

ZINGERANG

ACCEPTANCE OF TERMS AND CONDITIONS

This agreement is between Zingerang Software, Inc. ("Zingerang") and you ("you" or "Zingerang User"), as an authorized user of "Zingerang Services" (as defined in Section 2, below), and governs the terms and conditions of the Zingerang User's use of the Zingerang Services. Each Zingerang Service is provided to the Zingerang User under these Terms and Conditions for Zingerang Software, Inc., including any operating rules, and/or policies that may be published by Zingerang from time to time (collectively, the "Agreement"). This Agreement and such policies constitute the entire agreement between Zingerang User and Zingerang and supersede all prior agreements between the parties regarding the subject matter contained herein. BY USING ANY OF THE ZINGERANG SERVICES, ZINGERANG USER CONFIRMS THEIR ACCEPTANCE OF, AND AGREES TO BE BOUND BY, THIS AGREEMENT.

1) Zingerang reserves the right to change the Agreement at any time and to notify Zingerang User by posting an updated version of the Agreement on the Zingerang website. No other Agreement version will be effective or enforceable against Zingerang. Zingerang User agrees to review changes to the Agreement and the Zingerang Privacy Statement from time to time and if any change is not acceptable to Zingerang User, Zingerang User agrees to immediately terminate use of the Zingerang Services. Zingerang User's use of the Zingerang Services after the effective date of any such change constitutes Zingerang User's acceptance of all such changes.

The Zingerang Services provided pursuant to this Agreement are being offered only to persons age eighteen (18) or older, and to individuals, entities, or other legal persons who have authorization to sign legally binding contracts. By accepting the terms of this Agreement, Zingerang User is representing and warranting to Zingerang that Zingerang User is age eighteen (18) or older and/or the authorized signatory. If any information provided to Zingerang by Zingerang User is inaccurate, then Zingerang may, in its sole discretion, elect to terminate Zingerang User's Zingerang Usership and right to use the Zingerang Services.

The rights granted to Zingerang User under this Agreement are personal to Zingerang User. Zingerang User may not sell, assign, sublicense, or otherwise transfer or agrees to transfer, all or any portion of those rights without the prior written consent of Zingerang, which consent may be withheld in the absolute discretion of Zingerang.

2) ZINGERANG SERVICES

Zingerang Services are owned and operated by Zingerang. Individually, the Zingerang Services are:

- **Zingerang Outlook Edition** is an interactive mobile messaging service that allows a "Sender" to send messages to Zingerang Users on wired and wireless devices.

Zingerang may provide Zingerang Users with promotions that contain links to third-party websites. Zingerang has no control over the content of third-party websites or the services and products available from those third-party websites or third-party service providers and, unless otherwise stated, Zingerang does not recommend or endorse the third-party website or provider. Zingerang shall not be liable for any direct, indirect, consequential, punitive or other damages or losses related to Zingerang User's use of third-party websites or services. Zingerang User assumes full responsibility when Zingerang User chooses to use any services from a third-party or follows any links that lead to third-party websites, and Zingerang User agrees to defend, indemnify and hold Zingerang harmless from and against any claims, actions or demands, rising from or related to Zingerang User's accessing or using any such third-party websites, including, without limitation, reasonable legal and accounting fees. This Agreement applies only to Zingerang Services

3) REQUIREMENTS FOR ZINGERANG SERVICES

In order to use Zingerang Services, Zingerang User must (i) provide all equipment necessary to establish a connection to the Internet, including a computer and modem, and all telecommunications devices which the Zingerang User intends to use in conjunction with the Zingerang Services, (ii) obtain access to the Internet with a third-party provider and pay all fees associated with such access, (iii) subscribe to local exchange telephone, wireless telephone, or equivalent services for telecommunications services from a third-party

provider, including but not limiting to all ancillary services and equipment features as Zingerang may notify Zingerang User are necessary for receipt and use of the Zingerang Services.

In consideration of these Zingerang Services, Zingerang User agrees to: (i) provide current, complete, and accurate information about Zingerang User's Internet access and telecommunications services as are required by Zingerang for provision of the Zingerang Services; (ii) maintain and update the information as required to keep such information current, complete, and accurate; (iii) use the Zingerang Services only in accordance with applicable law; (iv) comply with United States law regarding the transmission of technical data exported from the United States through the Zingerang Services; (v) not use the Zingerang Services for illegal purposes; (vi) not interfere with or disrupt networks connected to the Zingerang Services; (vii) comply with all regulations, policies and procedures of networks connected to the Zingerang Services; and (viii) with respect to any Zingerang Service, transfer calls to continental United States telephone lines only.

Zingerang Users may be required to use the most recent version of the Zingerang Services as a condition of continuing to use the Zingerang Services.

4) USE OF ZINGERANG SERVICES

When using the Zingerang Services, Zingerang User shall be subject to any posted guidelines, rules, or licenses applicable to such Zingerang Services and to the Terms and Conditions. Such guidelines, rules, or licenses may contain terms and conditions in addition to those described in this Agreement.

In addition to the Zingerang Services, Zingerang may also make available materials, information, and services provided by third parties (collectively, the "Third-Party Services"). The Third-Party Services are governed by separate license agreements that accompany such services. Zingerang offers no guarantees and assumes no responsibility or liability of any type with respect to the Third-Party Services, including any liability resulting from incompatibility between the Third-Party Services and the Zingerang Services. Zingerang User agrees that they will not hold Zingerang responsible or liable with respect to the Third-Party Services or seek to do so.

5) USE OF SOFTWARE & SOFTWARE LICENSE

The software and accompanying documentation (the "Zingerang Software") that is made available to download from Zingerang's website is the copyrighted and patented work of Zingerang and/or its suppliers. Use of the software is governed by the terms of this agreement. Zingerang User will not be able to download or install any software unless the Zingerang User agrees to this Agreement, including the terms and conditions of this Section 5. If Zingerang User does not agree to such terms, Zingerang User will not be able to use the software. Absent a license agreement that accompanies the software, use of the software will be governed by the Terms and Conditions. Zingerang User agrees that they will not decompile, reverse engineer, or otherwise attempt to discover the source code of the software available through Zingerang.

Zingerang grants Zingerang User a royalty-free, nonexclusive, limited, revocable license to download and use the Zingerang Software only (1) in conjunction with the Zingerang Services and (2) in accordance with all of the terms and conditions of this Agreement. No sublicenses may be granted by Zingerang User. This Zingerang Software license shall expire when the Zingerang User's Zingerang Services account is terminated in accordance with the provisions of Section 21: Termination.

Zingerang User may be required to use the most recent version of the Zingerang Software as a condition of continuing to use the Zingerang Services. From time to time when Zingerang User makes use of the Zingerang Software, Zingerang unilaterally may download to Zingerang User's computer system the most recent version of the Zingerang Software or may instruct Zingerang User to do so. Zingerang may inform Zingerang Users about the availability of new versions of the Zingerang Software via email or through the Zingerang Software.

By agreeing to these Terms and Conditions, Zingerang User expressly agrees not to:

- (1) Modify, translate, reverse engineer, decompile, disassemble or create derivative works based upon the software available through Zingerang, or permit others to do so;
- (2) Bypass or defeat any feature or function of the software available through Zingerang;

- (3) Distribute the Zingerang Software;
- (4) Copy the Zingerang Software;
 - (5) Rent, lease, sublicense, grant a security interest in, or otherwise transfer rights in the Zingerang Software;
- (6) Remove or modify any proprietary notices or labels in the Zingerang Software;
- (7) Export or re-export any portion of the Zingerang Software (i) into (or to a national or resident of) Cuba, Iraq, Libya, Sudan, North Korea, Iran, Syria or any other country to which the U.S. has embargoed exports of goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders;
- (8) Access the Service with any software not provided specifically by Zingerang Software, Inc.; or
- (9) Partake in any personal or business-related activity that would constitute a criminal offense or otherwise violate any applicable local, state, federal or international law.

6) INTELLECTUAL PROPERTY; LIMITED LICENSE TO USERS

The Zingerang Services are protected by copyright, trademark, patent, and/or other intellectual property laws, and any unauthorized use of the Zingerang Services may violate such laws and these Terms and Conditions. Except as expressly provided herein, Zingerang does not grant any express or implied rights to use the Zingerang Services. Zingerang User agrees not to copy, republish, frame, download, transmit, modify, rent, lease, loan, sell, assign, distribute, license, sublicense, reverse engineer, or create derivative works based on the Zingerang Services, except as expressly authorized herein.

7) PAID SERVICES

Zingerang Users who subscribe to paid Zingerang Services (the "Paid Zingerang Services") are obligated to pay, as a condition of subscribing to the Paid Zingerang Services, all charges and fees imposed by Zingerang from time to time (including but not limited to one-time activation and setup fees, monthly recurring fees, and event-based fees such as the Voice Call feature in the "Service." as well as all excise taxes and regulatory surcharges imposed upon Zingerang. As a condition of accepting or continuing any subscription for the Paid Zingerang Services, Zingerang reserves the right to perform such credit verification as Zingerang determines to be appropriate, and Zingerang User agrees to grant all authorizations and provide all information necessary or convenient to perform Zingerang's credit verification. Zingerang may change the amount of the Charges from time to time upon advance written notice to Zingerang User at the email address provided upon registration for the Paid Zingerang Services. Any such new or modified Charges will take effect upon the date of such written notice, which shall be deemed the date of delivery for the notice, or such later date as is specified therein. A Zingerang User may avoid such new or modified Charges by canceling the subscription to the Paid Zingerang Services prior to the date on which the new or modified Charges are to take effect.

All Zingerang Users who subscribed to any Paid Zingerang Services, will be responsible for paying in advance, on a monthly or annual basis, all such Charges for Paid Zingerang Services to be rendered the forthcoming relevant period, monthly or annually, as the case may be, and as measured from the date on which such Zingerang User first registered for the Paid Zingerang Services (the "Commencement Date"). Zingerang User will be charged automatically on the anniversary date of Zingerang User's chosen payment plan. For example, if Zingerang User selects an annual payment plan, Zingerang User will be automatically charged on the annual anniversary of the Commencement Date.

Upon subscribing to the Paid Zingerang Services, Zingerang User may elect to pay the Charges either (i) with a credit card from such credit card issuer as is acceptable to Zingerang, or (ii) check payment with net terms payment arranged separately with Zingerang and only in accordance with procedures as prescribed by Zingerang from time to time.

Except for selection of manual check payment methods, Zingerang will not render a separate statement to the Zingerang User for the Charges. If Zingerang User pays the Charges (i) by credit card, such Charges will appear on the Zingerang User's credit card statement or (ii) by debit to Zingerang User's checking account, then such Charges will appear on Zingerang User's periodic bank statement. If Zingerang User fails to pay applicable Charges when due, then Zingerang may, in its sole and absolute discretion, cancel the Paid Zingerang Services, and may pursue such remedies as are available under applicable law for collection of delinquent Charges.

If Zingerang User subscribes for Paid Zingerang Services, then such Zingerang User will be responsible for the full monthly or annual charges to the end of the then-current term. Any then-paid Charges shall not be refundable, regardless of the date of termination for those Paid Zingerang Services. If Zingerang User has terminated the Paid Zingerang Services in accordance with the provisions of Section 21: Termination, below, prior to the anniversary date through which Zingerang User has paid the Charges for such Paid Zingerang Services, Zingerang shall not renew Zingerang User's Paid Zingerang Services subscription, and shall not charge Zingerang User any Charges for such Paid Zingerang Services, with respect to the period following that anniversary date.

8) FREE ZINGERANG SERVICES

Zingerang may, from time to time, offer particular Zingerang Services free of charge to its Zingerang Users. In addition, from time-to-time, Zingerang may choose, in its sole discretion, to promote its new Zingerang Services for a specified amount of time at no cost to its Zingerang Users (the "Free Zingerang Services"). Zingerang provides the Free Zingerang Services as an accommodation to its Zingerang Users, and reserves the right to terminate Zingerang User's Free Zingerang Services at anytime without notice. The Free Zingerang Services and all Zingerang Software associated therewith are for personal, non-commercial use only. If Zingerang User intends to use the Free Zingerang Services for commercial use, or Zingerang User desires more than one account, then Zingerang User agrees to upgrade to a Paid Zingerang Services. Free Zingerang Services are subject to the terms of this Agreement.

9) Zingerang "Beta" Services

Zingerang may, from time to time, offer particular "beta" versions of Zingerang Services free of charge to its Zingerang Users. By downloading the "beta" versions, the Zingerang User is agreeing that he/she understand that "beta" versions are pre-commercial releases of the software and that there may be service interruptions and outages as the "beta" version is undergoing verification. By participating in "beta" services the Zingerang User also agrees to allow Zingerang to solicit feedback on his experience with the "beta" services. Zingerang reserves the right to terminate "beta" services at any time.

10) MODIFICATIONS OF ZINGERANG SERVICES

Zingerang reserves the right to terminate or modify individual features of Zingerang User's Zingerang Services from time to time with or without notice to Zingerang User. In the event Zingerang opts to send written notice to Zingerang User detailing such termination or modification, an email will be sent to the email address most recently provided by Zingerang User to Zingerang. Any such termination or modification to Zingerang User's Zingerang Services will take effect upon the date of such written notice or such later date as specified therein.

Zingerang may, in its sole discretion, determine the extent, if any, to which any such modifications may impact the Charges for the Zingerang Services, but Zingerang, shall not have any obligation to adjust the Charges by reason of any such modifications to the Zingerang Services.

Zingerang shall not be liable to Zingerang User or any third party should Zingerang exercise its right to modify or terminate Zingerang Services or any feature of such Zingerang Services.

11) ZINGERANG USER CONDUCT

Zingerang User is solely responsible for the contents of his or her communications made using the Zingerang Services. Zingerang bears no responsibility for communications received by Zingerang User from third persons while using the Zingerang Services. Zingerang User's use of the Zingerang Services is subject to all applicable local, state, national and international laws and regulations.

Zingerang User shall be fully liable for all use of Zingerang User's account, including any unauthorized use of such account by any third party. Zingerang bears no responsibility for communications received by Zingerang User from third persons while using the Zingerang Services or any use of any person's telecommunications service, including but not limited to, Zingerang User's telecommunications services in connection with the use of Zingerang Services.

The Zingerang Services make use of the Internet and telephone network to receive, process and/or send certain messages to Zingerang Users; Zingerang User's conduct is therefore subject to laws, rules, regulations, policies and procedures governing the use of the Internet and telephone network. Zingerang Users will not use the Zingerang Services in conjunction with any person's telecommunications service who has not given specific permission to Zingerang User.

Zingerang User agrees not to make any communications or transmissions in conjunction with its use of the Zingerang Services that are unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or include otherwise objectionable material of any kind or nature. In conjunction with Zingerang User's use of Zingerang Services, Zingerang User further agrees not to transmit any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation. Attempts to gain unauthorized access to other computer systems are prohibited.

Zingerang User shall not interfere with any other Zingerang Users' use and enjoyment of Zingerang Services. Zingerang may, in its sole discretion, terminate the Zingerang Services without notice if Zingerang User fails to observe and comply with the terms and conditions of this Agreement. Failure on Zingerang's part to actively terminate Zingerang User's account following any violation by Zingerang User of this Agreement shall not constitute a waiver of Zingerang's right to terminate and shall not prevent Zingerang from terminating Zingerang User's account, consistent with this Agreement, at any point for past and/or current violations of Agreement.

Zingerang User is solely responsible for maintaining the confidentiality of Zingerang User's password and account. Furthermore, Zingerang User is entirely responsible for any and all activity that occurs under Zingerang User's account. Zingerang User may change Zingerang User's password at any time by following the instructions posted on Zingerang's website. Zingerang User agrees to immediately notify Zingerang of any unauthorized use of Zingerang User's account or any other breach of security known to Zingerang User.

12) PRIVACY POLICY

Zingerang User acknowledges and agrees that Zingerang neither endorses the contents of any communications to or from any Zingerang Users' account, nor assumes responsibility for any threatening, libelous, obscene, harassing or offensive material contained therein, any infringement of third party intellectual property rights arising there from, or any crime facilitated thereby.

The Zingerang Privacy Statement provides a detailed description of Zingerang's information gathering and privacy practices. Zingerang User hereby agrees with the Privacy Statement, and the methodology in which Zingerang handles content of Zingerang Users' messages. The Zingerang Privacy Statement is hereby incorporated by reference into this Agreement in its entirety, and can be found on the Zingerang website at <http://www.roaming-messenger.com/Apps/RMOutlookEdition/SignIn.aspx>

13) ZINGERANG USER MESSAGES TO ZINGERANG

Zingerang User hereby consents to the editing and publication by Zingerang of all or part of the text of any email or message sent by Zingerang User to Zingerang, together with the Zingerang User's initials and state and country of residence (if non-US), regarding the satisfaction of Zingerang User with the Zingerang Service. "Publication" includes but is not limited to, the reprinting and distributing such quotes electronically, in hard copy form, or posting such quotes on the Zingerang website.

14) DISCLAIMER OF WARRANTIES

Zingerang User expressly agrees that use of the Zingerang Services is at Zingerang User's sole risk. The Zingerang Services are provided on an "as is" and "as available" basis. Zingerang expressly disclaims all warranties of any kind, whether expressed or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement.

Zingerang makes no warranty that the Zingerang Services will meet Zingerang User's requirements, or that

the Zingerang Services will be uninterrupted, timely, secure, or error free; nor does Zingerang make any warranty as to the results that may be obtained from the use of the Zingerang Services or as to the accuracy or reliability of any information obtained through the Zingerang Services, or that defects in the Zingerang Services will be corrected. Zingerang assumes no responsibility for the deletion of or failure to store or deliver voice mail or fax messages.

Zingerang User understands and agrees that any material and/or data downloaded or otherwise obtained through the use of the Zingerang Services is done at Zingerang User's own discretion and risk, and that Zingerang User will be solely responsible for any damage to Zingerang User's computer system or loss of data that results from the download of such material and/or data.

Zingerang makes no warranty regarding any goods or services purchased or obtained through the use of Zingerang Services, or any transactions entered into while using the Zingerang Services. No advice or information, whether oral or written, obtained by Zingerang User from Zingerang or through the Zingerang Services shall create any warranty not expressly made herein.

Zingerang will make commercially reasonable efforts to resolve any technical problems Zingerang User may experience while using the Zingerang Services. Zingerang User understands that telephone-based technical support may not be provided. If Zingerang User experiences a problem with the Zingerang Services, Zingerang User may, at any time, send an email to support@roamingmessenger.com.

15) LIMITATION OF LIABILITY

Zingerang shall not be liable for any direct, indirect, incidental, special or consequential damages, resulting from the use or the inability to use any Zingerang Service or for the cost of procuring any substitute goods and services, or resulting from any goods or services purchased or obtained, or messages received or transactions entered into through the Zingerang Services or resulting from unauthorized access to or alteration of Zingerang User's transmissions or data, including but not limited to, damages for loss of profits, use, data or other intangible, even if Zingerang has been advised of the possibility of such damages.

16) SERVICE OUTAGES

Zingerang User acknowledges that the Zingerang Services are reliant upon independent services provided by third-parties that are beyond Zingerang's control. The loss or interruption of any one of those independent services may prevent the Zingerang Services from operating at the physical location where, or by the devices with which, the Zingerang Services are used by Zingerang User. In the event of any service interruption or outage, during which Zingerang Services may be temporarily unavailable, Zingerang User will continue to be billed for the Zingerang Services unless and until Zingerang User or Zingerang terminate the Zingerang Services in accordance with this Agreement. Zingerang will use commercially reasonable efforts to manage all faxes and communications intended for Zingerang User during any loss or interruption of such independent services.

Such independent service interruptions may include, but are not limited to:

- (1) Power outages;
- (2) Internet Service Provider outages;
- (3) Telecommunications service provider outages;
- (4) Outages due to Zingerang User's account suspension; and
- (5) Outages due to Zingerang User's failure to maintain the services used in conjunction with the Zingerang Services.

17) FORCE MAJEURE

Zingerang shall not be responsible for any delay or failure in performance that results from causes beyond its reasonable control ("Force Majeure Events"), whether or not foreseeable by such party. Such Force Majeure Events include, but are not limited to, adverse weather conditions, flood, fire, explosion, earthquake, volcanic action, power failure, embargo, boycott, war, revolution, civil commotion, act of public enemies, labor unrest (including, but not limited to, strikes, work stoppages, slowdowns, picketing or boycotts), inability to obtain equipment, parts, software or repairs thereof, acts or omissions of the other

party, and acts of God.

18) THIRD PARTIES

Zingerang User acknowledges that Zingerang's ability to perform its obligations under this Agreement is dependent upon the availability of equipment and services from third parties (collectively, the "Vendors") with whom Zingerang has contracted for the provision of telecommunications and Internet services and equipment used by Zingerang when providing the Zingerang Services, and agrees that Zingerang shall not be in breach of its obligations to Zingerang User hereunder, if Zingerang is prevented from performing such obligations by reason of the breach or other failure by any such Vendor to perform its obligations to Zingerang in accordance with the terms of such Vendor's agreement with Zingerang.

19) INDEMNIFICATION

Zingerang User shall indemnify, defend, and hold Zingerang, its parents, subsidiaries, affiliates, officers, directors, and employees free and harmless from any and all claims, costs, damages, and expenses (including but not limited to reasonable attorneys' fees), which arise from or are related to any act or omission by Zingerang User in connection with the use of the Zingerang Services, including but not limited to, any such claims, costs, damages, and expenses arising from or related to Zingerang User's violation of any terms and conditions of this Agreement, Zingerang User's violation of any applicable law, rule, or regulation, or any infringement by Zingerang User (or any other person using the Zingerang Services in reliance on Zingerang User's rights under this Agreement) of any intellectual property or other rights of any other person. This Section 20 shall survive termination of this Agreement.

20) TERMINATION

Either Zingerang User or Zingerang may terminate the Zingerang Services with or without cause at any time (the "Termination"). Termination by Zingerang User shall occur only when Zingerang User uses the online account cancellation system on the Zingerang Service website.

Upon submission of Zingerang User's intent to terminate the Zingerang User's Zingerang Services, Zingerang User agrees to cease use of all Zingerang Services and the Zingerang infrastructure technology (collectively "Zingerang Network"). Without limiting other rights of termination set forth in this Agreement, Zingerang may terminate any Zingerang Services or this entire Agreement by delivering to Zingerang User written or electronic notice of the termination of Zingerang User's Zingerang Services or this entire Agreement, which termination shall be effective immediately upon Zingerang's delivery of such notice. Zingerang shall not be liable to Zingerang User or any third party for any circumstances resulting from the Termination of Zingerang Services or this Agreement.

Notwithstanding any other provision of this Agreement to the contrary, if Zingerang User objects to any terms and conditions of the Agreement or any subsequent modifications thereto or becomes dissatisfied with the Zingerang User's Zingerang Services in any way, Zingerang User's sole and exclusive remedy shall be to terminate Zingerang User's Zingerang Services as described above. Zingerang shall not be liable to Zingerang User or any third party, or responsible for any charges incurred for the termination of services Zingerang User obtains from third-party providers. During the entire service period for which Zingerang User has paid in advance Charges to Zingerang, Zingerang shall continue to provide Zingerang User access to, and Zingerang User shall continue to be entitled to use, the associated Zingerang Services. Thereafter, Zingerang User shall have no right to Zingerang Services and Zingerang shall have no obligation to provide the same. In addition, Zingerang will not be held liable for any lost information or messages because of the termination of Zingerang User's Zingerang Services initiated by Zingerang User or Zingerang.

Zingerang reserves the right to communicate with Zingerang User following Termination until Zingerang User has paid to Zingerang all Charges levied prior to Termination.

The following sections shall survive the termination or expiration of this Agreement for any reason: 1, 6, 12, 14, 15, 19 and 20 and any payment obligations incurred prior to the expiration or termination of this Agreement.

21) PARTICIPATION IN PROMOTIONS OF ADVERTISERS

Zingerang User may enter into correspondence with or participate in promotions of persons who advertise goods or services in conjunction with the Zingerang Services (the "Advertisers"). Any such correspondence or promotions, including the delivery of and the payment for goods and services, and any other terms, conditions, warranties or representations associated with such correspondence or promotions, are solely between the corresponding Zingerang User and the Advertiser. Zingerang assumes no liability, obligation or responsibility for any part of any such correspondence or promotion.

22) TRADEMARK AND PROPRIETARY RIGHTS TO CONTENT

Zingerang's trademarks, websites, corporate names, trade names, domain names, logos, and service marks ("Marks") are the property of Zingerang. Zingerang User is not permitted to use the Marks without the prior written consent of Zingerang. Zingerang and the Zingerang logo are trademarks of Zingerang Software Inc.

Zingerang User acknowledges that content, including but not limited to the Zingerang Services, text, software, music, sound, photographs, video, graphics or other material contained in either sponsor advertisements or email-distributed, commercially produced information presented to Zingerang User through the Zingerang Services ("Content"), by Zingerang or Zingerang's Advertisers, is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws; and Zingerang User is permitted to use this Content only as expressly authorized by the Zingerang Services or the Advertiser. Zingerang User may not copy, reproduce, distribute, or create derivative works from this Content without express written authorization by Zingerang or such Advertiser.

23) NO THIRD PARTY BENEFICIARIES

No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

24) NOTICE

Zingerang may broadcast notices or messages through the Zingerang Services to inform Zingerang Users of changes to the Agreement, the Zingerang Services, or other matters as Zingerang in its sole discretion, deems to be of importance to Zingerang Users. At Zingerang's election, such broadcast may be sent over email, conventional mail, as a voice transmission, fax, and/or "pop-up" communication and notice shall be deemed delivered and received on the date on which it is transmitted. Use of the Zingerang Services constitutes Zingerang User's consent to receiving and acknowledgment of the sufficiency of such notices.

25) ARBITRATION

All disputes which arise under this Agreement or in connection with the Zingerang Services to be delivered hereunder and which are not resolved within thirty (30) days following the delivery by one party to the other of a written notice describing the dispute shall be resolved by binding arbitration under the rules of the American Arbitration Association before a single arbitrator in Santa Barbara, California. The decision of the arbitrator shall be final and binding on the parties, and judgment thereon shall be entered in a court of competent jurisdiction. ZINGERANG USER ACKNOWLEDGES AND AGREES THAT BY CONSENTING TO THIS AGREEMENT, ZINGERANG USER IS CONSENTING TO BINDING ARBITRATION OF ALL DISPUTES HEREUNDER, AND THAT IN ARBITRATION, ZINGERANG USER SHALL NOT HAVE A RIGHT TO A JURY TRIAL, SHALL HAVE LIMITED DISCOVERY RIGHTS, AND SHALL HAVE VERY LIMITED RIGHTS OF APPEAL FROM THE DECISION OF THE ARBITRATOR.

NOTHING IN THIS SECTION 26: ARBITRATION IS INTENDED OR SHALL BE CONSTRUED TO MODIFY OR OTHERWISE BE INCONSISTENT WITH THE PROVISIONS OF SECTION 21: TERMINATION, ABOVE, WHICH SETS FORTH THE SOLE AND EXCLUSIVE REMEDY OF ANY ZINGERANG USER WHO OBJECTS TO ANY TERMS OF THIS AGREEMENT (OR ANY MODIFICATION HEREOF) OR BECOMES DISSATISFIED WITH ANY ZINGERANG SERVICE.

26) MISCELLANEOUS

The Agreement shall be governed by and construed in accordance with the internal laws of the State of California, excluding its conflict of law provisions. Subject to Section 26: Arbitration, above, and without limiting the applicability of any provisions thereunder, Zingerang User and Zingerang agree to submit to the exclusive jurisdiction of the courts of the State of California and further agree that the exclusive venue for any cause of action arising under or relating to this Agreement or the Zingerang Services provided hereunder shall be the Superior Court in and for Santa Barbara County, California, sitting in the City of Santa Barbara, California. Zingerang User and Zingerang agree that any cause of action arising out of or related to the Agreement or the Zingerang Services must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred.

If any provision of the Agreement is determined by an arbitrator or court of competent jurisdiction to be contrary to applicable law, then such provision shall be construed as nearly as possible to conform to applicable law and the other provisions of this Agreement shall remain in full force and effect.

The Agreement (i) constitutes the entire agreement between Zingerang User and Zingerang and supersedes all prior agreements between the parties regarding the subject matter contained herein, and (ii) may be modified or amended only in the manner expressly set forth herein.

Zingerang at any time and from time to time may assign its rights and delegate its duties under this Agreement without the prior consent of Zingerang User. Zingerang User may not assign this Agreement to any other person under any circumstances.

Zingerang's failure to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Zingerang in writing.

The section titles in the Agreement are solely used for the convenience of the parties and have no legal or contractual significance.

27) NO SPAM; FILTERING TECHNOLOGY

You will not use the Service to transmit, either directly or indirectly, any unsolicited bulk e-mail or unsolicited commercial e-mail. You will not use the Service in any way that violates the [Zingerang Anti-Spam Policy](#). Zingerang may use filtering technology or other measures in its efforts to stop unsolicited bulk e-mail and unsolicited commercial e-mail. If your use of the Service includes e-mail related services, then this filtering technology or other measures may block, either temporarily or permanently, some e-mail sent to you through the Services even if such e-mail does not violate the Anti-Spam Policy.

28) MATERIALS YOU POST OR PROVIDE

You may be able to post or provide materials in publicly accessible areas for use in connection with the Service. Zingerang does not claim ownership of these materials. By posting or providing them, you give to Zingerang the rights to use, modify, copy, distribute, transmit and display the materials, publish your name with the materials, and give these rights to the public. You represent and warrant that you own or control all rights to the materials you post or provide. These rights apply only to legal materials and legal use of them. We will not pay you for your materials. We may remove them at any time.

29) ZINGERANG ANTI-SPAM POLICY This statement applies to those Zingerang websites and services that display or link to this notice ("Services"). Zingerang prohibits the use of the Services in any manner associated with the transmission, distribution or delivery of any unsolicited bulk or unsolicited commercial e-mail ("Spam"). You may not use any Services to send Spam. You also may not deliver Spam or cause Spam to be delivered to any of Zingerang's Services or customers.

In addition, e-mail sent, or caused to be sent, to or through the Services may not:

- . • use or contain invalid or forged headers;
- . • use or contain invalid or non-existent domain names;

- .
 - employ any technique to otherwise misrepresent, hide or obscure any information in identifying the point of origin or the transmission path;
- .
 - use other means of deceptive addressing;
- .
 - use a third party's internet domain name, or be relayed from or through a third party's equipment, without permission of the third party;
- .
 - contain false or misleading information in the subject line or otherwise contain false or misleading content;
- .
 - fail to comply with additional technical standards described below; or
- otherwise violate the applicable Use of Zingerang Services.

Zingerang does not authorize the harvesting, mining or collection of e-mail addresses or other information from or through the Services. Zingerang does not permit or authorize others to use the Services to collect, compile or obtain any information about Zingerang's customers or subscribers, including but not limited to subscriber e-mail addresses, which are Zingerang's confidential and proprietary information. Use of the Services is also subject to the applicable Privacy Policy and Use of Zingerang Services.

Zingerang does not permit or authorize any attempt to use the Services in a manner that could damage, disable, overburden or impair any aspect of any of the Services, or that could interfere with any other party's use and enjoyment of any Service.

If Zingerang believes that unauthorized or improper use is being made of any Service, it may, without notice, take such action as it, in its sole discretion, deems appropriate, including blocking messages from a particular internet domain, mail server or IP address. Zingerang may immediately terminate any account on any Service which it determines, in its sole discretion, is transmitting or is otherwise connected with any e-mail that violates this policy.

Nothing in this policy is intended to grant any right to transmit or send e-mail to, or through, the Services. Failure to enforce this policy in every instance does not amount to a waiver of Zingerang's rights. Unauthorized use of the Services in connection with the transmission of unsolicited e-mail, including the transmission of e-mail in violation of this policy, may result in civil, criminal, or administrative penalties against the sender and those assisting the sender.

30) CRITICAL APPLICATIONS

Zingerang User acknowledges and agrees that Zingerang Services are not designed, intended, authorized or warranted to be suitable for hosting life-support applications or other critical applications where the failure or potential failure of Zingerang Services can cause injury, harm, death or other grave problems, including, without limitation, loss of aircraft control, hospital life-support systems, and delays in getting medical care or other emergency services. Customer acknowledges and agrees that use of Zingerang Services to support such applications is fully at the risk of the Zingerang User and that the Zingerang User assumes all risk arising out of such use.

31) NO HARMFUL CODE

Zingerang User represents and warrants to Zingerang that no Content shall be knowingly transmitted by Zingerang User through Zingerang Services containing any program, routine or device which is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, including without limitation, any 'time bomb', virus, drop dead service, malicious logic, worm, Trojan horse or trap or back door (collectively, "Harmful Code").

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