

Terms and Conditions of Use

These Terms and Conditions of Use (the “Agreement”) are a legal agreement between Zift Solutions (“Company”) a North Carolina Corporation and you, a person or entity authorized by a specific customer of the Company (hereinafter referred to as “you” or “your”) and governs your use of the services (the “Services”) provided through the Zift123 portal.

IN ORDER TO USE THE SERVICES YOU MUST ACCEPT ALL OF THE TERMS OF THIS AGREEMENT. AFTER READING THE TERMS, IF YOU AGREE TO THEM, PLEASE INDICATE YOUR DECISION BY CLICKING ON “I AGREE” ON THE SERVICE REGISTRATION PAGE. IF YOU DO NOT AGREE, YOU WILL NOT BE ALLOWED TO USE THE SERVICES. Company may revise and update this Agreement at any time, in which case it will notify you and all other users of the changes to the Agreement. Your continued use of the Services will mean you accept those changes and agree to this Agreement as revised. You may not amend or change this Agreement unless Company agrees to such amendment or change in writing.

Your Use of the Services

You may use the Services, subject to the terms and conditions of this Agreement. You are solely responsible for your use of the Services. You specifically agree that you may not use the Services for anything other than a lawful and legitimate purpose. Examples of prohibited uses of the Services include, but are not limited to: (a) deceptive and unfair trade practices; (b) introduction of viruses, worms or other programming routines that are intended to disrupt or interfere with the intended operation of the Services; (c) promotion of any unlawful activity or purpose, including any activity that could give rise to criminal or civil liability; and (d) any activity that infringes on the copyright, patent, trademark or other rights of any

person or entity. In addition to the foregoing, you may not use the Services in any way that (i) does not comply with the terms of this Agreement, as amended by Company from time to time, or any other terms, rules, or guidelines provided by Company concerning your use of the Services, or (ii) might adversely affect Company's public image, reputation or goodwill. You agree: (i) not to reverse engineer, disassemble or decompile the Services or any part thereof; (ii) to take all reasonable steps to insure that the Services, and the trade secrets, confidential and proprietary information contained therein, are not disclosed to any person other than your employees, licensees or agents who have a need for access in order to use them; (iii) not to remove the copyright, trade secret or other proprietary protection legends or notices which appear on the Services; and (iv) that you shall promptly notify Company of and shall otherwise cooperate with Company in preventing any unauthorized use or copying of the Services by your employees, agents, customers or others. Company reserves the right to provide maintenance and upgrades to its systems, which may make the Services temporarily unavailable. Company will attempt to schedule downtime during hours of low usage such as weekends, holidays and off-peak business hours, but under certain conditions Company may have to work on the system at other times.

Suspension or Termination of the Services and the Agreement

Notwithstanding anything else herein to the contrary, without limiting Company's other remedies in law or equity, Company may immediately issue a warning, temporarily suspend, indefinitely suspend or terminate your ability to access the Services and/or terminate this Agreement, without notice or liability therefor, for any reason whatsoever (in Company's sole determination), including but not limited to if (a) you breach this Agreement or any other agreement between Company and you; (b) Company is unable to verify or authenticate any information you provide to it (which it has no duty to do but may pursue in its sole and absolute discretion); or (c) Company believes, in its sole and absolute discretion, that your actions may cause, result in or carry a risk of legal liability for you, Company or any third party. Upon termination of this Agreement, any provision of this Agreement that by its terms imposes continuing obligations on you shall survive the termination of this Agreement.

User Content; Password Protection

You represent that any information provided by you in connection with your use of the Services is accurate, complete and current, and you agree to update that information promptly if there is any change. If this Agreement is being accepted by any individual for you, then you represent that such individual has the authority to execute this Agreement on your behalf. If you are provided with a user ID and or password to use the Services, you are responsible for keeping your user ID and password secret and confidential. You agree that you are responsible for any communications, transactions or use of the Services that are made using your password, together with any fees, charges, liability or other obligation that may result from such use. You are responsible for changing your password if you believe that your password has been stolen or might otherwise be misused. You may not assign your password or any of your rights under this Agreement without the prior written consent of Company, and any attempted assignment without such consent shall be void.

User Materials

As part of the Services, you may create or provide information, messages, data and other materials in electronic format that will be stored, uploaded, posted, e-mailed or otherwise transmitted using the Services (collectively "User Materials"). You represent that you have obtained all necessary third party rights, including, without limitation, copyrights, for any User Materials that belong to third parties. It is your responsibility to determine if it is necessary for you to obtain, and for obtaining, any licenses required to use third party information or content that is part of the User Materials. You agree not to use the Services for, and the User Material will not contain, any infringing, illegal, sexually explicit, hateful, vulgar, threatening, abusive, harassing, defamatory, or racially, ethnically, or otherwise objectionable material, including, without limitation, any materials that could give rise to any liability to Company or which might adversely affect Company's public image, reputation or goodwill. **YOU WILL BE RESPONSIBLE FOR MAKING BACK-UP AND ARCHIVAL COPIES OF ALL USER MATERIALS. IN NO EVENT WILL COMPANY BE RESPONSIBLE TO YOU OR ANY OTHER PERSON FOR ANY LOSS, CORRUPTION OR ALTERATION OF USER MATERIALS, OR FOR ANY LOSS ARISING**

OUT OF ANY BREACH OF ANY SECURITY, INCLUDING, WITHOUT LIMITATION, ANY SPECIAL, DIRECT, INDIRECT OR OTHER DAMAGES OF ANY KIND.

Use of Data

All data, contacts, email lists, email addresses and User Materials provided by you (collectively “Your Data”) will be held in confidence and not disclosed by Company to any third person, directly or indirectly; provided; however, that: (i) Company may use the Your Data solely to provide Services to you; and (ii) in certain instances the Company customer that you are associated with may process and transmit Your Data to assist in providing the Services to the same extent that you process Your Data. Notwithstanding the foregoing, Company may use Your Data for the purposes of evaluating and improving the Services; provided that such data is used in an aggregated form, does not include any personally identifiable information, and cannot be used in any way to identify you or any of your end users. You represent that you have the authorization needed, if any, under applicable law to supply Your Data to Company for the uses and disclosures described in this Agreement and Company’s privacy policy. You agree that Company may collect, use, disclose and otherwise process data as described in Company’s privacy policy.

Disclaimer of Warranty

THE SERVICES ARE PROVIDED “AS IS”, “AS AVAILABLE”, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, AND COMPANY HEREBY DISCLAIMS THE SAME. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY NEITHER WARRANTS THAT THE SERVICES WILL BE PROVIDED IN AN UNINTERRUPTED, SECURE OR ERROR-FREE MANNER, NOR DOES COMPANY MAKE ANY WARRANTY AS TO THE RESULTS OBTAINED FROM THE SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF ANY CONTENT CONTAINED IN OR

PROVIDED THROUGH THE SERVICES. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY COMPANY, ITS AGENTS OR EMPLOYEES WILL CREATE A WARRANTY. ANY USE OF THE SERVICES IS AT YOUR OWN RISK.

Limitation of Liability

COMPANY WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF OR INABILITY TO USE THE SERVICES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR LOST PROFITS OR DATA OR BUSINESS INTERRUPTION), WHETHER ARISING FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, DATA OR E-MAILS, ERRORS, DEFECTS, VIRUSES OR OTHER MALICIOUS CODE, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE LIABILITY OF COMPANY TO YOU FOR ANY CLAIM WHATSOEVER, WHETHER ARISING IN CONTRACT, TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY) OR FOR ANY CLAIM MADE AGAINST COMPANY BY ANY OTHER PARTY, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM, EXCEED FIVE DOLLARS (\$5.00).

Indemnification

You agree to defend, indemnify and hold harmless Company, its officers, directors, employees, contractors, customers, suppliers and licensors, from and against any and all costs, fees, loss, claim or liability (including without limitation all attorneys' fees and expenses) which they may incur in connection with (a) your breach of this Agreement or any other rules or guidelines provided to you by Company, or (b) your use of the Services.

Legal Compliance; Authority; Binding Nature

You shall comply with all applicable laws, statutes, ordinances and regulations regarding your use of the Services. You agree, represent and warrant that (i) you understand the terms and conditions of this Agreement and that it constitutes a valid, binding obligation, and (ii) you have full power, authority and legal capacity to enter into this Agreement.

International Data Transfers

In the event that your use of the Services will cause you to transfer “personal data,” as defined by [Directive 95/46/EC](#) of the European Parliament and of the Council of 24 October 1995 (on the protection of individuals with regard to the processing of personal data and on the free movement of such data), to Company from a Member State subject to [Directive 95/46/EC](#):

- You, as data exporter, and Company, as data importer, agree to abide by applicable provisions of the Company Data Transfer Agreement, which is hereby incorporated by reference into the Agreement. In the event that you are not the “controller” of the personal data, as defined by [Directive 95/46/EC](#), you represent that you have obtained a legally-binding power-of-attorney from each controller for which you will transfer personal data that authorizes you to agree to the terms of the Company Data Transfer Agreement on each controller’s behalf (each, a “POA”).
- You and Company agree that the following fields of the Company Data Transfer Agreement incorporate the information provided by you as part of the account creation process for the Services or provided in each POA, as applicable: The name, physical address, telephone number, fax number, and e-mail address of the controller and any other information needed to identify the controller;

Member State governing law (see Clause 9 and Clause 11, paragraph 3); and the name, position, and address of the person accepting this Agreement and the Company Data Transfer Agreement. In the event the noted information was not provided during account creation or otherwise, Company will rely on the primary physical address and contact information of the controller's EU-based location(s).

- By accepting the terms of this Agreement, you consent, as required by Clause 11 of the Company Data Transfer Agreement, to Company subcontracting data processing operations performed in connection with the Services.

Choice of Law; Miscellaneous

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to the choice of law provisions thereof. Any controversy or claim arising out of or relating to this Release, or the negotiation or breach thereof, shall be settled by arbitration in accordance with N.C. Gen. Stat. § 1-569.1 et seq. (the "Revised Uniform Arbitration Act") and the then-current Rules of Commercial Arbitration of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be held in Raleigh, North Carolina and shall be conducted in the English language, and shall be conducted before a single arbitrator mutually agreeable to the parties, or if no agreement can be reached, then selected by the American Arbitration Association. The arbitrator shall award reimbursement of attorneys' fees and other costs of arbitration to the prevailing party, in such manner as the arbitrator shall deem appropriate. Any decision by an arbitrator may be affirmed and reduced to judgment in any court of competent jurisdiction. In addition, the losing party shall reimburse the prevailing party for the costs and expenses incurred by it, including attorneys', arbitrators' and courts' fees and expenses, in connection with any action or proceeding hereunder.

This Agreement and the rights granted hereunder may not be assigned or transferred by you, in whole or in part without Company's prior written

consent. Any successor in interest or assign must agree to the terms and conditions of this Agreement. Without limiting the foregoing, you may not provide any other person access to the Services. If any provision of this Agreement is held invalid, such invalidity shall not affect any other provisions of this Agreement. Headings are inserted for reference only and shall not be construed as a part of this Agreement. No failure or delay on the part of Company to exercise any right under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude any other or further exercise thereof or of any other right. This Agreement represents the entire understanding and agreement between you and Company concerning your use of the Services, and supersedes any prior representations, understandings or agreements.