

SOFTWARE AGREEMENT

This SOFTWARE AGREEMENT ("Agreement") dated _____ ("Effective Date") is entered into by and between _____, having an office at _____ ("Customer") and ZOS Communications, LLC ("Licensor"), having an office at 28 Anacapa Street, Santa Barbara, California, 93101 and describes the terms and conditions pursuant to which Licensor shall license to customer and certain Software (as defined below), provide Services (as defined below) associated with the Software, and Support (as defined below) the Software and Services.

In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

1. Definitions

1.1 "Confidential Information" means this Agreement and all its Schedules, any addenda hereto signed by both parties, all Software listings, the combination of Services to be provided, Documentation, information, data drawings, benchmark tests, specifications, trade secrets, object code and machine-readable copies of the Software, source code relating to the software, and any other proprietary information supplied to Licensee by Licensor, or by Licensee to Licensor and clearly marked as "confidential information" including all items defined as "confidential information" in any other agreement between Licensee and Licensor whether executed prior to or after the date of this Agreement.

1.2 "Documentation" means all on-line help files or written instruction manuals or materials regarding the Use of the Software or Services.

1.3 "Services" means the services specified in Schedule A, in any, including any associated data, as supplied by or on behalf of Licensor and excludes Third Party Services.

1.4 "Software" means the certain location communication platform system, associated location-based routines and logic, and certain mobile device client, for use in conjunction with an associated database, as supplied by or on behalf of Licensor, and excludes any Third Party Software.

1.5 "Support" means the services specified in Schedule B as supplied by or on behalf of Licensor in support of the Software and/or Services, including hosting, if so provided, as well as any service level agreement, if so provided.

1.6 "Third Party Services" means any services provided by a third party upon which the Services are based.

1.7 "Third Party Software" means the computer program(s) (if any) provided by third parties (directly or through Licensor) to which the terms and conditions of an applicable Third Party Software agreement may apply. Licensor reserves the right to provide some, but not necessarily all such Third Party Software agreements in Schedule C to this Agreement.

1.8 "Use" means, as defined in Schedule A, including an exhibits thereto, with respect to Software, the loading, utilization, storage or display of the Software by the number of authorized users set forth in Schedule A to process Licensee's information and serve Licensee's computing needs in the countries referred to in Schedule A, and means, with respect to Services, the utilization of the Services and loading, utilization, storage and display of any data or content

associated with the Services.

2. Grant of License

2.1 For so long as this Agreement is in force, Licensor grants to Licensee a limited, nonexclusive and non-transferable license to (a) Use the object code version of the Software, (b) use the Documentation in connection with Use of the Software, (c) copy the Software for backup or archival purposes provided that all titles, trademark symbols, copyright symbols and legends, and other proprietary markings are reproduced, and (d) Use the Services and content associated with the Services.

2.2 Additional terms and conditions related to the use of the Software from a website(s) and content therein and the download and use of the Software, content, data and Services also apply to Licensee pursuant to those terms and conditions and this Agreement. Those terms and conditions may be set forth on the website or as a condition to installation of the Software. In the event of a conflict between such terms and conditions and this Agreement, the terms of this Agreement shall prevail.

2.2 This is a license only and not a sale. Licensor owns and retains all right, title and interest, including all related intellectual property rights, in and to the Software, Documentation, content and Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Licensee or any other party Service. The ZOS name, the ZOS logo, the ZHIING name and ZMS name, and any other the product or service names associated with the Software, content, Service or Support are trademarks of Licensee or third parties, and no right or license is granted to use them. Licensee acknowledges that, except as specifically provided under this Agreement, no other right, title, or interest in these items is granted.

2.3. Licensee will own all data once delivered to Licensee by Licensor through the Service.

2.4 The rights granted under this license may be exercised only by employees of Licensee, its affiliated companies, or its contractors. The term of this license runs with the term of this Agreement.

2.5 Licensor shall deliver copies of the Software to Licensee via download from a website(s) as necessary to support the number of users specified in Schedule A. Licensee may reproduce the Documentation by printing or copying the online files for its own internal use.

3. License Restrictions

3.1 Licensee agrees that it will not itself, or through any parent, subsidiary, affiliate, agent or other third party:

- a) sell, lease, license, sublicense, encumber or otherwise deal with any portion of the Software or content of the Service, or Documentation;
- b) decompile, disassemble, or reverse engineer any portion of the Software, unless and to the extent required under national law;
- c) access the Service in order to (i) build a competitive product or service, (ii) build a product using similar ideas, features, function or graphics of the Service, or (c) copy any ideas, features, function, content or graphics of the Service
- d) write or develop any derivative software, works, or any other software programs

or content based upon the Service, the content, or the Confidential Information provided by Licensor;

- e) create Internet links to the Service or frame or mirror any content of the Service on any server or wireless or Internet-based device;
- f) use the Software to provide processing services to third parties, commercial timesharing, rental or sharing arrangements, or on a "service bureau" basis;
- g) provide, disclose, divulge or make available to, or permit use of the Software, Services or Documentation by persons other than Licensee's employees without Licensor's prior written consent; or
- h) exceed the number of users set forth in Schedule A.

3.2 Licensee may make one copy of each downloaded version of the Software for archival purposes only. Licensee may not make any other copies of the Software.

3.3 Licensor may audit Licensee to confirm that the number of users of the Software is consistent with the terms of this Agreement. Licensor may utilize a third party under appropriate nondisclosure to perform such audit.

3.4 Restricted Rights Legend. The Software, Third Party Software (if any), and associated Documentation are "commercial computer software" and "commercial computer software documentation," and, as such, the rights of the U.S. Government End Users with respect to the Software, Third Party Software (if any), and associated Documentation, is restricted in accordance with FAR 12.212 or DFARS 227.7202, as applicable. Any technical data provided that is not covered by the above provisions is deemed to be "technical data-commercial items" pursuant to DFAR Section 227.7015(a). Any use, modification, reproduction, release, performance, display or disclosure of such technical data shall be governed by the terms of DFAR Section 227.7015(b).

4. Service

4.1 Licensor will provide Licensee with Use of the Service, including location-based services, location-integration services, browser interfaces and content and data transmission, access and storage, for up to the number of users set forth in Schedule A, in accordance with Schedule A.

4.2 Licensor makes no guarantees to the continuous availability of the Service, any specific features of the Service, or any data or content delivered by the Service, as the Service relies upon numerous Third Party Services outside of the control of Licensor, other than as set forth in Schedule B, if at all.

5. Payment

5.1 In consideration of the rights granted herein, Licensee shall pay Licensor the fees specified in Schedules A, B and C as set forth therein.

5.2 All usage-based rates and monthly fees are fixed for the initial one-year term of this Agreement. All fees rendered or billed from the United States are payable in United States Dollars ("USD"). Invoices shall be issued, to Licensee's address as set forth herein, by the second week of the month following the initiation or rendering of Service or Support and shall be

payable within thirty (30) days of the invoice date. Any payments in default are subject to an interest charge of the lesser of (a) 1.5 percent per month, of (b) the legal maximum allowable rate at the time of default. Licensee agrees that if it defaults in its payment obligations, it shall pay to Licensor its reasonable expenses incurred in enforcing its rights under this Agreement, including without limitation attorney and collection agency fees.

5.3 Licensee is responsible for all taxes under this Agreement, except for taxes on Licensor's net income.

6. Support

6.1 Licensor shall provide email support between the hours of 9:00 am to 5:00 pm, Pacific Standard Time, Monday through Friday, excluding "Public Holidays", but has no obligation to provide Licensee with hard-copy documentation, upgrades, enhancements, modifications, or other support unless specifically contracted for by Licensee as set forth in Schedule B.

6.2 Licensor makes no guarantees as to the continuous availability of the Software, content, data or Service or any specific features of the Software, content, data or Service, other than as set forth in Schedule B, if at all. Licensor will inform Licensee of any significant changes to the Software, content, data or Service.

6.3. The Software, content, data or Service may be subject to limitation, delays and other problems inherent in the use of the Internet, electronic communications and Third Party Software and Third Party Services. Licensor is not responsible for any delays, delivery failures, or other damage resulting from such problems.

6.4 Additional support, if any, shall be provided in accordance with the terms set forth in Schedule B.

7. Local Laws and Export Control

7.1 The Software, content, data and Service provided under this Agreement may include services and use software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the European Union. Licensee acknowledges and agrees that the Software, content, data and Service shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Software, content, data and Service, Licensee represents and warrants that Licensee is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Licensee agrees to comply strictly with all U.S. and European Union export laws and assume sole responsibility for obtaining any necessary licenses to export or re-export.

7.2 The Software, content, data and Service provided on the site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000

7.3 Licensor makes no representation that the Software, content, data and Service are appropriate or available for use in other locations. If Licensee uses the Software, content, data and Service from outside the United States of America and/or the European Union, Licensee is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Software, content, data and Service contrary to United States or European Union (including European Union Member States) law is prohibited. None of the Software, content, data and Service, nor any information acquired through the use of the Software, content, data and Service, is or will be used for nuclear activities, chemical or biological weapons or missile projects, unless specifically authorized by the United States government or appropriate European body for such purposes.

8. Third Party Software

The Software or Service may contain, be derived from or make use of materials or software provided by Third Party Software providers. Such materials or software are subject to restrictions, in addition to those listed in this Agreement, which restrictions, if any are listed on Schedule C.

9. Warranty and Limitation of Liability

9.1 Licensor warrants to the Licensee that the Software will perform in substantial accordance with the Documentation for a period of ninety (90) days from the Effective Date. If the Software does not perform as warranted, Licensor shall undertake to correct the Software, or if correction of the Software is reasonably not possible, replace such Software free of charge. If neither of the foregoing is commercially practicable, Licensor shall terminate this Agreement with respect to the non-confirming software program. **THE FOREGOING ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY.** The warrant set forth above is made to and for the benefit of Licensee only and will be enforceable against Licensor only if:

- a) the Software has been properly installed and has been used at all times in accordance with the instructions for Use; and
- b) all modifications, alterations or additions to the Software, if any, have been made using software tools provided by Licensor to Licensee; and
- c) Licensee has not made or caused to be made modifications, alterations or additions to the Software that cause it to deviate from the Documentation.

9.2 **Except** as set forth above, Licensor makes no warranties, whether express, implied, or statutory regarding or relating to the Software, Documentation, content, data, Services or Support furnished or provided to Licensee under this Agreement. Specifically, Licensor does not warrant that the Software, content or data will be error free or will perform in an uninterrupted manner. To the greatest extent allowed by law, Licensor specifically disclaims all implied warranties of merchantability, fitness for a particular purpose (even if Licensor had been informed of such purpose) with respect to the Software, Documentation, content, data, Services and Support, and with respect to the use of any of the foregoing.

9.3 **IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, TO THE FURNISHING, PERFORMANCE OR USE OF THE SOFTWARE, DOCUMENTATION, CONTENT, DATA, SERVICES OR**

SUPPORT PERFORMED HEREUNDER, OR ANY DELAY IN DELIVERING THE SOFTWARE, DOCUMENTATION, CONTENT, DATA, SERVICES OR SUPPORT. THIS LIMITATION WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY LIMITED REMEDY AND REGARDLESS OF ANY NOTIFICATION OF POTENTIAL DAMAGES. THE PARTIES ACKNOWLEDGE THAT THIS SECTION REFLECTS A NEGOTIATED ALLOCATION OF RISK. LICENSOR DOES NOT GUARANTEE THAT THE SOFTWARE, DOCUMENTATION, CONTENT, DATA, SERVICES OR SUPPORT WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT FOR INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL LICENSOR'S LIABILITY (WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER FORM OF LIABILITY) TO LICENSEE OR ANY OTHER PARTY FOR DAMAGES OR LOSS, HOWEVER SO ARISING OR CAUSED, WHETHER OR NOT ARISING FROM LICENSOR'S NEGLIGENCE, EXCEED THE AMOUNTS PAID FOR THE SOFTWARE OR SERVICE GIVING RISE TO SUCH LIABILITY IN THE PRIOR SIX MONTHS.

10. Indemnification for Infringement

10.1 Licensor will defend, hold harmless, and indemnify Licensee against all losses, liabilities, judgments, awards, and costs arising out of any action brought against Licensee to the extent that it is based on a claim that the Software, content, or Services provided herein, used as permitted under this Agreement and exclusive of Third Party Software and Third Party Services, infringe or misappropriate any U.S. patents, U.S. copyrights, or U.S. trade secrets provided that Licensor is notified in writing of such claim as promptly practical after Licensee receives such claim. Licensor will have the right to control the defense of any such claim, and Licensee will not settle any such claim without Licensor's prior written approval. In addition, if Licensee is enjoined from using any Software, content or Services, Licensor will, at its sole option and expense, procure the right for Licensee to continue to use the Software, content or Services or replace or modify the Software, content or Services so as to make it non-infringing without impairing its performance or requiring Licensee to procure any other hardware or software to use the Software, content, data or Services. If the preceding options are not available to Licensor, it may revoke the license granted by this Agreement upon notice to Licensee and refund any unused monthly fees paid by Licensee to Licensor on prorated basis.

10.2 The foregoing obligations shall not apply to the extent the infringement arises as a result of modifications to the Software. This Section 10 states the entire liability of Licensor with respect to infringement of any patent, copyright, trade secret or other proprietary right.

11. Confidential Information

Each party acknowledges that the Confidential Information constitutes valuable trade secrets and each party agrees that it shall use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and will not disclose, or permit to be disclosed, the same, directly or indirectly, to any third party without the other party's prior written consent. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. However, neither party bears any responsibility for safeguarding information that (i) is publicly available; (ii) obtained by the other party from third parties without restrictions on disclosure, (iii) independently developed by the other party without reference to Confidential Information, or (iv) required to be disclosed by order of a court or other governmental entity.

12. Term and Termination

12.1 This Agreement commences on the Effective Date and will remain in force until it is terminated. Termination of this Agreement shall occur if any of the following events ("Termination Events") occur, provided that in no such termination will entitle Licensee to a refund of any portion of any monies which have been paid to Licensor:

a) Licensee is in breach of this Agreement, including breach of the any of the license restrictions or confidentiality restrictions set forth above, which breach, if capable of being cured, is not cured within thirty (30) days after Licensor gives Licensee written notice of such breach; or

b) Licensee terminates its business activities or becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority.

12.2 Termination will become effective immediately or on the date set forth in the written notice of termination. Termination of this Agreement will not affect the provisions regarding Licensee's or Licensor's treatment of Confidential Information, provisions relating to the payment of amounts due, provisions limiting or disclaiming Licensor's liability, provisions regarding non-solicitation and/or applicable law, which provisions will survive termination of this Agreement.

12.3 Within fourteen (14) days after the date of termination or discontinuance of this Agreement for any reason whatsoever, Licensee shall return the Software, content, derivative works and all copies thereof, in whole or in part, all related Documentation and all copies thereof, and any other Confidential Information in its possession provided by Licensor.

13. Non-Assignment/Binding Agreement

Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Licensee, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidate, without the prior written consent of Licensor, which consent will not be unreasonably withheld.

14. Notices

Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered mail return receipt requested, (c) sent by overnight air courier, or (d) by facsimile, in each case forwarded to the appropriate address set forth herein. Either party may change its address for notice by written notice to the other party. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after posting or one (1) day after (i) delivery to an overnight air courier services or (ii) the moment of transmission by facsimile.

15. Miscellaneous

15.1 *Force Majeure*. Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions, but the inability to meet financial obligations is expressly

excluded.

15.2 *Waiver.* Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed or be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to make subsequent action.

15.3 *Severability.* If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

15.4 *Entire Agreement.* This Agreement (including the Schedules and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter, except as provided in Section 1.1 with respect to the definition of "Confidential Information."

15.5 *Counterparts.* This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

15.6 *Applicable Law.* This Agreement will be interpreted and construed in accordance with the laws of the State of California and the United States of America, without regard to conflict of law principles.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

_____, Licensee ZOS Communications, LLC, Licensor

By: _____ By: _____

Print Name Print Name

Address: Address:

28 Anacapa Street, Suite C

Santa Barbara, CA 93101

Date: _____ Date: _____