



Zarca Interactive, Inc. Terms of Services

Zarca Interactive, Inc. ("Zarca") is a Delaware corporation, that provides its customers online software to create and deploy Web surveys, Web forms, Web-based event registration forms, including capabilities to generate reports, upload, input and download data ("Data") through its unique technology platform (the "Services"). These Services are accessible solely by persons authorized by Zarca in the Zarca Sales Order Form to access the Services and have acquired lawful access to the Services ("End User").

These terms and conditions, including any future amendments, along with the Privacy Policy, the Zarca Sales Order Form and any of their respective amendments (collectively, the "Agreement") shall govern End User's use of the Services. The continued access and use of the Services shall be conclusively deemed an acceptance of this Agreement and any subsequent changes to the Services.

1. LICENSED RIGHTS:

Subject to the terms of this Agreement, Zarca hereby grants End User a limited, non-exclusive, non-transferable, revocable license to use and access the Services only for the period of time, the number of responses, and purposes stated in the Zarca Sales Order Form executed by End User.

Zarca may from time to time and at its sole discretion provide additional materials to complement the Services, including, but not limited to sample surveys, and educational material, either inside the platform or via email ("Materials"). Zarca hereby grants End User a limited license to use the Materials solely for End User's own authorized internal business purposes.

End User agrees to use the Services solely in accordance with the terms and purposes expressly authorized in this Agreement.

2. PRIVACY, USER NAMES AND PASSWORDS:

Zarca is committed to its policy of protecting the privacy and confidential information of its End Users. Any information provided by an End User to Zarca relating to the Service shall only be used as described in the Zarca Privacy Policy, which can be viewed at <http://www.Zarca.com/online-survey-privacy.html>. End Users shall remain solely responsible for all Service activity associated with End User's usernames and passwords. If a breach of security regarding user names or passwords occurs, End User shall inform Zarca immediately.

3. ZARCA'S OBLIGATIONS:

Zarca shall provide the following items, each according to the specifications in the Zarca Sales Order Form executed by End User:

- a. user name(s) and password(s) to access and use the Service;
- b. additional sub-account(s) to access the Service as End User may select, if any.;
- c. technical support;
- d. training related to using the Services; and
- e. access to certain premium features as End User may select, if any.

Additionally, Zarca will refrain from identifying a survey respondent with a particular response when End User opts for the anonymous or semi-anonymous survey options.

4. END USER'S OBLIGATIONS:

The Service is designed to allow End Users customization in the design of the surveys and the survey process. Accordingly, End User shall be responsible to perform, at a minimum, the following functions:



- a. participate in training conducted by Zarca;
- b. create and administer the surveys;
- c. provide the name of at least one employee or one email address to be used as the named sender for all email communications to survey participants;
- d. ensure authority to use the name or the email address that will appear as the sender;
- e. provide and maintain an accurate End User profile, including valid contact information;
- f. distribute all surveys in a manner that allows for the timely collection and download of all responses and information prior to the termination of End User's license; and
- g. employ reasonable safeguards to preserve confidentiality of usernames and passwords, the failure of which may result in termination of the Services.

End User is solely obligated to back-up and download all necessary Data relating to the Services. From time to time, Zarca reserves the right to delete any and all Data that is older than two years from its database at any time, with a written 30 days notice to the End User.

5. PROHIBITED USES:

End User shall not, and shall not permit any employee or other third-party under its direction, to do any of the following prohibited acts, which may result in the immediate termination of Services and other remedies:

- a. copy, use, analyze, reverse engineer, decompile, disassemble, translate, convert, or apply any procedure or process to the Service in order to ascertain the source code for the Service;
- b. transmit pornographic, obscene, threatening, defamatory, harassing, hate-oriented, defamatory, racist, illegal, or otherwise objectionable material using the Service;
- c. hide the identity of any sender of electronic communications;
- d. interfere with, disrupt or manipulate the Service, its networks or servers;
- e. successfully gain or attempt to gain unlawful or unauthorized access to the Service or accounts, systems and networks connected to the Service by password mining or other unauthorized means;
- f. engage in any activity that violates any law, including, but not limited to the CAN SPAM Act, the Health Insurance Portability and Accountability Act, the Children's Online Privacy Protection Act, or any third party right, including infringing any intellectual property right of another, privacy right or publicity right; send, or promote or condone the sending of unsolicited email to individuals not affiliated with the End User;
- g. upload, download, or distribute files that contain viruses, do not meet the specifications of file type indicated by Zarca, corrupted files or software. Any third party software embedded in the Zarca's website may be used only in conjunction with the Service and may not be used separately; or
- h. if deploying anonymous or semi-anonymous surveys, End User shall take all necessary steps to prevent linking a survey response to the identity of that survey participant. End User shall not perform any Data analysis, plant any identifying Data or send email invitations in such way that that would link the identity of survey participants to their responses. If such information becomes available accidentally or through actions of End User, End User shall notify Zarca immediately and refrain from revealing the identify of any survey participant to any other individuals inside or outside End User's organization. End User shall at all times commit to the level of care necessary to ensure compliance with the features that enable deployment of anonymous and semi-anonymous surveys.

Additionally, the Services offer technical support by Zarca staff to assist End Users in the use of the Services. Although not expressly limited, End User understands and agrees that access to technical support professionals by phone and email is limited to a reasonable use of these resources. As such, any use of technical support that is excessive or unreasonable in light of prevailing industry standards may require the approval of Zarca. Such approval shall not be withheld unless End User's excessive and unreasonable use creates extraordinary costs to Zarca. Upon approval, the parties may agree to accommodate End User's use by passing the additional costs to



End User. However, if an accommodation cannot be agreed upon, Zarca may resort to termination as described in this Agreement.

If End User posts any content that is in violation of these Terms or the law, Zarca reserves the right to remove such content without notice.

6. PROPRIETARY RIGHTS:

Zarca owns all right, title, and interest in and to the Services, Materials, and Zarca's registered and unregistered, domestic and foreign, trademarks, service marks, trademark applications, service mark applications, trade names, patents, patent applications, copyrights, copyright applications, discoveries, know-how and trade secrets of and relating to the Services, including any and all surveys created by Zarca prior to consulting with End User ("Intellectual Property"). End User shall only use its limited grant of rights to Zarca's Intellectual Property for the purposes as stated in Section 1 above. Zarca may from time to time make modifications to the Services in the form of software upgrades and software releases based on a variety of factors including End User's feedback. Because Zarca must use substantial resources to make and support such changes, and because such changes are derived from Zarca's existing Intellectual Property, Zarca owns all right, title, and interest in and to such changes.

End User owns all right, title and interest in its own intellectual property including its trademarks, survey responses, and its own survey questions, provided they are not derived from Zarca's Intellectual Property. End User grants Zarca a license to display End User's name, registered and unregistered trademarks, and other identifying information in Zarca marketing materials, including on the Zarca website. End User shall not remove any copyright notice attached to Zarca Intellectual Property, including those appearing on all templates.

7. PAYMENT OBLIGATIONS:

End User shall pay the fees according to the payment terms in the Zarca Sales Order Form executed by End User. All orders are non-cancellable and non-refundable. Zarca may assess a late fee of 1.5% per month on any balance that remains unpaid after the invoice due date. Failure to pay any invoice within 60 days of the invoice date is a material breach of this Agreement that entitles Zarca to stop the Services and demand payment in full for all outstanding amounts, including payments owed through the subscription period and accrued late fees. End User shall be responsible for paying all applicable sales, use, and other taxes.

8. UPGRADING OF SERVICES:

Zarca may from time to time improve the functionality of the Service and retire old features. Zarca reserves the right to decide whether retired feature will be available.

9. WARRANTY AND DISCLAIMER:

All Materials provided by Zarca to End User either directly or through the survey bank are provided "AS IS." Zarca makes no representations or warranties of any kind concerning their use. End User's use of these is at its own risk.

Zarca represents and warrants that the Services shall be provided in a workmanlike manner that conforms to the relevant, prevailing industry standards.

Except for the warranty above, Zarca provides the services as is and expressly disclaims all other warranties, including, but not limited to, the warranties of merchantability, fitness for a particular purpose, and quiet enjoyment. End user understands that Zarca is dependent on certain third-parties and on matters outside its control for delivering the services. Zarca expressly disclaims that services will be uninterrupted, timely, secure, virus-free, error-free, accurate or reliable. Any material or data obtained or downloaded through the services, including survey responses and sample surveys, is done at end user's own risk and end user shall remain solely



responsible for any damage caused by such material, including any loss of data or damage to end user's computer systems. Zarca shall not be responsible for end user's failure to store, download, or backup its data.

End user acknowledges that Zarca provides a platform from which end user may communicate with survey participants, employees and other constituents. Zarca does not control, edit, or endorse end user's or survey participant's communications and responses. End user shall remain solely responsible to evaluate the accuracy, reliability, completeness and usefulness of any communications, surveys, survey responses, survey results, and similar materials. Zarca shall not be responsible for any errors or omissions in any content or for any loss or damage incurred as a result of content transmitted through the service.

End user represents and warrants that it shall not breach the obligations under Sections 5 and 6 of this agreement.

10. LIMITATION OF LIABILITY:

Zarca's liability for damages under this agreement are limited to direct monetary damages, and the amount of such damages shall not exceed the aggregate fees paid by end user within the past year of service up to a maximum of \$5000.00. In no event will Zarca be liable for providing substitute services or any indirect, consequential, incidental, or special damages, including but not limited to damages resulting from lost profits, lost revenue, lost data, or inability to use the services, whether in an action in contract or tort, even if the other party has been advised of the possibility of such damages and notwithstanding any failure of essential purpose. Client acknowledges that Zarca has set its prices and entered into this agreement in reliance on the disclaimers of warranties and limitation of liability and the same form an essential basis for the bargain between the parties.

11. INDEMNITY:

End User agrees to indemnify, hold harmless, and defend or settle at its own expense Zarca and its directors, officers, employees, and agents against claims for property damage, loss of Data, loss of revenue or profits, death, illness, injury, improper business practices arising out of End User's use of the Services, reliance on the Services and any survey reports, or unauthorized access by persons using End User's login credentials due to End User's negligence. However, End User's duty to indemnify Zarca shall not apply to any claims or disputes resulting from Zarca's willful misconduct. As a condition to End User's defense and indemnification of Zarca, Zarca shall give End User: (1) prompt written notice of any action, claim or threat of infringement suit, or other suit within 30 days of its receipt; (2) the opportunity to take over, settle or defend such action, claim or suit at End User's sole expense; and (3) assistance in the defense of any such action at the expense of End User.

If any Service becomes, or in Zarca's opinion is likely to become, subject of such a claim of infringement, Zarca must either provide End User the right to continue to use that Service, or replace or modify the Service so it is no longer infringing. If neither of the foregoing is commercially and reasonably available to Zarca, End User shall return all Materials relating to the Services to Zarca, or the Service may be deactivated by Zarca, and Zarca must then refund End User a pro-rated amount of the fees paid for the infringing Service based on the remaining contracted period. Zarca shall have no obligation or liability hereunder for any claim resulting from: (a) modification of the Services by any party other than Zarca, (b) modification of the Services by Zarca in accordance with End User's designs, specifications, or instructions; (c) use other than as granted in this Agreement; (d) use of a superseded version of the Services if the infringement claim could have been avoided by using a current version available to End User.

This section states the parties' sole and exclusive remedies and liability for any intellectual property rights infringement or misappropriation claims or damages.

12. CONFIDENTIAL INFORMATION:

The parties understand the provision of Services may require the use and disclosure of certain confidential



information. The parties shall hold in confidence and not use or disclose to any third party, or use for any purpose other than as expressly authorized in this Agreement, the terms and pricing of Services under this Agreement, any software or documentation related to the Services, Zarca sample questions and templates, trade secrets, technical know-how, inventions, Materials, product development plans, pricing, marketing plans, client lists, distribution lists and all survey responses from surveys, the know-how, proprietary, or other confidential information received from the other party (collectively, "Confidential Information"). Information which is communicated orally shall be considered Confidential Information if confirmed in writing as being confidential within a reasonable time after the initial disclosure. However, Zarca may share End User Confidential Information with agents acting on its behalf in order to provide Services under this Agreement, provided agent has executed a confidentiality agreement protecting End User's Confidential Information with at least the protections outlined in this Agreement. If any party is required by law to disclose Confidential Information of the other party, the disclosing party must provide the other party with reasonable notice of its intent to comply with the disclosure request and take reasonable steps to minimize extraneous disclosure.

Confidential Information does not include information that: (a) is known to the receiving Party prior to any disclosure and can be so proven by written records; (b) is received at any time by the receiving party in good faith from a third party lawfully in possession of it and having the right to disclose the same, and can be so proven by written records; (c) is as of the date of receipt by the receiving Party in the public domain or subsequently enters the public domain other than by reason of acts or omissions of the employees or agents of the receiving Party which acts or omissions have not been consented to by the other Party, and can be so proven by written records; (d) becomes publicly available through no fault of the receiving Party; (e) or is independently developed by or on behalf of the receiving Party without resort to the other Party's Confidential Information as can be shown by reasonable documentary evidence.

13. TERMINATION:

This Agreement shall become effective on the Contract Start Date and terminate on the Contract End Date specified in the Zarca Sales Order Form executed by End User, subject to automatic renewal terms as agreed upon by the parties. At the expiration of the term, this Agreement will automatically renew annually for 1 year intervals at Zarca's then current rates, unless End User provides written notice to Zarca of its intent to terminate at least 60 days before the expiration of the Initial Term or any renewal. Upon termination of this Agreement or the rights licensed herein, End User shall cease using the Services and related materials immediately. Upon termination, Zarca shall not have any obligation to make available or provide access to the Services. Accordingly, End User should download all information desired prior to the Contract End Date.

Zarca may immediately terminate this Agreement in response to any breach or any action that in Zarca's discretion constitutes a violation of section 5 of this Agreement or any other abuse of the Services. Zarca may terminate this Agreement for any reason by providing 30 days written notice. If Zarca terminates this Agreement for any reason not constituting a breach of this Agreement by End User, Zarca must refund to End User unused charges on a pro-rata basis. End User shall remain responsible for all charges due through the Contract End Date if termination is for any other reason.

Paragraphs 7 through 14 shall survive termination of this Agreement.

14. GENERAL PROVISIONS:

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard to its own or other conflict of law principles. The parties shall use good faith and all reasonable efforts to resolve disputes arising from or relating to this Agreement by negotiating with each other first. Any unresolved disputes may then be brought before a neutral arbitrator in Fairfax County, Virginia. Any disputes unresolved by arbitration may then be brought in a court of competent jurisdiction in Fairfax County, Virginia.



This Agreement represents the entire final Agreement between the parties and supersedes all prior Agreements relating to the use of the Services, whether written or oral, unless otherwise expressly permitted in this Agreement.

The failure by Zarca to enforce any right or provision of the Agreement shall not constitute a waiver of that provision or any other provision of the Agreement.

The parties understand that there may be an occurrence of an event or effect that cannot be reasonably anticipated or controlled, which even by the exercise of reasonable diligence cannot prevent non-performance. These occurrences and events include, but are not limited to: acts of God; acts of war; acts of public enemies; strikes; fires; explosions; outages; general Internet brown-outs or black-outs or shortage of bandwidth; hacking; actions of the elements; or other similar causes beyond the control of End User or Zarca in the performance of this Agreement. Upon the occurrence of such event or effect, the parties shall agree to excuse performance under this Agreement and not hold the other liable for the delay in or failure of performance under this Agreement. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages.

End User shall not assign or otherwise transfer the rights under this Agreement by operation of law or otherwise, without Zarca's prior written consent. Any entity that acquires, merges with, or otherwise combines in any manner with End User shall not acquire any rights to the Services under this Agreement, without Zarca's prior written consent.

If any provision of the Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.