



Master Subscription Agreement

1. **SCOPE.** This Master Subscription Agreement (together with the Services Order, the “Agreement”) provides Customer access to Zmags’ proprietary online subscription Services consisting of the web-based application(s) listed on the Services Order and a platform to create, upload, host, and/or deliver digital content (the “Services”).
2. **LICENSE; USE OF SERVICES.**
 - 2.1. **License.** During the Term (as defined in Section 3 below) and subject to the terms and conditions of this Agreement, Zmags grants to Customer a non-exclusive, non-transferrable (except as otherwise permitted herein), revocable, limited right to use the Services.
 - 2.2. **Zmags Responsibilities.** During the Term, Zmags will provide to Customer, at no additional charge, the Zmags Enterprise support services, a current description of which is located at www.zmags.com/support, which support terms are incorporated into this Agreement.
 - 2.3. **Customer Responsibilities.**
 - 2.3.1. Customer represents and warrants that:
 - i. it either owns fully and outright or otherwise possesses and has obtained all rights, approvals, licenses, consents and permissions as are necessary to perform its obligations and exercise its rights hereunder;
 - ii. it will prevent unauthorized access to the Services, and promptly notify Zmags of any such unauthorized access;
 - iii. the Customer Content (as defined in Section 5.2), and its use through the Services, directly or indirectly, does not, and shall not, infringe, violate or misappropriate any third party’s rights;
 - iv. it shall comply with all applicable laws, regulations and industry standards, including any data protection, privacy and security laws;
 - v. it will give all required notices and appropriate disclosures to all data subjects regarding Customer’s (and any third parties acting on Company’s behalf) use, processing and transfer of any personal data (as defined under applicable law); and
 - vi. it will obtain all necessary rights and valid consents from the data subjects to permit use, processing and transfer of personal data by Zmags for the purposes of its fulfilling its obligations under this Agreement or as may be required by applicable law (including any opt-in consents required under applicable European data protection law).
 - 2.3.2. Customer shall not:
 - i. sell, resell, rent or lease the Services;
 - ii. use the Services to store or transmit infringing, libelous, pornographic, obscene, abusive, libelous, defamatory, or otherwise unlawful or tortious material, or to store or transmit material in violation of any third-party rights;
 - iii. interfere with, or disrupt the integrity or performance of, the Services or any of its third-party data;
 - iv. attempt to gain unauthorized access to the Services, or its related systems or networks;
 - v. copy, reproduce or otherwise create derivative works or adaptations of the Services;
 - vi. reverse engineer the Services;
 - vii. use the Services in a service-provider capacity, distribute or resell the Services to third parties for a fee, or in either case, as part of another service;
 - viii. remove or modify any proprietary marking or restrictive legends in the Services;
 - ix. use any automatic device or program or manual process to monitor, frame, copy or reproduce the Services;
 - x. access the Services to build a competitive product or service, or copy any feature, function or graphics of the Services, or
 - xi. exceed the scope of the license granted as described in the Services Order, including the business entity limitation.



3. **TERM.** Subject to earlier termination as provided in Section 10 below, this Agreement is for the Initial Term specified in the Services Order, and will automatically renew for additional successive twelve (12) month periods unless either party gives the other party written notice of cancellation at least ninety (90) days prior to the expiration of the then-current term (each such one-year period, a “Renewal Term”; together with the Initial Term, the “Term”).
4. **PAYMENT OF FEES.**
 - 4.1. Customer will pay Zmags the Services Fees described in the Services Order in accordance with the terms hereof. The Services Fees set forth in the Services Order exclude taxes. Customer is responsible for the payment of all taxes and duties levied or assessed in connection with this Agreement, including but not limited to all local and federal import, sales, use, value added, or other taxes, however excluding any taxes based on Zmags’ net income.
 - 4.2. Upon written agreement with Customer, Zmags reserves the right to change the Services Fees at the end of the Initial Term or any then-current Renewal Term. Such change will modify this Agreement unless Customer ceases to use the Services at the end of any Term for which Customer has already paid. Discounts provided by Zmags in the Initial Term may not apply to any Renewal Term.
 - 4.3. Any amounts not received by Zmags by the relevant due date will incur a service charge equal to the lesser of (i) 1.5% per month, or (ii) the maximum amount permitted by law. The service charge will accrue on a daily basis from the due date until payment of all outstanding amounts is made in full. Customer agrees that failure to pay any fees when due including overage fees may result in the applicable Services being limited, suspended or terminated.
5. **PROPRIETARY RIGHTS.**
 - 5.1. **Reservation of Rights by Zmags.** All software, hardware and other technology provided by Zmags as part of the Services is proprietary to Zmags, and all right, title and interest in and to the Services, including all associated intellectual property rights, remains the sole and exclusive property of Zmags. No grant of rights or license to any Zmags intellectual property may be assumed or implied by this Agreement. Zmags reserves all rights not expressly granted herein.
 - 5.2. **Customer Content.**
 - 5.2.1. All content, images, files and other data uploaded, posted or generated under Customer’s account (“Customer Content”) remains the sole and exclusive property of Customer. Customer may, at any time, request the removal and deletion of the Customer Content from the Services. Customer hereby grants to Zmags a non-exclusive, royalty-free, license to use, modify, process, and display the Customer Content for purposes of Zmags performing its obligations under this Agreement.
 - 5.2.2. Notwithstanding anything to the contrary, Zmags shall have the right to collect and analyze data and other information relating to the provision, use and performance of the Services and related systems and technologies (including, without limitation, information concerning Customer Content and data derived therefrom), and Zmags will be free (during and after the Term) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Zmags offerings, and (ii) use such data solely in aggregate or other de-identified form in connection with its business and for any lawful purpose. Upon creation, as between Zmags and Customer, Zmags shall own all right, title and interest in and to all such aggregated or de-identified data.
 - 5.2.3. Customer Content and use of the Services is also subject to Zmags privacy policies, available at <https://zmags.com/privacy-policy.html>
6. **MUTUAL CONFIDENTIALITY.**
 - 6.1. **Definition of Confidential Information.** Confidential Information means all non-public 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 (“Confidential Information”). Zmags’ Confidential Information includes the Services, and Confidential Information of each party



includes the terms of this Agreement and all Services Orders, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by either party.

- 6.2. Exclusions.** Confidential Information excludes 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; (iii) is received from a third party without breach of any known obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party without use of or access to the Confidential Information of the Disclosing Party. Receiving Party may disclose Confidential Information if required by law, but will attempt to provide Disclosing Party advance notice.
- 6.3. Protection of Confidential Information.** The Receiving Party must use the same degree of care that it uses to protect its confidential information (in no event less than reasonable care) to not disclose or use any Confidential Information of the Disclosing Party for any purpose (other than within the scope of this Agreement or for the benefit of the Disclosing Party). The Receiving Party must 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 restrictive than those in this Agreement.

7. WARRANTY and REMEDY.

- 7.1. Limited Warranty.** During the Term of this Agreement, Zmags warrants it will use commercially reasonable efforts to maintain 99.9% online availability of the Service in any given month (excluding scheduled outages, force majeure events, or outages related to Customer).
- 7.2. LIMITED REMEDY AND DISCLAIMER.** PROVIDED THAT CUSTOMER NOTIFIES ZMAGS OF A BREACH OF SECTION 7.1 IN WRITING WITHIN 30 DAYS OF SUCH BREACH, CUSTOMER'S EXCLUSIVE REMEDY AND ZMAGS' SOLE OBLIGATION FOR SUCH BREACH IS FOR ZMAGS TO PROVIDE A REFUND OF THE SERVICES FOR THE APPLICABLE MONTH.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES ARE FURNISHED BY ZMAGS AND ACCEPTED BY CUSTOMER ON AN "AS IS, AS AVAILABLE" BASIS AND ZMAGS AND ALL THIRD PARTY PROVIDERS DISCLAIM ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS, IMPLIED, STATUTORY OR OTHER, ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES REGARDING TITLE, QUALITY, ACCURACY, CORRECTNESS, COMPLETENESS, COMPREHENSIVENESS, SUITABILITY, COMPATIBILITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR OTHERWISE (IRRESPECTIVE OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE). THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. ZMAGS MAKES NO REPRESENTATIONS OR WARRANTIES THAT ACCESS TO THE SERVICES WILL BE UNINTERRUPTED, THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE RESULTS OBTAINED BY CUSTOMER WILL BE ERROR FREE. AS BETWEEN ZMAGS AND CUSTOMER, CUSTOMER ASSUMES ALL RISK WITH RESPECT TO ITS USE OF THE SERVICES AND OTHER SERVICES BY ITS EMPLOYEES AND AGENTS. NO ZMAGS EMPLOYEE OR AGENT IS AUTHORIZED TO MAKE ANY STATEMENT THAT ADDS TO, AMENDS OR ALTERS THE WARRANTIES, OR WAIVES THE LIMITATIONS CONTAINED IN, THIS AGREEMENT.

8. EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY.

- 8.1. EXCLUSION OF CERTAIN DAMAGES.** NEITHER PARTY IS LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGE ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION), REGARDLESS OF WHETHER ARISING FROM BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF THE LOSS OR DAMAGE, OR IF THE LOSS OR DAMAGE COULD HAVE BEEN REASONABLY FORESEEN.
- 8.2. LIMITATION OF LIABILITY.** EXCEPT FOR (A) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, OR (B) CUSTOMER'S FAILURE TO PAY SERVICE FEES AND OTHER CHARGES, EACH PARTY'S



LIABILITY FOR ALL OTHER DAMAGES RELATING TO, OR ARISING UNDER, THIS AGREEMENT (WHETHER IN INDEMNITY, CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER WITHIN THE IMMEDIATELY PRECEDING 12 MONTHS FOR THE SERVICE.

9. INDEMNIFICATION.

- 9.1. During the Term, each party (as the “Indemnifying Party”) agrees to defend and indemnify the other party (as the “Indemnified Party”) for any third party claim alleging the Indemnifying Party’s technology or content directly infringes any U.S. patent, trademark or copyright (“Third Party Claim”). The Indemnifying Party shall, at its sole cost and expense, defend the Indemnified Party against such Third Party Claim and hold the Indemnified Party harmless from all losses, costs, damages and expenses (including reasonable attorney’s fees) finally awarded by a court of competent jurisdiction against the Indemnified Party, or agreed to in a written settlement agreement executed by the Indemnifying Party, which are directly attributable to such Third Party Claim.
- 9.2. The Indemnifying Party agrees to defend and indemnify the Indemnified Party pursuant to Section 9.1 provided that the Indemnified Party (a) promptly notifies the Indemnifying Party in writing upon learning, or receiving notice, of a Third Party Claim, (b) provides the Indemnifying Party with reasonable assistance as requested by the Indemnifying Party (at the Indemnifying Party’s expense) to defend or settle such Third Party Claim, (c) provides the Indemnifying Party sole control of the defense and the authority to settle such Third Party Claim, and (d) refrains from making any admission about such Third Party Claim without the Indemnifying Party’s prior written consent.
- 9.3. In the event of any actual or anticipated infringement claim, the Indemnifying Party may, at its option, (a) substitute or modify the applicable technology or content to avoid infringement, or (b) obtain a license to allow for the continued use of the applicable technology or content under the terms of this Agreement. If either of the foregoing alternatives are not, in the opinion of the party whose technology or content is the subject of the applicable claim, commercially reasonable, then such party may terminate this Agreement and, if applicable, refund any unused and prepaid fees.
- 9.4. The indemnity obligations in Section 9.1 do not extend to any claim related to, arising out of, or based on: (a) any violation of any use restrictions, confidentiality or proprietary rights provisions in this Agreement; (b) any unauthorized use or modifications of the Indemnifying Party’s technology or content; (c) any products or Services developed in conformance with specifications, designs or instructions provided by the Indemnified Party; or (d) any third-party products, services, hardware, software or other materials, or any combination of these, with the Indemnifying Party’s technology or content if such technology or content would not be infringing without this combination.
- 9.5. The parties agree that Sections 8 and 9 constitute the Indemnifying Party’s entire liability and the Indemnified Party’s sole and exclusive remedy for intellectual property rights claims arising out of or related to this Agreement.

10. TERMINATION AND SUSPENSION OF SERVICES.

- 10.1. **Termination for Breach.** If either party is in breach of any material term of this Agreement, the other party may terminate this Agreement at the end of a 30-day notice/cure period, if the breach has not been cured. Notwithstanding the foregoing, Zmags may terminate this Agreement and usage of the Services within 15 days for Customer’s failure to cure any payment related breaches.
- 10.2. **Actions Upon Termination.** Upon any termination as provided in Section 10.1 by Customer, Zmags must refund any prepaid fees covering the remainder of the Term. Upon any termination as provided in Section 10.1 by Zmags, Customer must pay the past due fees and all fees payable for the remainder of the Term with regard to any Services Orders.
- 10.3. **Suspension of Services for Violations.** Zmags may immediately terminate this Agreement or suspend the Services if it in good faith believes that, in connection with Customer’s use of the Services, Customer may have violated any Zmags user guides and policies, applicable government law and regulations, or this Agreement. In the event of such a suspension or termination, Zmags may elect to contact Customer in advance, but it is not required to do so.



- 11. GOVERNING LAW AND ARBITRATION.** This Agreement is governed by the law of The Commonwealth of Massachusetts, without regard to conflict of law principles. Any dispute arising out of, or relating to, this Agreement must be determined by binding arbitration in Boston, Massachusetts, under the then current commercial or international rules of the American Arbitration Association. Nothing in this Agreement prevents any party from seeking injunctive relief in any court of competent jurisdiction. The prevailing party in any litigation or arbitration is entitled to recover its attorney's fees and costs from the other party.
- 12. EQUITABLE RELIEF.** Customer acknowledges that any breach by it of any confidentiality provision or use restrictions in this Agreement will cause irreparable damage to Zmags or its third party licensors and that remedy at law may be inadequate. Therefore, in addition to any remedies, Zmags or its licensors will be entitled to seek injunctive relief for any actual or threatened breach of any confidentiality or use restriction.
- 13. FORCE MAJEURE.** Zmags shall not be liable to Customer for any failure to perform or delay in performance hereunder where such failure or delay is occasioned by force majeure or an Act of God (including, but not limited to, fire, embargo, labor strike, or interruption of telecommunications, internet or electrical service), or circumstances beyond Zmags' reasonable control
- 14. PUBLICITY.** Zmags may publicly disclose that Customer is a customer of Zmags and a licensee of the Services, including being listed as a customer of Zmags on its website and other promotional materials, and Customer hereby grants a limited license to use its logo or trademark solely for that purpose.
- 15. MISCELLANEOUS OTHER TERMS.** This Agreement, together with the Services Order, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. In the event of a conflict between a Services Order and this Agreement, this Agreement shall govern. No amendment of any term of this Agreement is effective unless signed in writing by each party. The terms, conditions, warranties, representations and indemnities contained in this Agreement, including the documents, instruments and agreements executed and delivered by the Parties pursuant hereto, may be waived only by a written instrument executed by the Party waiving compliance. Any such waiver shall only be effective in the specific instance and for the specific purpose for which it was given and shall not be deemed a waiver of any other provision hereof or of the same breach or default upon any recurrence thereof. No failure on the part of a Party hereto to exercise and no delay in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. Customer may not assign or transfer this Agreement or a Services Order to a third party, or to an entity, business unit or division thereof other than the entity, business unit or division thereof listed in Services Order, whether by assignment or operation of law, without prior written consent of Zmags, and such consent may be conditioned upon changes in the Services Fees or Term. The parties are independent contractors, and no partnership, joint venture or franchise is created hereby. If any provision of this Agreement shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement. Any terms that by their nature survive termination or expiration of this Agreement, will survive, including Sections 4, 5, 6, 8, 9, 10 and this Section 14. Each party must comply with the export laws of the United States in providing and using the Services. The Convention on Contracts for the International Sale of Goods does not apply. Customer acknowledges Zmags may utilize third party software and services (including "cloud" services and software) when providing the Services. This Agreement may be executed in counterparts.