

**EXHIBIT A**  
**GENERAL TERMS AND CONDITIONS**

**1. DEFINITIONS.**

**"Affiliate"** means, with respect to a party, any entity which directly or indirectly Controls, is Controlled by, or is under common Control with such party.

**"Agreement"** means collectively (i) the initial Product Order Form and all follow-on Product Order Forms; (ii) the General Terms; (iii) any addenda signed by both Zinc and Customer; and (iv) all schedules, statements of work and attachments hereto or incorporated herein.

**"Confidential Information"** has the meaning set forth in Section 11.

**"Control"** means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity.

**"Customer Contact"** means Customer's internal resource that is knowledgeable about Customer Equipment and Customer's use of the Service.

**"Customer Data"** means all electronic data or information that Customer, its Affiliates and/or End Users submit, create, develop, provide or use in conjunction with use of the Service.

**"Customer Equipment"** means Customer's computer hardware, software and network infrastructure used to access the Service.

**"Documentation"** means the electronic form of user manuals, help files and other technical information and materials relating to use of the Service that is made available to Customer by Zinc.

**"Effective Date"** means the date specified on the initial Product Order Form, or if no such date is specified, the date Customer executes the initial Product Order Form.

**"End Users"** means Customer's and its Affiliates' current employees, agents, contractors, consultants or other individuals who are (i) acting for the benefit of Customer or an Affiliate, or for the benefit of Customer's business operations, and (ii) authorized by Customer or an Affiliate to use the Service.

**"Evaluation Period"** means the period during which Customer is granted a limited term license to use the Service for the purpose of evaluating whether or not to purchase a longer term right to use the Service.

**"Extension Term"** means each additional subscription period for which the subscription term for a Product Order Form is extended.

**"Force Majeure Event"** means a natural disaster, actions or decrees of governmental bodies or communications line failure which (i) hinders, delays or prevents a party in performing any of its obligations, and (ii) is beyond the control of, and without the fault or negligence of, such party, and (iii) by the exercise of reasonable diligence such party is unable to prevent or provide against.

**"Initial Term"** means the first Service subscription term that is defined on a Product Order Form, or if no initial subscription term is defined on a Product Order Form, the first twelve (12) months applicable to such Product Order Form, commencing on the date Customer executes such

Product Order Form. If an Evaluation Period is specified on a Product Order Form, the Initial Term applicable to such Product Order Form shall commence immediately up expiration of the Evaluation Period.

**"Product Order Form"** means an ordering document for the Service signed by Zinc and Customer.

**"Professional Services"** means the on-boarding, configuration or other professional services provided by Zinc to Customer.

**"Service"** means the enterprise mobile messaging solutions and the Software designated by Zinc as generally available production releases, including updates thereto.

**"Software"** means the software applications provided to Customer by Zinc for installation on End User devices in order to allow End Users to access and use the Service.

**"Software Updates"** means updates, modifications, or new releases of the Software that Zinc generally makes available at no additional charge to its customers who are current in payment of Subscription Fees. Customer is granted a right to use Software Updates in accordance with the terms and conditions relating to use of the Software as defined herein. Software Updates do not include products, modules or options that are designated by Zinc as new products, modules or options for which Zinc charges a separate fee.

**"Subscription Fees"** mean the fees paid by Customer for the right to access and use the Service, receive Support during the applicable Term.

**"Support"** means the standard support services provided by Zinc in accordance with Section 7.

**"Taxes"** means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

**"Term"** for each Product Order Form means the Evaluation Period, if applicable, the Initial Term and any Extension Term.

**"Work Product"** means (i) any improvements to the Service developed or created by Zinc during the course of providing Support or Professional Services to Customer; (ii) any pre-existing proprietary Zinc templates, code, tools, templates, methodologies provided to Customer by Zinc in the course of fulfilling its obligations under this Agreement; and (iii) any enhancements or derivative works of any of the foregoing. Work Product does not include any Customer Data or Customer Confidential Information.

**2. TERMS OF THE SERVICE.** Zinc shall make the Service available to Customer in accordance with this Agreement and the then current Documentation. As long as this Agreement is in effect, the functionality of the Service will not be materially less than that defined in Zinc's Documentation in effect as of the Effective Date. Customer's right to use the Service is limited to the Service modules and the number of authorized End Users specified on each Product Order Form and is also subject to any additional terms and conditions specified on a Product Order Form.

**2.1** Subject to the terms of this Agreement Zinc grants Customer a worldwide royalty-free, fully paid-up, nonexclusive, limited term, irrevocable, transferable (only to a successor in interest by way of merger, reorganization or sale of all or substantially all assets or equity) license to use the Software solely in connection with the Service.

**3. CUSTOMER RESPONSIBILITIES RELATING TO USE OF THE SERVICE.** Customer is responsible for (i) all activities conducted under its End User logins; (ii) obtaining and maintaining any Customer Equipment and any ancillary services needed to connect to, access or otherwise use the Service; (iii) ensuring that the Customer Equipment and any ancillary services are compatible with the Service and comply with configuration requirements set forth in the Documentation; (iv) all Customer Data that Customer uploads, posts, transmits, or otherwise disseminates using the Service; (v) maintaining secure access to the Service; and (vi) maintaining reasonable security mechanisms with respect to issuance of username and password information. Customer will notify Zinc immediately of any unauthorized use of Customer's Service account or any other breach of security regarding Customer's Service account.

**3.1** Customer shall use the Service solely for its internal business purposes, in compliance with applicable law, and shall not, except as otherwise permitted in this Agreement: (a) resell, sublicense, lease, time-share or otherwise make the Service available to any third party other than authorized End Users; (b) send or store infringing or unlawful material via the Service; (c) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Service or the data contained therein; (d) modify, copy or create derivative works based on the Service; (e) reverse engineer the Service; (f) access the Service for the purpose of building a competitive product or service or copying its features or End User interface; or (g) use the Service, or permit it to be used, for purposes of benchmarking or other comparative analysis intended for publication without Zinc's prior written consent.

**3.2** Customer shall not upload, post, transmit, or otherwise disseminate Customer Data while using the Service that: (i) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (ii) is fraudulent, false, misleading or deceptive; (iii) is defamatory, obscene, pornographic, vulgar or offensive; (iv) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (v) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vi) promotes illegal or harmful activities or substances

**3.3** Customer grants Zinc a worldwide, royalty-free, fully paid-up, non-exclusive, transferable license, with the right to sublicense, to use, reproduce, adapt or modify format, transmit, distribute, publicly perform, publicly display, repurpose and otherwise use Customer Data in connection with operating and providing the Service.

**4. PROFESSIONAL SERVICES.** Professional Services will be provided on the terms set forth in a mutually executed

Product Order Form or statement of work at the fees specified therein.

## **5. OWNERSHIP.**

**5.1** As between the parties, Zinc shall retain all ownership rights in the Service and the Work Product. Customer shall retain all ownership rights in its Confidential Information and the Customer Data and all data, text, files, data, output, programs, files, information, or other material that Customer provides, develops, generates, creates, makes available or uses in conjunction with the Service. Notwithstanding anything to the contrary stated herein, Zinc may aggregate and use transactional and performance data (but not Customer Data) related to Customer's use of the Service for its business purposes as long as such aggregation and use does not allow identification of Customer or any End User or include characteristics that identify Customer or an End User. Zinc hereby grants Customer a royalty-free, fully paid-up, nonexclusive, limited term, irrevocable, worldwide, transferable (only to a successor in interest by way of merger, reorganization or sale of all or substantially all assets or equity), license to use the Work Product solely for purposes related to its use of the Service. No license, right or interest in any Zinc or Customer trademark, copyright, trade name or service mark is granted hereunder.

**5.2** Zinc shall have a royalty-free, fully paid-up, nonexclusive, perpetual, irrevocable, worldwide, transferable (only to a successor in interest by way of merger, reorganization or sale of all or substantially all assets or equity), license to use, copy, modify, or distribute, including by incorporating into the Service, any suggestions, enhancement requests, recommendations or other feedback provided by Customer, its Affiliates or its End Users relating to the operation of the Service.

## **6. FEES.**

**6.1** Unless otherwise specified on a Product Order Form, the Subscription Fees stated in each Product Order Form hereunder shall be effective during the Initial Term specified in such Product Order Form and shall be billed on an annual basis in advance. At the expiration of the Initial Term or any Extension Term the subscription term for the Service will automatically renew for a successive period of one year, unless at least 30 days prior to the expiration of the then current Term either party provides written notice to the other party of its intent not to renew the Term.

At any time prior to expiration of the Initial Term or an Extension Term, Customer may renew the subscription term for an initial or follow-on Extension Term. Zinc may modify the Subscription Fees specified on a Product Order Form for any Extension Term upon sixty (60) days prior written notice, provided, that any increase in Subscription Fees shall not take effect until the beginning of the next Extension Term.

**6.2** Upon execution of a Product Order Form, payment obligations are non-cancelable and, except as expressly provided in this Agreement, upon payment, all payments made by Customer are non-refundable. All undisputed fees due hereunder shall be due and payable

within thirty (30) days of receipt of invoice. Any payment of undisputed fees not received from Customer by the due date may accrue late charges at the rate of the lower of 1% of the outstanding balance per month or the maximum rate permitted by law, from the date such payment was due until the date paid. Nonpayment of undisputed fees due hereunder may result in suspension of Customer's ability to access the Service until payment is made.

**6.3** Unless otherwise provided, Zinc's fees do not include any Taxes, and Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding Taxes based on Zinc's net income or property. If Zinc has the legal obligation to pay or collect Taxes for which Customer is responsible, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides a valid tax exemption certificate authorized by the appropriate taxing authority.

**6.4** Customer shall reimburse Zinc for all reasonable, pre-approved and appropriately documented travel and related expenses incurred by Zinc in performing Professional Services at Customer's location.

**6.5** If Customer's use of the Service is found to be greater than that contracted for, Customer will be invoiced for additional Subscription Fees for the period commencing on the date of use of such additional use through the remainder of the then current subscription term.

**7. SUPPORT.** Zinc shall provide Support at no additional charge provided Customer is current in payment of the applicable Subscription Fees. Zinc will provide Customer Support in accordance with the terms of this Agreement. A Customer Contact may contact Zinc technical support during its standard technical support hours (8:00 a.m. to 5:00 p.m. Pacific Time Monday through Friday excluding scheduled holidays). Support requests can be made at any time via email and will be addressed by Zinc during the support hours listed above. Customer will promptly identify two Customer Contacts who will be the only persons authorized to interact with Zinc technical support. Support also includes Software updates. Zinc shall have no obligation to support problems to the extent caused by (i) Customer's negligence or unauthorized modification of any part of the Service; (ii) Software in any form or configuration other than provided by Zinc; or (iii) other causes external to the Service or beyond the reasonable control of Zinc. In addition, Zinc shall have no obligation to support the installation or maintenance of applications or devices external to the Service.

## **8. WARRANTIES**

**8.1** Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement; and (ii) it shall comply with all applicable laws in its performance hereunder.

**8.2** Zinc warrants that during the Term the Service will perform in all material respects in accordance with the Documentation. Zinc may modify the Documentation in its sole discretion provided that at all times this Agreement is in effect the functionality of the Service will not be materially decreased during a subscription term. In the event of a

breach of the foregoing warranty, Zinc will fix, provide a work around, or otherwise repair or replace the nonconforming aspect of the Service, or, if Zinc is unable to do so, terminate the license for the Service and return the Subscription Fees paid to Zinc for the period beginning with Customer's notice of nonconformity through the remainder of the Evaluation Period, the Initial Term or Extension Term, as applicable.

**8.3** Zinc warrants that during the Term the Service will meet the requirements set forth in the Service Level Agreement (the "SLA"), as set forth in Exhibit A-1. In the event of a breach of the foregoing warranty, as Customer's sole and exclusive remedy, Zinc will provide the remedy set forth in the SLA.

**8.4** Zinc warrants that at all times it will maintain the confidentiality of Customer Data in accordance with all applicable laws and it will collect, maintain and handle all personal data in compliance with all applicable data privacy and protection laws. Except as required by applicable law, Zinc will not disclose Customer Data to any third party for any purpose other than as required to provide the Service or Professional Services to Customer.

**8.5** Zinc warrants that (i) it will provide the Professional Services in a professional and workmanlike manner consistent with good industry standards and practices; and (ii) that for a period of three (3) months after completion the Professional Services will conform to the applicable statement of work. As Customer's sole and exclusive remedy and Zinc's entire liability for any breach of the foregoing warranty, Zinc will re-perform the Professional Services, or, if Zinc is unable to do so, return the fees paid to Zinc for such deficient Professional Services.

**8.6** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ZINC DOES NOT WARRANT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED, OR ERRORFREE.

## **9. INTELLECTUAL PROPERTY INDEMNITY.**

**9.1** Zinc shall defend and indemnify Customer against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against Customer by a third party alleging that the use of the Service as contemplated hereunder infringes the intellectual property rights of such third party, provided that Customer (a) promptly gives written notice of the Claim to Zinc; (b) gives Zinc sole control of the defense and settlement of the Claim (provided that Zinc may not settle any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Zinc, at Zinc's expense, all reasonable assistance.

**9.2** In the event of a Claim Zinc will, at its sole option and expense: (i) procure for Customer the right to continue using the Service under the terms of this Agreement; (ii) replace or modify the Service to be noninfringing without

material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate the license for the infringing the Service and refund Customer all prepaid fees for the remainder of its subscription term after the date of termination.

**9.3** Zinc shall have no liability for any Claim to the extent the Claim is based upon (i) the use of the Service in combination with any other product, service or device not furnished, recommended or approved by Zinc, if such Claim would have been avoided by the use of the Service, without such product, service or device; (ii) modifications to the Service made by a party other than Zinc if a Claim would not have occurred but for such modifications; (iii) Customer's failure to use updated or modified version of the Service provided by Zinc to avoid a Claim; or (iv) Customer's use of the Service other than in accordance with this Agreement.

**9.4** THE PROVISIONS OF THIS SECTION 9 SET FORTH ZINC'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

**10. INDEMNIFICATION BY CUSTOMER.** Customer shall defend and indemnify Zinc against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Zinc by a third party alleging that the Customer Data, or Customer's use of the Service in violation of this Agreement, infringes the intellectual property rights of such third party; provided, that Zinc (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless it unconditionally releases Zinc of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

#### **11. CONFIDENTIALITY.**

**11.1** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed 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, including the terms and conditions of this Agreement (including pricing and other terms reflected in Product Order Forms), the Service, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to Disclosing Party.

**11.2** Receiving Party shall not disclose any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written consent. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Each party represents and warrants that it will collect, maintain and handle all personal data in compliance with all applicable data privacy and protection laws. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.

**11.3** If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

**11.4** If Receiving Party discloses (or threatens to disclose) any Confidential Information of Disclosing Party in breach of confidentiality protections hereunder, Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies are inadequate.

**11.5** Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information and, upon request, return to the Disclosing Party or destroy (at the Disclosing Party's election) all materials containing such Confidential Information.

#### **12. LIMITATION OF LIABILITY.**

**12.1** EXCEPT WITH RESPECT TO (i) THE PARTIES' INDEMNIFICATION OBLIGATIONS SPECIFIED HEREIN; (ii) DAMAGES RELATED TO CLAIMS BASED ON A BREACH OF EITHER PARTY'S OBLIGATIONS SET FORTH IN SECTION 11 (CONFIDENTIALITY) OR (iii) DAMAGES RELATED TO CLAIMS BASED ON EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE FEES PAID TO ZINC DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

**12.2** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **13. TERM AND TERMINATION.**

**13.1** This Agreement commences on the Effective Date



and continues until all subscription licenses granted in accordance with this Agreement have expired or been terminated.

**13.2** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach of this Agreement if such breach remains uncured at the expiration of such period; (ii) immediately upon written notice if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; or (iii) as otherwise provided herein. Upon any termination for cause by Customer, Zinc shall refund Customer any prepaid fees for the remainder of its subscription term after the date of termination.

**13.3** The parties' rights and obligations with respect to the fees and payment terms, audit rights, title and protection, confidentiality, patent and copyright indemnification, warranty disclaimers, limitation of liability, attorney's fees, and governing law provisions of this Agreement shall survive termination of this Agreement. **13.4** Upon the effective date of termination of this Agreement: Customer's license to use the Service will cease.

#### **14. GENERAL**

**14.1** If Customer is a federal government entity, Zinc provides the Service, including related technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in this Agreement.

**14.2** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.

**14.3** Notices shall be in writing and effective upon receipt.

**14.4** No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by Customer and Zinc. To the extent of any conflict between this Agreement and any schedule or attachment to this Agreement, this Agreement shall prevail unless expressly stated otherwise in such schedule or attachment. Notwithstanding any language to the contrary therein, no terms stated in a purchase order or in any other order document (other than a statement of work or other mutually

executed order document expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void. This Agreement represents the entire agreement of the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement.

**14.5** No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

**14.6** Neither party shall be liable to the other for any delay or failure to perform hereunder due to a Force Majeure Event.

**14.7** Either party may include the other's name or logo in customer or vendor lists and on its website in accordance with the other's standard guidelines. In addition, in exchange for the discounts granted to Customer, Customer agrees to work in good faith with Zinc to (i) release a press announcement announcing Customer's selection of the Service; (ii) serve as a reference account to designated Zinc prospects for reference calls; (iii) cooperate with Zinc to develop a "case study" document which describes Customer's intended use of the Service; and (iv) publicize the nature of Customer's business relationship with Zinc through discussions of the relationship with industry and financial analysts designated by Zinc.

**14.8** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other party, to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity. Any attempted assignment in breach of this section shall be void. This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**14.9** Each party agrees to comply with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the importation and use of the Service. This Agreement shall be governed exclusively by the internal laws of the state of California, without regard to its conflicts of laws rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

**Exhibit A-1  
Service Level Agreement**

**1. General Terms Applicable to this SLA:**

- a) **Definitions.** Except as otherwise modified or defined herein, all capitalized terms in this Exhibit A-1 have the same meanings as set forth in the General Terms.
- b) **Service Credits**
  - i) "Service Credit" means the percentage of the pro-rated monthly Subscription Fees for the Service that is awarded to Customer for a validated claim related to breach of the Service System Availability warranty specified in Section 2 below during that month.
  - ii) In any given month, Customer shall in no event be entitled to receive a credit that exceeds 100% of its monthly Subscription Fee.
  - iii) Service Credits may only be redeemed at time of renewal of a Product Order Form for an Extension Term. Upon Customer's renewal of a Product Order Form for an Extension Term, Service Credits earned by Customer hereunder will be applied against Subscription Fees due for the Extension Term. If Service Credits cannot be applied to future Subscription Fees because the applicable Product Order Form or the Agreement has expired or been terminated, Zinc will promptly pay Customer the amount of the Service Credit.
- c) **SLA Claims**
  - i) Customer must notify Zinc within 10 business days from date of incident it believes entitles it to receive a remedy under the Service System Availability warranty set forth below. All claims will be subject to validation by Zinc. Zinc will use log files, database records, audit logs, and any other information available to validate claims and make a good faith judgment on the applicability of Service Credits to said incident. Zinc may request Customer to provide copies of reports or other data to validate the claim.
  - ii) Zinc shall make information used to validate a Service Credit claim available for auditing by Customer at Customer's request.
  - iii) The remedies set forth herein represent Customer's sole and exclusive remedy for Zinc' breach of the Service System Availability warranty defined in this Exhibit A-1.

**2. Exclusions.** Customer shall not have any remedies under this SLA to the extent any SLA claim is due to: (i) Customer Equipment and/or third party software, hardware or network infrastructure outside of Zinc's data center and not under the direct control of Zinc; (ii) failure of Customer to meet the configuration requirements for Customer Equipment used to access the Service set forth in the Documentation; (iii) End Users mobile devices; or (iv) a Force Majeure Event.

**3. Service System Availability Warranty**

- a) Zinc warrants at least 99.9% Service System Availability during each calendar month.
- b) For purposes of this Service System Availability warranty, the following definitions will apply:
  - i) "Emergency Maintenance" means downtime of the Service outside of Scheduled Maintenance Window hours that is required to apply urgent patches or fixes, or undertake other urgent maintenance activities. If Emergency Maintenance is required, Zinc will immediately contact Customer via email and provide the expected start time, the planned duration of the Emergency Maintenance, and whether Zinc expects the Service to be unavailable during the Emergency Maintenance.
  - ii) "Service System Availability" means the percentage of total time during each calendar month during which the Service is available to Customer, excluding Scheduled Downtime and Emergency Maintenance.
  - iii) "Scheduled Downtime" means the window during which scheduled maintenance of the Service may be performed. The Scheduled Maintenance Window is between the hours of 9:00 PM – 12 AM PST. In the event Zinc expects the Scheduled Maintenance Window activity to result in the Service being unavailable to Customer, Zinc will provide Customer with minimum four (4) business days advance notification. Times for the Scheduled Maintenance Window may be changed with reasonable prior written notice (which may be via email) to Customer.
- c) **Remedy.** If the Service System Availability is less than warranted under this Section 2, Zinc will provide Customer with a Service Credit for the month in which the failure to meet this warranty has occurred. The Service Credit will be calculated in accordance with the table below. If Customer submits one or more validated Service Credit claims under this Service System Availability warranty in each of three (3) consecutive calendar months, Customer may terminate the Agreement upon thirty (30) days written notice.

% of the Service System Availability per Calendar Month	Service Credit calculated on a pro-rated monthly basis
< 99.9%	10%
< 99%	15%
< 98.0%	20%