

## Zoneomics SUBSCRIPTION SERVICE AGREEMENT

Last Revised: November 10, 2020

This Zoneomics Subscription Service Agreement (“**Agreement**”) is a legal agreement between Zoneomics, a Delaware corporation located (“**Zoneomics**”) and you, the user accepting the terms of this Agreement (“**User**”), governing User’s access to and use of one or more of the Zoneomics Services (as defined below). If you are using the Zoneomics Services on behalf of a company, organization, group or other entity, then "User" includes you and that entity, and if you are creating an account on behalf of a company, organization, group or other entity, you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to this Agreement, and that you agree to this Agreement on the entity's behalf.

**Prior to accessing or using the Zoneomics Services, User must affirm its consent to being bound by the terms and conditions set forth in this Agreement by checking the box indicating User’s acceptance of such terms and conditions. By checking such box, User acknowledges that: (a) User has read and understood this Agreement; and (b) User is legally competent to enter into and agree to this Agreement. If User does not check such box or does not agree with this Agreement, User will not be able to access and/or use the Zoneomics Services.**

**THIS AGREEMENT INCLUDES (1) AN ARBITRATION PROVISION; (2) A WAIVER OF RIGHTS TO BRING A CLASS ACTION AGAINST Zoneomics; (3) A RELEASE BY USER OF ALL CLAIMS FOR DAMAGE AGAINST Zoneomics THAT MAY ARISE OUT OF USER’S USE OF THE Zoneomics SERVICES; and (4) AN AUTOMATIC RENEWAL PROVISION. BY ACCESSING OR USING ANY OF THE Zoneomics SERVICES, USER AGREES TO THESE PROVISIONS.**

### 1. DEFINITIONS.

Capitalized terms shall have the meanings set forth in this Section 1 (Definitions) or as otherwise defined in this Agreement.

“**Admin Account**” means, in the event User is a company, organization, group or other entity that has purchased an Enterprise Subscription, the administrative account opened for User, which account monitors and controls the subscriptions for and access to the Zoneomics Services for all Authorized Users designated by User under its Enterprise Subscription.

“**Authorized User**” means an individual employee, director, officer, executive or other member of User’s organization that User has expressly authorized to use and access the applicable Zoneomics Service through User’s Enterprise Subscription.

**“Developments”** means the collective ideas, know-how, inventions, methods, or techniques developed or conceived as a result of providing the Zoneomics Services hereunder, including without limitation any derivative works, improvements, enhancements and/or extensions made to the Zoneomics Services and all Intellectual Property Rights therein and thereto throughout the world.

**“Documentation”** means any of Zoneomics’s proprietary documentation made available to User and its Authorized Users, if any, by or on behalf of Zoneomics for use with the Zoneomics Services, including any such documentation made available online, electronically, in print or otherwise.

**“Enterprise Subscription”** has the meaning set forth in Section 5.1.

**“Export Data”** means any data that is made available to User and/or any of its Authorized Users for download by or on behalf of Zoneomics with Zoneomics’s explicit written permission for use outside of the applicable Zoneomics Service.

**“Intellectual Property Rights”** means all patent rights, copyright rights, mask work rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights, rights in software and all other intellectual property rights that may now exist or hereafter come into existence, and all applications therefor and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

**“Order Form”** means any order form, purchase order other written or electronic communication between Zoneomics and User through email or through the order portal on the Zoneomics Site with respect to the purchase of a Zoneomics Service.

**“Privacy Policy”** means Zoneomics’s Privacy Policy posted on the Zoneomics Site, which governs Zoneomics’s practices regarding the collection, storage, use, and disclosure of User Data.

**“Zoneomics Data”** means any data, content or other information provided or made available by or on behalf of Zoneomics or generated by or in connection with the provision or use of, or access to, the Zoneomics Services, including without limitation Export Data and Usage Data.

**“Zoneomics Service”** means each of Zoneomics’s proprietary commercial real estate research software as a service platforms offered through the Zoneomics Site, including without limitation all software (in object or source code form), script, programming code, data, information, structural hierarchies, interfaces, processes, HTML code, graphics, multimedia files and/or text contained therein, together with any fixes, updates, enhancements and upgrades thereto. Without limiting the foregoing, the term

“Zoneomics Service” includes, but is not limited to, the Documentation and the Zoneomics Data.

“**Zoneomics Site**” means Zoneomics’s website located at <http://www.Zoneomics.com/> and all subdomains thereof.

“**Usage Data**” means any data, content, or other information directly provided to Zoneomics or the applicable Zoneomics Service by or on behalf of User or any Authorized User (other than User Data), including any Feedback.

“**User Data**” means any data, content or other information provided by or on behalf of User or any Authorized User to subscribe to the Zoneomics Services that identifies, or in combination with other information or data in Zoneomics’s possession, could be used to identify, User or any Authorized User.

## 2. LICENSE GRANT.

Subject to the terms and conditions of this Agreement, including without limitation User’s payment of all applicable Fees and compliance with all of Section 3 and Section 10.2 below, Zoneomics grants User and its Authorized Users (if any) a limited, revocable, non-exclusive, non-transferable license (without the right to sublicense) during the Term to access and use the Zoneomics Service subscribed to by User solely for User’s internal business purposes and in accordance with any applicable Documentation. The foregoing license grant is not a sale of any Zoneomics Service or any copy thereof, and Zoneomics or its third-party partners or suppliers, as applicable, retain all right, title, and interest in and to the Zoneomics Services and any Developments (including any copies thereof and all Intellectual Property Rights therein). Any attempt by User to transfer any of the rights, duties or obligations hereunder, except as expressly permitted in this Agreement, is void. For the avoidance of doubt, neither User nor its Authorized Users (if any) may permit any of its or their third party vendors, service providers, contractors or other agents to access or use the Zoneomics Services, even if such access or use is for User’s internal business purposes. Zoneomics reserves all rights not expressly granted under this Agreement. For the avoidance of doubt, Zoneomics may revoke this license and terminate User’s or any Authorized User’s access to and use of the Zoneomics Services at any time for any reason in Zoneomics’s sole discretion.

## 3. LICENSE RESTRICTIONS.

User shall not, directly or indirectly, nor shall User permit any Authorized User (if any) or any third party, including any third party providing services or technology to or for the benefit of User, to:

- (a) copy, distribute, attempt to get unauthorized access to, or disclose any part of the Zoneomics Services in any medium, including without limitation by any automated or non-automated “scraping” of Zoneomics Data;
- (b) use any automated system (including without limitation “robots,” “spiders,” and “offline readers”) to access the Zoneomics Services in a manner that sends more request messages to the Zoneomics servers than a human can reasonably produce in the same period of time by using a conventional online web browser;
- (c) reverse engineer, decompile, disassemble or otherwise attempt to access or discover the source code or underlying ideas or algorithms of the Zoneomics Services;
- (d) modify, adapt, reproduce or create derivative works based on the Zoneomics Services (including any Zoneomics Data or Documentation);
- (e) rent, lease, distribute, sell, resell, assign, license, sublicense or otherwise transfer User’s (or, as applicable, any Authorized User’s) rights to access or use the Zoneomics Services;
- (f) use the Zoneomics Services for timesharing or service bureau purposes or otherwise for the benefit of a third party;
- (g) remove any proprietary notices from the Zoneomics Services or any other Zoneomics materials furnished or made available hereunder;
- (h) use the Zoneomics Services to develop any similar or competitive service, or other information resource of any kind (print, electronic or otherwise) for sale to, distribution to, display to or use by others;
- (i) use the Zoneomics Services in violation of (i) any third-party right known, or that should have been known, to User or (ii) any federal, state, or local law, rule, or regulation;
- (j) take any action that imposes, or may impose (as determined by Zoneomics in its sole discretion) an unreasonable or disproportionately large load on the Zoneomics infrastructure;
- (k) upload invalid data, viruses, worms, or other harmful software code, files, scripts or agents through the Zoneomics Services;
- (l) bypass the measures Zoneomics may use to prevent or restrict access to the Zoneomics Services, including without limitation features that prevent or restrict use or

copying of any Zoneomics Data or enforce limitations on access to or use of the Zoneomics Services;

(m) share login information for the Zoneomics Services or otherwise allow more than one individual to use the Zoneomics Services under a single account pursuant to this Agreement; or

(n) use the Zoneomics Services to obtain unauthorized access to Export Data that would otherwise have required User to pay additional Fees.

## 5. ENTERPRISE SUBSCRIPTION.

5.1. If User is a company, organization, group or other entity, and wishes to purchase a subscription for Zoneomics Services for access and use by multiple individuals within such entity (an “**Enterprise Subscription**”), Zoneomics will create an Admin Account, and User shall designate an individual to be the account manager for such Admin Account and shall notify Zoneomics of any changes to such account manager role. A User who has purchased an Enterprise Subscription shall designate only that number of Authorized Users as permitted under the Order Form for such subscription. Each Authorized User shall be required to create a separate account in order to access and use the Zoneomics Services under an Enterprise Subscription.

5.2. If User is an individual and after User purchases a subscription to use the Zoneomics Services, an entity that employs User or that is otherwise affiliated with User subsequently purchases an Enterprise Subscription, and such entity then elects to assume User’s subscription, User’s initial subscription will be terminated (and User’s account and related Usage Data will be transferred to the Enterprise Subscription) and User will have no further payment obligations under such terminated subscription; provided that User’s other obligations under this Agreement will remain in force and unaffected by such transfer.

5.3. Regardless of whether any Enterprise Subscription is in effect, if User is an individual and User’s account (a) is paid for by an employer or other company, organization, group or other entity (in the case of an independent contractor), (b) was created at the request of an employer or other entity, (c) uses a work-sponsored email address, (d) is administered by an employer or other entity, and/or (e) otherwise reasonably appears to Zoneomics as controlled by an employer or other entity, Zoneomics will consider User’s account and all information associated therewith as property of such employer or other entity as the ultimate account holder. Upon the cessation of User’s employment or contract for any reason, User will have to create a new account and purchase a new subscription to continue to access the Zoneomics Services, and Zoneomics may block or discontinue access rights associated with any former employer or company account.

## 6. USER ACCOUNT; AUTHORIZED USERS.

User is solely responsible for the activity that occurs under its account and the accounts of its Authorized Users (if any), and User must keep, and require its Authorized Users (if

any) to keep, its and their account password secure. User and, if applicable, each Authorized User, should use “strong” passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) for its account. User must notify Zoneomics immediately of any breach of security or unauthorized use of User’s or any of its Authorized Users’ account. Zoneomics will not be liable for any losses caused by any unauthorized use of User’s or any Authorized User’s account. User shall ensure that User’s Authorized Users are bound by and comply with the terms and conditions of this Agreement. User shall be solely responsible for User’s actions and the actions of any Authorized Users while using a Zoneomics Service. Without limiting the foregoing, User shall not permit more than one individual to use the Zoneomics Services under a single account and User acknowledges that the license granted herein is for the unique individual associated with such single account.

## 7. AUDIT.

During the Term or following the expiration or earlier termination of this Agreement for any reason, if Zoneomics has reasonable grounds to believe that User is in violation of its obligations hereunder (including with respect to Section 13.3), upon reasonable notice and during usual business hours, User agrees to allow Zoneomics, or its designated third party (under confidentiality provisions no less stringent than those set forth in this Agreement), to audit those relevant facilities, systems, procedures, records, and/or data logs, of User, as necessary to ensure User’s (and its Authorized Users’) compliance with the terms of this Agreement. User shall cooperate with Zoneomics in all reasonable respects in connection with such audit and shall pay Zoneomics’s expenses relating to such audit.

## 8. PROPRIETARY RIGHTS.

### 8.1. **User Proprietary Rights.**

- (a) Zoneomics hereby acknowledges that, as between User and Zoneomics and subject to Section 8.2 below, User owns all legal right, title, and interest in and to User Marks (as defined below) and all Intellectual Property Rights therein. Nothing in this Agreement will confer on Zoneomics any right of ownership or interest in User Marks or the Intellectual Property Rights therein. User reserves all rights in User Marks not expressly granted under this Agreement. User hereby acknowledges and agrees that Zoneomics may use User’s trade names, trademarks, service marks, logos, domain names, and other distinctive brand features (collectively, “**User Marks**”), in presentations, marketing materials, customer lists, financial reports and website listings (including links to User website) for the purpose of advertising or publicizing the Zoneomics Services and/or Zoneomics’s business.

- (b) Notwithstanding anything in this Agreement to the contrary, for the avoidance of doubt, Zoneomics's collection, storage, use, and disclosure of User Data is governed by the Privacy Policy.

## 8.2. **Zoneomics Proprietary Rights.**

- (a) User hereby acknowledges that, as between User and Zoneomics, Zoneomics owns all legal right, title and interest in and to (i) the Zoneomics Services (including, without limitation, the Zoneomics Site, the Documentation and the Zoneomics Data), (ii) the Developments, and (iii) all Intellectual Property Rights in the foregoing. Without limiting the foregoing, Zoneomics shall own all right, title, and interest in and to any Developments resulting from any work performed to customize any Zoneomics Service for User. If User or any Authorized User is ever held to have any right, title or interest in or to any Zoneomics Service or any Developments, User hereby assigns, and shall procure that each of its Authorized Users assigns, to Zoneomics all such right, title, and interest, including all Intellectual Property Rights therein. Nothing in this Agreement will confer on User any right of ownership or other interest in or to any Zoneomics Service or the Developments, or any Intellectual Property Rights therein. Zoneomics reserves all rights in the Zoneomics Services not expressly granted under this Agreement, whether arising under the theories of license or estoppel or otherwise.
- (b) If User provides Zoneomics with any suggestions, ideas, feedback, reports, error identifications or other information related to any Zoneomics Service or User's (including its Authorized Users') use and evaluation thereof ("**Feedback**"), or any other Usage Data, User hereby assigns to Zoneomics all right, title and interest in and to all Usage Data, including all Intellectual Property Rights therein.

## 9. SECURITY.

Zoneomics has certain safeguards in place in the interest of the security of User Data, as described in more detail in the Privacy Policy. User acknowledges that, notwithstanding such security precautions, use of, or connection to, the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Zoneomics Services and User Data. Accordingly, User acknowledges and agrees that Zoneomics cannot and does not guarantee or accept any liability in connection with the privacy, security, integrity or authenticity of any information so transmitted over or stored in any system connected to the Internet (including User Data) or that any such security precautions will be adequate or sufficient.

## 10. USER OBLIGATIONS.

- 10.1. **Hardware.** User is solely responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access and use the Zoneomics Services, and for paying all third-party fees and access charges (e.g., ISP, telecommunications) incurred by or on behalf of User while using any Zoneomics Service.
- 10.2. **Conduct.** User represents, warrants and covenants that User and its Authorized Users (if any): (a) will abide by all local, state, national, and international laws, rules, and regulations applicable to User's (and its Authorized Users') use of the Zoneomics Services, including without limitation, all applicable privacy laws and data protection legislation; (b) have all necessary rights to provide and use any data, content and/or information that User or Authorized User provides or makes available to Zoneomics in connection with User's use of any Zoneomics Service and that Zoneomics's use thereof as contemplated by this Agreement will not violate any right of any third party or any law, rule, or regulation; (c) will not provide any data, content or other information in violation of any fiduciary duty, duty of confidentiality, or contractual obligation; (d) will not transmit through or store on any Zoneomics Service any data, content or other information in violation of the rights of any individual or entity in any jurisdiction, including without limitation, rights of privacy, rights of publicity, trade secret rights, or any other Intellectual Property Rights; (e) will not use any Zoneomics Service for illegal, fraudulent, unethical or inappropriate purposes; (f) will not interfere or disrupt networks connected to any Zoneomics Service or interfere with the ability of others to access or use the Zoneomics Service; and (g) will not transmit or upload any material or otherwise use any Zoneomics Service in any manner that could constitute a criminal offense or give rise to civil liability. User acknowledges that User is solely responsible for any User Data, Usage Data and other information that User (or any of its Authorized Users) makes available to the Zoneomics Services and that the Zoneomics Services are a passive conduit. Zoneomics neither endorses the contents of any User Data, Usage Data nor assumes any responsibility for any infringement of third-party rights arising therefrom or any crime facilitated thereby. User shall notify Zoneomics if User becomes aware that any Zoneomics Service is being used for any illegal or unauthorized purpose.

## 11. FEES AND TAXES.

- 11.1. **Fees and Payment.** In consideration for the provision of the Zoneomics Services to User, User shall pay Zoneomics the subscription fees applicable to such access and use set forth in the applicable Order Form(s) ("**Fees**"), in accordance with the payment terms set forth in such Order Form(s). If User provides its payment by way of credit card or debit card, User hereby grants permission to Zoneomics to charge all Fees due and owing to such credit card or debit card, including Fees with respect to renewals of subscriptions for a Zoneomics Service in accordance with this Agreement on the date on which such Fees are due. User may withdraw its consent to Zoneomics's use of such credit card or debit card by providing thirty (30) days' prior written notice to Zoneomics. Such withdrawal does not constitute a termination of the Zoneomics Services and User shall remain liable for any Fees as they become due. User represents that it is the card holder of any credit card or debit card that it provides to Zoneomics for payment(s), or that User is duly authorized to provide the consent to use such credit card or debit card as set forth in this Section 11. Payment obligations for use of the Zoneomics Services are non-cancelable and Fees paid are non-refundable.
- 11.2. **Taxes.** All Fees are exclusive of all taxes, levies or duties, and User will be responsible for payment of such taxes, levies or duties resulting from its use of the Zoneomics Services, excluding only federal and state taxes based solely upon Zoneomics's net income. If Zoneomics has the legal



obligation to pay or collect taxes for which User is responsible pursuant to this Section 11.2, Zoneomics will invoice the amount of such taxes to User and User shall pay such amount, unless User provides Zoneomics with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 12. TERM AND TERMINATION.

- 12.1. **Agreement Term.** This Agreement shall commence on the date User accepts this Agreement by checking the box indicating User's acceptance and, unless earlier terminated pursuant to Section 12.3, shall continue until all of User's subscriptions or rights to access or use the Zoneomics Services have expired (the "**Term**"). The initial term of each paid subscription for a Zoneomics Service shall be one year unless otherwise specified in the applicable Order Form.
- 12.2. **Automatic Renewal.** Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional one-year periods, unless either party gives the other written notice of non-renewal at thirty (30) days prior to the expiration of the then-current subscription term. The subscription fee for a renewal term will be at or below Zoneomics's applicable list price in effect at the time of the renewal, unless Zoneomics notifies User of a different price at least thirty (30) days before the end of the then-current subscription term. Notwithstanding anything to the contrary herein, any renewal in which subscription volume for any Zoneomics Services has decreased from the prior subscription term will result in re-pricing at renewal without regard to the prior subscription term's per-unit pricing.
- 12.3. **Termination.** (a) Either party may terminate this Agreement for a material breach by the other party that remains uncured for thirty (30) days after its receipt of written notice of such breach from the non-breaching party, and (b) Zoneomics may immediately terminate this Agreement and any Order Form(s) then in effect, in the event of any breach or alleged breach by User of Sections 2, 3, 8.2, or 10.2 (or any portion thereof). In the event that Zoneomics elects to terminate this Agreement or any Order Form for cause in accordance with this Section 12.3, User will not be entitled to any refund, regardless of the remaining duration of the Term.
- 12.4. **Effect of Termination.** Upon the expiration or earlier termination of this Agreement for any reason, whether by User or Zoneomics: (a) all licenses granted to User hereunder shall terminate and User will have no rights to access or use any portion of the Zoneomics Service, including any Documentation or Zoneomics Data; (b) User shall immediately cease accessing and using the Zoneomics Service; and (c) User will comply with Section 13.3. All terms which by their nature should survive the expiration or termination of this Agreement shall so survive, including Sections 1, 7, 8, 10.2, 12.4 and 13-17.

## 13. CONFIDENTIALITY.

- 13.1. **Obligations.** Each of the parties shall maintain in confidence any non-public, confidential or proprietary information disclosed by or on behalf of the other party, whether disclosed before or during the Term, whether disclosed orally or disclosed or accessed in written, electronic or any other form or media, whether tangible or intangible, and whether or not marked, designated, or otherwise identified as "confidential" ("**Confidential Information**"). The receiving party (and User's Authorized Users if User is the receiving party) shall not disclose, use, transmit, inform or make available to any third party any Confidential Information of

the disclosing party, and shall not use any Confidential Information of the other party except as necessary in order to perform its obligations or exercise its rights under this Agreement. Each party shall take all actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information of the other party and such other party's respective rights therein, at all times exercising at least the same degree of care that it uses to protect its own Confidential Information of a similar nature, but in no event less than a reasonable degree of care. Each party shall restrict access to the Confidential Information of the other party to those employees or agents who require access in order to perform such party's obligations or exercise such party's rights hereunder; provided that, in no event shall User or its Authorized Users (if any) permit any of its or their third party vendors, service providers, contractors or other agents to access or use Zoneomics's Confidential Information, even if such access or use is for User's internal business purposes. Zoneomics's "Confidential Information" includes, without limitation, the Zoneomics Services (including without limitation the Documentation and Zoneomics Data), the terms of this Agreement and any negotiations between User and Zoneomics regarding use of the Zoneomics Services (including, without limitation, any Fees payable thereunder). For the avoidance of doubt, Usage Data shall constitute Zoneomics's Confidential Information.

- 13.2. **Exclusions.** Confidential Information shall not include any information that is (a) already rightfully known to the receiving party at the time of the disclosure; (b) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the receiving party; (c) subsequently disclosed to the receiving party on a non-confidential basis by a third party not having a confidential relationship with the other party that rightfully acquired such information; or (d) communicated to a third party with the express written consent of the disclosing party. A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process shall not be considered a breach of this Agreement; provided the receiving party provides prompt notice of any such subpoena, order, or the like to the disclosing party so that such party will have the opportunity to obtain a protective order or otherwise oppose the disclosure.
- 13.3. **Destruction or Return of Confidential Information.** Upon expiration or earlier termination of this Agreement for any reason, the receiving party shall, upon request of the disclosing party, return to the disclosing party, or otherwise destroy (with written certification of the same), all copies of the disclosing party's Confidential Information, except for archival and back-up copies on back-up tapes and if, and to the extent, the receiving party is required to retain such material under applicable laws, rules or regulations. Notwithstanding the foregoing, none of the Zoneomics Data nor any component of the Zoneomics Services may be retained through archival or back-up copies or kept or used by User upon expiration or earlier termination of this Agreement for any reason.

14. WARRANTY DISCLAIMER.

USER ACKNOWLEDGES THAT THE Zoneomics SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, Zoneomics, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ALL, AND MAKE NO, WARRANTIES OF ANY KIND (WHETHER EXPRESS, STATUTORY, IMPLIED OR OTHERWISE ARISING IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE) WITH RESPECT TO THE Zoneomics SERVICES,

INCLUDING, WITHOUT LIMITATION, THE CONDITIONS AND/OR WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR LOSS OF DATA. Zoneomics FURTHER EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF OR RELATING TO ANY THIRD-PARTY SITES LINKED TO FROM THE Zoneomics SERVICES. Zoneomics DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE Zoneomics SERVICES WILL MEET USER'S REQUIREMENTS OR THAT THE OPERATION OF THE Zoneomics SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS WILL BE CORRECTED. Zoneomics IS NOT OBLIGATED TO PROVIDE USER WITH ANY UPDATES TO THE Zoneomics SERVICES BUT MAY ELECT TO DO SO IN ITS SOLE DISCRETION.

#### 15. INDEMNIFICATION.

User shall indemnify, hold harmless, and defend Zoneomics and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by an Indemnified Party arising out of any third-party claim (a) alleging breach or non-fulfillment of any representation, warranty or covenant under this Agreement by User or its Authorized Users (including use of a Zoneomics Service in violation of this Agreement), (b) alleging any grossly negligent or more culpable act or omission of User or its Authorized Users, including any reckless or willful misconduct, in connection with the performance of its obligations under this Agreement, or (c) relating to, or arising out of, the use or provisioning of any User Data, Usage Data or Zoneomics Data.

#### 16. LIMITATION OF LIABILITY.

16.1. **Consequential Damages Waiver.** UNDER NO CIRCUMSTANCES SHALL Zoneomics, OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND THE LIKE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING THE USE AND/OR INABILITY TO USE THE Zoneomics SERVICES, EVEN IF Zoneomics HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

16.2. **Essential Purpose.** The limitations set forth in this Section 16.2 shall apply even if this Agreement or any limited remedy specified herein is found to have failed of its essential purpose. These limitations are integral to the calculation of fees in connection with the license of the Zoneomics Services, and were Zoneomics to assume any further liability, such consideration would out of necessity have been substantially increased.

#### 17. COMMUNICATIONS CONSENT

You agree that Zoneomics may contact you via email, telephone or text messages using the contact information provided by you or on your behalf in connection with your use of the Zoneomics Services, including for marketing purposes and to provide you with

information about the Zoneomics Services. You understand that you are not required to provide this consent as a condition of purchasing any Zoneomics Services. You also understand that you may opt out of receiving such communications from Zoneomics at any time by contacting info@Zoneomics.com. If you do not choose to opt out, we may contact you as described herein.

## 18. GENERAL.

- 18.1. **Remedies.** User acknowledges and agrees that the Zoneomics Services have been developed at significant cost and has significant commercial value to Zoneomics, and that Zoneomics may suffer irreparable harm as a result of any breach of this Agreement for which monetary damages would not be an adequate remedy. Therefore, in addition to all other remedies available at law or otherwise (which Zoneomics does not waive by the exercise of any rights hereunder), Zoneomics will be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and User hereby waives any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.
- 18.2. **Notices.** All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered in person, mailed by first class mail, postage prepaid, (registered or certified) or by overnight courier, or sent by fax or electronic mail with confirming copy sent by mail or courier as set forth above, to the party to receive the notice at the address set forth at the beginning of this Agreement or such other address as either party may specify in writing in accordance with this Section 18.2. All such notices shall be effective upon receipt.
- 18.3. **Assignment.** Neither party may assign this Agreement, or any of its rights or obligations hereunder, without the other party's prior written consent, provided, however, that Zoneomics may assign this Agreement, in whole or in part, without User's prior written consent (a) to one of its affiliates, or (b) to any entity that acquires (whether by merger, reorganization, acquisition, sale or otherwise) all or substantially all of the business or assets of Zoneomics to which this Agreement relates. Any assignment made in violation with this Section 18.3 shall be void, and this Agreement shall benefit and bind the permitted successors and assigns of the parties.
- 18.4. **Relationship of Parties.** Zoneomics and User's relationship is solely that of independent contractors, and this Agreement will not establish any partnership, joint venture, employment, franchise or agency between Zoneomics and User. Neither Zoneomics nor User will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- 18.5. **Export Control.** User understands and acknowledges that the Zoneomics Services are subject to regulation by agencies of the United States, including, but not limited to, the U.S. Department of Commerce, which prohibit export or diversion of certain products and technology to certain countries. Any and all obligations of Zoneomics to provide the Zoneomics Services shall be subject in all respects to such laws and regulations as shall from time to time govern the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States, including without limitation the U.S. Export Administration Act of 1979, as amended, any successor legislation, and the Export Administration Regulations issued by the U.S. Department of Commerce, Bureau of Export Administration. User represents and

warrants that User will comply with the U.S. Export Administration Regulations and other laws and regulations governing exports in effect from time to time.

- 18.6. **U.S. Government-Restricted Rights.** If a Zoneomics Service is licensed to the United States government or any agency thereof, then such Zoneomics Service will be deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212, as applicable. Any use, reproduction, release, performance, display or disclosure of a Zoneomics Service and any accompanying Documentation by the U.S. Government will be governed solely by this Agreement and is prohibited except to the extent expressly permitted by this Agreement.

18.7. **Governing Law; Dispute Resolution.**

This Agreement shall be governed by the laws of the State of New York, excluding its conflict of laws rules. The United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

**Informal Process First.** User agrees that in the event of any dispute, controversy or claim (each, a “**Claim**”) between User and Zoneomics, User will first contact Zoneomics and make a good faith sustained effort to resolve the dispute before resorting to more formal means of resolution, including without limitation any court action.

**Arbitration Agreement.** After the informal dispute resolution process any remaining Claims relating in any way to User’s use of the Zoneomics Services, or relating in any way to the communications between User and Zoneomics or any other user of the Zoneomics Services, will be finally resolved by binding arbitration. This mandatory arbitration agreement applies equally to User and Zoneomics. However, this arbitration agreement does not (a) govern any Claim by Zoneomics for infringement of its Intellectual Property Rights or use of or access to a Zoneomics Service that is unauthorized or exceeds authorization granted in this Agreement or (b) bar User from making use of applicable small claims court procedures in appropriate cases. If User is an individual, User may opt out of this arbitration agreement within thirty (30) days of the date on which User first accesses or uses a Zoneomics Service by following the procedure described below.

Arbitration is more informal than a lawsuit in court. There is no judge or jury in arbitration. Instead, the Claim is resolved by a neutral arbitrator. Court review of an arbitration award is limited. Except to the extent the parties agree otherwise, arbitrators can award the same damages and relief that a court can award. User agrees that the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that User and Zoneomics are each waiving the

right to a trial by jury or to participate in a class action. This arbitration provision will survive any termination of this Agreement.

If User wishes to begin an arbitration proceeding, after following the informal dispute resolution procedure, User must send a letter requesting arbitration and describing its claim to 767 Third Ave, New York, New York 10017. The arbitration will be administered by the American Arbitration Association (AAA) under its rules including, if User is an individual, the AAA's Supplementary Procedures for Consumer-Related Disputes. If User is not an individual or has accessed or used the Zoneomics Services on behalf of an entity, the AAA's Supplementary Procedures for Consumer-Related Disputes will not be used. The AAA's rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879.

The number of arbitrators will be one. User may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the county of residence or at another mutually agreed location. The arbitration will be conducted in the English language. New York law will apply. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. If User is an individual and has not accessed or used the Zoneomics Services on behalf of an entity, Zoneomics will reimburse those fees for claims totaling less than \$10,000, unless the arbitrator determines the claims are frivolous, and Zoneomics will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous.

The arbitrator, and not any federal, state, or local court, will have exclusive authority to resolve any Claim relating to the interpretation, applicability, unconscionability, arbitrability, enforceability, or formation of this arbitration agreement, including any claim that all or any part of this arbitration agreement is void or voidable. However, the preceding sentence will not apply to the "Class Action Waiver" section below.

If User does not want to arbitrate Claims with Zoneomics and User is an individual, User may opt out of this arbitration agreement by sending an email to [info@Zoneomics.com](mailto:info@Zoneomics.com) within thirty (30) days of the date on which User first accesses or uses a Zoneomics Service.

***Class Action Waiver.*** Any Claim must be brought in the respective party's individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiff, or similar proceeding ("**Class**

**Action**”). The parties expressly waive any ability to maintain any Class Action in any forum. If the Claim is subject to arbitration, the arbitrator will not have authority to combine or aggregate similar claims or conduct any Class Action nor make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. The parties understand that any right to litigate in court, to have a judge or jury decide their case, or to be a party to a class or representative action, is waived, and that any claims must be decided individually, through arbitration.

If this class action waiver is found to be unenforceable, then the entirety of the Arbitration Agreement, if otherwise effective, will be null and void. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. If for any reason a claim proceeds in court rather than in arbitration, User and Zoneomics each waive any right to a jury trial.

18.8. **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 and will not 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 take subsequent action. Except as expressly stated in this Agreement, no exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

18.9. **Severability.** If any provision of this Agreement, or portion thereof, is found to be invalid, unlawful or unenforceable to any extent, the parties shall negotiate in good faith amendments to this Agreement to reflect the original intent of the parties as closely as possible. Such invalid provision or portion thereof will be severed from the remaining provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

18.10. **Force Majeure.** Except for payment obligations, neither party shall be in default if its failure to perform any obligation under this Agreement is caused by supervening conditions beyond that party's reasonable control, including acts of God, civil commotion, war, strikes, labor disputes, third-party Internet service interruptions or slowdowns, vandalism or "hacker" attacks, acts of terrorism or governmental demands or requirements.

18.11. **Entire Agreement; Conflicting Terms.** This Agreement, together with any Order Form and any terms of use posted by Zoneomics on the Zoneomics Site, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements and understandings between the parties relating to the subject matter hereof. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, and (2) this Agreement. The parties agree that any term or

condition stated in any User purchase order or in any other of User's order documentation (excluding Order Forms) is null and void.

- 18.12. **Modification.** Zoneomics may modify this Agreement at any time. In the event Zoneomics modifies the terms of this Agreement, we will notify User on an Order Form, by posting notice on the Zoneomics Site or by sending notification to User's email address provided to Zoneomics. If User does not agree to such modifications, User may terminate this Agreement within thirty (30) days of modification.