agreement (the “Agreement”).

We provide financial backing to our commitment to achieve and maintain the Service Levels for our Service. If we do not achieve and maintain the Service Levels for our Service as described in this SLA, then you may be eligible for a credit towards a portion of your monthly service fees. We will not modify the terms of your SLA during the initial term of your subscription; however, if you renew your subscription, then the version of this SLA that is current at the time of renewal will apply for your renewal term.

1.2 2. Definitions

“Applicable Monthly Service Fees” means the total fees actually paid by you for a Service that are applied to the month in which a Service Credit is owed.

“Downtime” means a period of time greater than ten minutes where more than five percent of end users are unable to post or read messages on any part of the Zinc service for which they have the appropriate permissions, excluding (i) Scheduled Downtime; and (ii) unavailability of a Service due to limitations described in Section 5(a) below. Downtime is measured in the units set forth in Section 3.

“Incident” means (i) any single event, or (ii) any set of events, that result in Downtime.

“Scheduled Downtime” means periods of Downtime related to network, hardware, or Service maintenance or upgrades. We will publish notice or notify you at least 48 hours prior to the commencement of such Downtime.

“Service” or “Services” refers to the Zinc service purchased by you pursuant to the Agreement.

“Service Credit” is the percentage of the Applicable Monthly Service Fees credited to you following Zinc’s claim approval.

“Service Level” means the performance metric(s) set forth in this SLA that Zinc agrees to meet in the delivery of the Services, e.g., monthly availability.

“User Minutes” means the total number of minutes in a month, less all Scheduled Downtime, multiplied by the total number of users.

3. Service Level Commitment

(a) The “Monthly Uptime Percentage” for a Service is calculated by the following formula:

where Downtime is measured in User Minutes; that is, for each month, Downtime is the sum of the length (in minutes) of each Incident that occurs during that month multiplied by the number of users impacted by that Incident.

(b) If the Monthly Uptime Percentage falls below 99.9% for any given month, you may be eligible for the following Service Credit:

Monthly Uptime Percentage	Service Credit
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< 99.9%	25%
< 99%	50%
< 95%	100%

1.3 4. Service Credit Claim

If we fail to meet the minimum Monthly Uptime Percentage described above for a Service, you may submit a claim for a Service Credit.

You must submit a claim to customer support at Zinc that includes: (i) a detailed description of the Incident; (ii) information regarding the duration of the Downtime; (iii) the number and location(s) of affected users (if applicable); and (iv) descriptions of your attempts to resolve the Incident at the time of occurrence. We must receive the claim and all required information by the end of the calendar month following the month in which the Incident occurred. For example, if the Incident occurred on February 15th, we must receive the claim and all required information by March 31st.

We will evaluate all information reasonably available to us and make a good faith judgment on whether a Service Credit is owed. We will use commercially reasonable efforts to process claims during the subsequent month and within forty five (45) days of receipt. You must be in compliance with the Agreement in order to be eligible for a Service Credit. If we determine that a Service Credit is owed to you, we will apply the Service Credit to your Applicable Monthly Service Fees.

1.4 5. Limitations

(a) This SLA and any applicable Service Levels do not apply to any performance or availability issues:

1. Due to factors outside our control;
2. That result from your or third party services, hardware, or software;
3. Caused by your use of a Service after we advised you to modify your use of a Service, if you did not modify your use as advised;
4. During pre-release, beta and trial Services (as determined by us);
5. That result from your unauthorized action or inaction or from your employees, agents, contractors, or vendors, or anyone gaining access to our network by means of your passwords or equipment; or
6. That result from your failure to adhere to any required configurations, use supported platforms, and follow any policies for acceptable use.
7. For licenses reserved, but not paid for, at the time of the Incident.

(b) Service Credits are your sole and exclusive remedy for any performance or availability issues for any Service under the Agreement and this SLA. You may not unilaterally offset your Applicable Monthly Service Fees for any performance or availability issues.