

ZINGGRID OEM LICENSE AGREEMENT

This Agreement, dated _____ (the “Effective Date”), is made by and between ZingSoft, Inc. DBA ZingChart (“Licensor”), a California corporation doing business at 2105 Garnet Avenue, San Diego, CA 92109, and _____ (“Licensee”), a _____ doing business at _____.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, Licensor and Licensee hereby agree as follows:

1. DEFINITIONS

1.1. “Customer” means a customer of Licensee who is given access to use Licensee’s Software as a Service (SaaS) product or distributed OEM product containing ZingGrid.

1.2. “Documentation” means the documentation, whether provided in printed form or on machine-readable media, which is generally provided by Licensor to its licensees in conjunction with and in support of the Licensed Products. The Documentation includes all modifications, revisions and enhancements to the Documentation provided to Licensee under this Agreement.

1.3. “Intellectual Property Rights” means all present and future worldwide rights in copyrights, trademarks, trade secrets, patents, patent applications, moral rights, contract rights and any other proprietary rights, whether registered or unregistered.

1.4. “Licensed Products” means the machine-readable, object-code version of the Licensor computer software programs set forth on invoice, including all modifications, revisions, enhancements, derivative works and corrections that Licensor provides to Licensee pursuant to this Agreement.

1.5. “Software as a Service” means any application that requires user authentication from Customers to access Licensed Products.

1.6. “Locations” means any fully qualified domain, fully qualified subdomain, non-fully qualified domain name, ip address, server name, or any other identifiable location used to license products.

1.7. “Users” means the end user of the website(s) or application(s) which includes licensed products.

1.8. “OEM Location Licenses” means the individual licenses required per installation of OEM distributed product.

2. LICENSES

2.1. Grant of License.

(a) Licenses. Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive, non-transferable worldwide license under all of Licensor’s Intellectual Property Rights to: (i) use the Licensed Products as necessary to create a single product or service that includes the non-branded OEM version; (ii) market and distribute an application which include the Licensed Products to Customers directly or through one or more tiers of distributors or OEM’s; (iii) to include Licensed Products in distributed Customer installations assuming valid OEM Installation License(s) as indicated on Exhibit A.

This ZingGrid OEM license requires an annual licensing fee.

The ZingGrid OEM license provides access to the current major version (1.x.x) of ZingGrid. Should a new major version of ZingGrid be released within your annual licensing term, access to the newest major version will be made available at no additional cost. Upon renewal of your OEM Development license after a major version upgrade you will continue to have access to the newest version of ZingGrid at the annual fee originally agreed upon.

2.2. No Reverse Engineering. If Licensee makes any modification or derivative of any kind the modification or derivatives shall remain the proprietary product of the Licensor and the Licensee shall remain bound by this agreement.

2.3. No Competing Products. Licensee may not produce any stand alone product, specifically no grid or table creation library for direct sales that would compete with Licensor's products.

3. PAYMENTS

3.1. License Payments. Licensee shall pay Licensor as specified in Exhibit A for (the "License Fees").

3.2. Payment Terms. Licensee shall pay Licensor within ten (10) days of the date of Licensor's invoice during the Term of this Agreement, Payments made under this Agreement after their due date will incur interest at a rate equal to 1.5% per month or the highest rate permitted by applicable law, whichever is lower.

3.3. Taxes. All amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. Licensee will pay all taxes, fees, duties and other governmental charges, and any related penalties and interest, assessed in connection with this Agreement and its performance by any authority within or outside of the U.S., except for taxes payable on Licensor's net income. Licensee will promptly reimburse Licensor for any and all taxes or duties that Licensor may be required to pay in connection with this Agreement or its performance.

4. MAINTENANCE, SUPPORT, TRAINING AND DEVELOPMENT

4.1. By Licensee. Licensee will be responsible for providing all direct technical support to its users for the developed website(s) or applications.

5. CONFIDENTIALITY

5.1. Obligations. Each of Licensor and Licensee agrees:

- i. that it will not disclose to any third party or use any proprietary or technical information disclosed to it by the other party (including, with respect to Licensee, any Licensed Products) (collectively, "Confidential Information") except as expressly permitted in this Agreement; and
- ii. that it will take all reasonable measures to maintain the confidentiality of all Confidential Information in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance.

5.2. Exceptions. "Confidential Information" will not include information that:

- i. is in or enters the public domain without breach of this Agreement;
- ii. is lawfully received from a third party without restriction on disclosure and without breach of a nondisclosure obligation; or
- iii. is developed independently.

6. PROPRIETARY RIGHTS

6.1. Licensor's Ownership.

- a) The Licensed Products and Documentation, and all Intellectual Property Rights therein, are and will remain the sole and exclusive property of Licensor.
- b) Licensee will not delete or in any manner alter the Intellectual Property Rights notices of Licensor and its suppliers, if any, appearing on the Licensed Products as delivered to Licensee.

6.2. Licensee's Duties. Licensee will use its reasonable efforts to protect Licensor's Intellectual Property Rights in the Licensed Products and will report to Licensor any infringement of such rights of which Licensee becomes aware.

7. WARRANTY

7.1. THE SOFTWARE IS PROVIDED TO THE CUSTOMER ON AN "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE IS BORNE BY LICENSEE. LICENSOR EXPRESSLY DISCLAIMS, TO THE FULL EXTENT ALLOWED BY APPLICABLE LAW, ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, LICENSOR DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. SHOULD THE SOFTWARE PROVE DEFECTIVE, LICENSEE ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. NOTE: SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS. IN SUCH A CASE THE ABOVE EXCLUSION MAY NOT APPLY. NOTE: EXCEPT TO THE EXTENT ALLOWED BY LOCAL LAW, THESE WARRANTY TERMS DO NOT EXCLUDE, RESTRICT OR MODIFY, AND ARE IN ADDITION TO, THE MANDATORY STATUTORY RIGHTS APPLICABLE TO THE LICENSE OF THE SOFTWARE TO LICENSEE.

7.2. Power and Authority. Licensor warrants to Licensee that it has sufficient right and authority to grant to Licensee all licenses and rights that Licensor grants under this Agreement.

8. INFRINGEMENT INDEMNITY

8.1. Duty to Indemnify and Defend

- a) Licensor will indemnify Licensee against, and will defend or settle at Licensor's own expense, any action or other proceeding brought against Licensee to the extent that it is based on a claim that the use of the Licensed Products as licensed in this Agreement infringes any United States copyright or that the Licensed Products incorporate any misappropriated trade secrets.
- b) Licensor will have no obligation under this Section as to any action, proceeding, or claim unless: (A) Licensor is notified of it promptly; (B) Licensor has sole control of its defense and settlement; and (C) Licensee provides Licensor with reasonable assistance in its defense and settlement.

8.2. Injunctions.

(a) If Licensee's use of any Licensed Products under the terms of this Agreement is, or in Licensor's opinion is likely to be, enjoined due to the type of infringement or misappropriation specified in subsection (8.1 a) above, then Licensor may, at its sole option and expense, either: (i) procure for Licensee the right to continue using such Licensed Products under the terms of this Agreement; or (ii) replace or modify such Licensed Products so that they are noninfringing and substantially equivalent in function to the enjoined Licensed Products; or (iii) if options (i) and (ii) above cannot be accomplished despite the reasonable efforts of Licensor, then Licensor shall terminate Licensee's rights and Licensor's obligations under this Agreement with respect to such Licensed Products, and refund to Licensee all ongoing license fees paid by Licensee to Licensor for copies of such Licensed Products to the extent that Licensee is contractually obligated to return to any Customers their payments made to Licensee for such copies.

8.3. Sole Remedy. THE FOREGOING ARE LICENSOR'S SOLE AND EXCLUSIVE OBLIGATIONS, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.

8.4. Exclusions. Licensor will have no obligations under this Section 8 with respect to any claim of infringement or misappropriation based on (i) any unauthorized use, reproduction or distribution of the Licensed Products by Licensee or any of its Customers, (ii) any modifications to the Licensed Products not made by Licensor or (iii) the use of the Licensed Products in combination with other products, equipment, software or data not provided by Licensor (other than the Licensee Product) if the claimed infringement or misappropriation would not have occurred but for such combination.

9. LIMITATIONS OF LIABILITY

9.1. EXCEPT TO THE EXTENT PROHIBITED BY LOCAL LAW, IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY USED (WHETHER BASED IN WARRANTY, CONTRACT, TORT OR OTHER LEGAL THEORY), ARISING OUT OF THE USE OF, OR THE INABILITY TO USE, OR THE RESULTS OF USING THE SOFTWARE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LICENSOR'S LIABILITY TO

LICENSEE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE PRICE PAID BY LICENSEE FOR THE SOFTWARE. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE SOFTWARE FAILS OF ITS ESSENTIAL PURPOSE. NOTE: SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN SUCH A CASE, THIS LIMITATION MAY NOT APPLY.

10. TERM AND TERMINATION

10.1. Events of Termination.

Either party will have the right to terminate this Agreement if:

- a) the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after written notice;
- b) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or
- c) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.

10.2. Effect of Termination.

- a) Upon termination or expiration of this Agreement, (i) Licensee will immediately return to Licensor or (at Licensor's request) destroy all copies of the Licensed Products, Documentation and other Confidential Information in its possession or control, and (ii) all licensed rights granted in this Agreement will immediately cease to exist, and Licensee must promptly discontinue all further use and distribution of the Licensed Products.
- b) Customer License Agreements granted by Licensee in accordance with this Agreement will survive the expiration or termination of this Agreement in accordance with their terms.

10.3. No Damages for Termination. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND, INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES, ON ACCOUNT OF THE TERMINATION OR EXPIRATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS. LICENSEE WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE ANY COMPENSATION OR REPARATIONS ON TERMINATION OR EXPIRATION OF THIS AGREEMENT UNDER THE LAW OF THE TERRITORY OR OTHERWISE, OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT. Neither party will be liable to the other on account of termination or expiration of this Agreement for reimbursement or damages for the loss of goodwill, prospective profits or anticipated income, or on account of any expenditures, investments, leases or commitments made by either party or for any other reason whatsoever based upon or growing out of such termination or expiration.

10.4. Nonexclusive Remedy. The exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

10.5. Survival. The rights and obligations of the parties contained in Sections 3 (Payments) (but only with respect to amounts that are owed, but not yet paid, as of the date of any termination or expiration of this Agreement), 5 (Confidentiality), 6 (Proprietary Rights), 8 (Infringement

Indemnity), 9 (Limitations of Liability), and 11.3 (Effect of Termination) will survive the termination or expiration of this Agreement.

11. GENERAL

11.1. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Licensee may not assign this Agreement without Licensor's written consent, which consent will not be unreasonably withheld, except that Licensee may assign this Agreement and any of its rights and obligations hereunder without permission to a successor entity in the event of a merger, acquisition, sale of stock or assets or similar event. Any attempt to assign this Agreement in contravention of this Section 11.1 will be null and void.

11.2. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California (except with respect to its conflict of laws principles). Application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

11.3. Severability. If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force.

11.4. Force Majeure. Except for payments due under this Agreement, neither party will be responsible for any failure to perform due to causes beyond its reasonable control (each a "Force Majeure"), including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, denial of or delays in processing of export license applications, fire, floods, earthquakes, accidents, strikes, or fuel crises, provided that such party gives prompt written notice thereof to the other party. The time for performance will be extended for a period equal to the duration of the Force Majeure, but in no event longer than sixty (60) days.

11.5. Notices. All notices under this Agreement will be deemed given when delivered personally, sent by confirmed facsimile transmission, or sent by certified or registered mail or nationally-recognized express courier, return receipt requested, to the address shown below or as may otherwise be specified by either party to the other in accordance with this section.

11.6. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

11.7. Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.

11.8. Entire Agreement. This Agreement and its exhibits are the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties. The parties have caused this Agreement to be executed by their duly-authorized representatives as of the Effective Date.

IN WITNESS WHEREOF, this Agreement has been duly executed by authorized representatives of the parties hereto.

ZingSoft, Inc.

Licensee: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: 2105 Garnet Avenue

Address: _____

San Diego, CA. 92109
