

ZENGER FOLKMAN COMPANY LICENSE AGREEMENT ELECTRONIC DOCUMENT DELIVERY

The terms of this agreement ("License Agreement" or "Agreement") govern the relationship between you and Zenger Folkman Company and its affiliates (hereinafter "ZF" or "Us" or "We") regarding your use of ZF's intellectual property (the "Products") in any form. Use of the Product is also governed by ZF's Privacy Policy, which is incorporated herein by reference. By registering for use of the Products, and for good and adequate consideration paid to ZF by you directly or indirectly by an entity properly and separately under license with ZF, you contract with ZF and you understand and agree to this License Agreement and Privacy Policy incorporated by reference herein. If this License Agreement was issued under the terms of a separate association or master license agreement, you agree to be bound by the terms of that license agreement. If, and only if, you are entering into this License Agreement on behalf of an organization or as a private individual, you are representing to ZF that you are duly authorized to enter into this Agreement.

ZF reserves the right, at its sole discretion, to change, modify, add or remove portions of this Agreement and its Privacy Policy at any time by posting the amended terms on the ZF Website. You will be deemed to have accepted such changes by continuing to use the Products. If at any point you do not agree to any portion of the then-current version of our Agreement, and / or the ZF Privacy Policy and / or any other ZF policy, rules or codes of conduct relating to your use of the Products, your license to use the Products shall immediately terminate and you must immediately stop using the Products.

1. Product License.

- a. Subject to your agreement and continuing compliance with this Agreement and any other relevant ZF policies, ZF grants you a non-transferable, non-exclusive, non-sublicensable, revocable limited license ("License") subject to the limitations below to access and use the following ZF Products for your own non-commercial personal development. You agree to not use the Product for any other purpose.
- b. You agree that you will not, under any circumstances:
 - i. Engage in any act that ZF deems to be in conflict with the spirit or intent of the License or make improper use of ZF's support services
 - ii. Share the Products with any other person, group or organization.
 - iii. Disrupt, overburden, or aid or assist in the disruption or overburdening of any computer or server used to offer or support the Products.
 - iv. Institute, assist, or become involved in any type of attack, including with limitation distribution of a virus, denial of service attacks upon the Products, or other attempts to disrupt the Products or any other person's use of the Products
 - v. Attempt to gain unauthorized access to the Products or to the ZF Website by any means other than the user interface provided by ZF, including but not limited to, by circumventing or modifying, attempting to circumvent or modify, or encouraging or assisting any other person to circumvent or modify, any security, technology, device or software that is part of the Products.

- vi. Attempt to harass, abuse, or harm, or advocate or incite harassment, abuse or harm of another person, group, including ZF employees.
 - vii. Make available through the Products any material or information that infringes any copyright, trademark, patent, trade secret, right of privacy, right of publicity, or other right of any person or entity or impersonates any other person, including without limitation a ZF employee.
 - viii. Use, copy, modify, or transfer the Products, or any copy thereof, in whole or in part, except as expressly provided in this Agreement.
 - ix. Reverse engineer, disassemble, decompile, or translate the Products, or otherwise attempt to derive the source code of the software, or authorize any third party to do any of the foregoing.
 - x. Rent, lease, loan, resell, or distribute the Products, or any part thereof, in any way.
- c. ZF reserves the right to determine what conduct it considers to be in violation of the spirit or intent of this License Agreement. ZF reserves the right to take action as a result, which may include terminating your access to the Products.
 - d. ZF will provide you with an ID and password ("Login Information") which you may use to gain access to and use the Products. You shall not share the Login Information, nor let anyone else access your account or do anything else that might jeopardize the security of your Account. In the event you become aware of or reasonably suspect any breach of security, including without limitation any loss, theft, or unauthorized disclosure of the Login Information, you must immediately notify ZF by emailing support@zfco.com.

2. Suspension and Termination of Access

- a. WITHOUT LIMITING ANY OTHER REMEDIES, ZF MAY LIMIT, SUSPEND, TERMINATE, MODIFY, OR DELETE ACCESS TO ZF PRODUCTS OR PORTIONS THEREOF IF YOU ARE, OR ZF SUSPECTS THAT YOU ARE, FAILING TO COMPLY WITH ANY OF THESE TERMS OF SERVICE OR FOR ANY ACTUAL OR SUSPECTED ILLEGAL OR IMPROPER USE OF THE PRODUCTS, WITH OR WITHOUT NOTICE TO YOU. YOU CAN LOSE THE RIGHT TO RECEIVE AND UTILIZE THE PRODUCTS AS A RESULT OF ACCESS TERMINATION OR LIMITATION AND ZF IS UNDER NO OBLIGATION TO COMPENSATE YOU FOR ANY PERCEIVED LOSS.
- b. WITHOUT LIMITING OUR OTHER REMEDIES, WE MAY LIMIT, SUSPEND OR TERMINATE ACCESS TO THE PRODUCTS AND TAKE TECHNICAL AND LEGAL STEPS TO PREVENT USERS FROM ACCESSING THE PRODUCTS IF WE BELIEVE THAT THEY ARE CREATING RISK OR POSSIBLE LEGAL LIABILITIES, INFRINGING OUR INTELLECTUAL PROPERTY RIGHTS OR THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES OR ACTING INCONSISTENTLY WITH THE LETTER OR SPIRIT OF OUR TERMS OR POLICIES.
- c. ZF RESERVES THE RIGHT TO TERMINATE YOUR ACCESS TO THE PRODUCTS AT THE END OF THE ACCESS PERIOD.

3. Hosting Services.

- a. You or users designated and authorized by you will gain access to and use Products and the ZF Website through the use of IDs and passwords provided to you by ZF.
4. **Ownership.**
- a. **Products.**
All Products and any derivative works thereof delivered or otherwise provided to you by ZF in the performance of this Agreement are the property of ZF or its licensor(s) and are protected by United States copyright and other intellectual property laws. The Products are licensed, not sold, to you for use only under the terms of this Agreement, and ZF or its licensor(s) reserve all rights not expressly granted to you in this Agreement.
5. **Fee Payments.**
- a. If this License Agreement was issued under the terms of a separate association or master license agreement, no additional payment is required. If, and only if, you are entering into this License Agreement personally on behalf of an association or organization without a master license agreement or as a private individual, you agree to pay ZF the fees for use of the Products. All Fees are exclusive of shipping and handling. ZF may revise the pricing for the goods and services offered at any time.
 - b. YOU ACKNOWLEDGE THAT ZF IS NOT REQUIRED TO PROVIDE A REFUND FOR ANY REASON, AND THAT YOU WILL NOT RECEIVE MONEY OR OTHER COMPENSATION AFTER YOUR ACCESS TO THE PRODUCTS IS TERMINATED.
6. **Indemnification, Warranties, and Disclaimers.**
- a. You agree to indemnify ZF against, and hold it harmless from, any claims, damages, losses and liabilities asserted by any third-party caused or alleged to be caused by you, resulting from or arising out of your use of the Products, or resulting from or arising out of any breach by you of this Agreement. This includes, without limitation, indemnification against claims arising from personal physical injury or damage to property caused or alleged to be caused by you. Indemnification includes, without limitation, the payment of judgments, settlements, attorneys' fees, and other costs and expenses.
 - b. **Disclaimer. WITH RESPECT TO THE PRODUCTS AND SERVICES DESCRIBED IN THIS AGREEMENT, THE PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS FOR YOUR USE. ZF MAKES NO WARRANTIES, REPRESENTATIONS OR PROMISES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. ZF DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. ZF SPECIFICALLY DOES NOT WARRANT THAT THE INFORMATION AND MATERIAL CONTAINED IN THE PRODUCTS OR THE USE OF THE PRODUCTS WILL MEET YOUR REQUIREMENTS. ZF DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE PRODUCTS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NO ORAL OR**

WRITTEN INFORMATION OR ADVICE GIVEN BY ZF OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY EXPRESSLY SET FORTH IN THIS AGREEMENT. ZF DOES NOT WARRANT THAT YOU WILL BE ABLE TO ACCESS OR USE THE PRODUCTS AT THE TIMES OR LOCATIONS OF YOUR CHOOSING; THAT THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE; THAT DEFECTS WILL BE CORRECTED; OR THAT THE PRODUCTS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

- c. Limitation on Liability. ZF SHALL NOT BE LIABLE TO YOU (REGARDLESS OF THE FORM OF ACTION OR THE CLAIM, E.G., CONTRACT, WARRANTY, TORT, MALPRACTICE AND/OR OTHERWISE) FOR INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS OF REVENUE, PROFITS, BUSINESS OPPORTUNITIES, OR FOR ANY FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, EVEN IF ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING. THE AGGREGATE LIABILITY OF ZF RELATING TO OR ARISING FROM THIS AGREEMENT AND FOR ANY AND ALL CAUSES OF ACTION SHALL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY YOU TO ZF UNDER THIS AGREEMENT IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT A CLAIM. YOU ACKNOWLEDGE AND AGREE THAT IF YOU HAVE NOT PAID ANYTHING TO ZF DURING SUCH TIME PERIOD, YOUR SOLE REMEDY (AND ZF'S EXCLUSIVE LIABILITY) FOR ANY DISPUTE WITH ZF IS TO STOP USING THE PRODUCTS.**
- d. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for certain types of damages. Accordingly, some of the above disclaimers and limitations may not apply to you. To the extent that ZF may not, as a matter of applicable law, disclaim any warranty or limit its liability as set forth herein, the scope of such warranty and the extent of ZF's liability shall be the minimum permitted under such applicable law. IN PARTICULAR, NOTHING IN THIS AGREEMENT SHALL AFFECT THE STATUTORY RIGHTS OF ANY CONSUMER OR EXCLUDE OR RESTRICT ANY LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ANY NEGLIGENCE OR FRAUD OF ZF.
- e. ZF agrees to maintain reasonable, current, industry-standard security measures to prevent unauthorized access to your data under ZF control. Such measures shall include, where appropriate, use of firewalls, virus-screening software, logon identification and passwords, prompt application of current security patches, virus definitions and other updates. Notwithstanding the foregoing, you understand and acknowledge that the transmission of data through the Internet is not inherently secure, and that security measures are not foolproof.

7. General Provisions.

- a. **Assignment and Successors.** ZF may assign or delegate this Agreement and/or the ZF Privacy Policy, in whole or in part, to any person or entity at any time with or without your consent. You may not assign or delegate any rights or obligations under this Agreement or Privacy Policy without ZF's prior written consent, and any unauthorized assignment or delegation by you is ineffective.
- b. **Supplemental Policies.** ZF may publish additional policies related to specific services. Your right to use such services is subject to those specific policies and this Agreement.
- c. **Governing Law and Forum.** This Agreement shall be governed by the laws of the state of Utah without giving effect to conflict or choice of law principles. If a dispute arises between you and ZF, we strongly encourage you to first contact us directly to seek a resolution by emailing our customer support team at support@zfco.com. Any controversy or claim arising out of or relating to the Agreement, or breach thereof, shall be submitted to the following procedure: (a) direct negotiation in a settlement conference to be scheduled as soon as possible after the dispute arises; (b) if no resolution is reached within sixty (60) days of the settlement conference, the parties will submit the dispute to non-binding mediation in Utah under the mediation rules of the American Arbitration Association; (c) if no settlement is reached within sixty (60) days of the start of mediation, either party may seek legal redress exclusively in the state or federal courts within Utah and its appellate courts. The Parties agree and submit to such exclusive jurisdiction and venue.
- d. **Force Majeure.** ZF shall not be deemed in breach of this Agreement for any failure to perform an obligation where such failure is caused by an Act of God, labor dispute or shortage, any disruption in or failure of Internet communications, or any other circumstances or cause beyond ZF's control.
- e. **Waiver and Severability.** The failure of ZF to enforce any provision of this Agreement shall not be deemed a waiver of that provision or of ZF's right to thereafter enforce that or any other provision. The express waiver by ZF of any provision, condition or requirement of this Agreement or of the ZF Privacy Policy shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement. Except as expressly and specifically set forth in this Agreement, no representations, statements, consents, waivers, or other acts or omissions by ZF shall be deemed a modification of this Agreement nor legally binding, unless documented in physical writing, hand-signed by you and a duly appointed officer of ZF. In the event that any provision of this Agreement is held to be invalid, unenforceable or illegal, the provision will be eliminated or limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.
- f. **Entire Agreement.** This Agreement, any Supplemental Policies and any documents expressly incorporated by reference herein (including the ZF Privacy Policy): (i) represent the entire agreement between the Parties relating to the subject matter of this Agreement, and (ii) supersede all prior purchase orders, agreements, understandings, representations and warranties applicable to the subject matter of this Agreement.

- g. **Notices.** We may notify you via postings on <http://surveys.zfco.com>, via e-mail or any other communication means using contact information you provide to us. All notices given by you or required from you under this Agreement or the ZF Privacy Policy shall be in writing and addressed to Zenger Folkman Company Attn: CEO, 1550 N Technology Way, Bldg D, Suite 3300, Orem, UT 84097. Any notices that you provide without compliance with this Section on Notices shall have no legal effect.
- h. **Equitable Remedies.** You acknowledge that the rights granted and obligations made under this Agreement to ZF are of a unique and irreplaceable nature, the loss of which shall irreparably harm ZF and which cannot be replaced by monetary damages alone so that ZF shall be entitled to injunctive or other equitable relief (without the obligations of posting any bond or surety or proof of damages) in the event of any breach or anticipatory breach by you. You irrevocably waive all rights to seek injunctive or other equitable relief, or to enjoin or restrain the operation of the Products or the ZF Website and agree to limit your claims to claims for monetary damages, limited by Section 7 (if any).