

ZAP END-USER LICENSE AGREEMENT

Last Updated: November, 4 2020

IMPORTANT NOTICE! YOUR USE OF THE SOFTWARE IS SUBJECT TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT. THEREFORE, PLEASE SCROLL THROUGH AND READ ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT CAREFULLY BEFORE USING THE SOFTWARE. THIS IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND ZAP FOR YOUR USE OF THE SOFTWARE.

YOU WILL INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT BY DOING ONE OR MORE OF THE FOLLOWING OR ALLOWING OR AUTHORIZING A THIRD PARTY TO DO ONE OR MORE OF THE FOLLOWING FOR YOU: (1) CLICKING "I AGREE" OR A SIMILAR AFFIRMATION AS APPLICABLE WHICH APPEARS DURING THE INSTALLATION OF THE PROGRAM, OR (2) ACCESSING OR USING THE PROGRAM, OR (3) SIGNING A COPY OF THIS AGREEMENT.

IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH COMPANY OR ENTITY TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY YOU MUST NOT ACCEPT THESE TERMS AND CONDITIONS OR OTHERWISE ACCESS OR USE THE SOFTWARE.

IF YOU DO NOT AGREE TO BE LEGALLY BOUND BY THIS AGREEMENT IN ITS ENTIRETY AND WITHOUT MODIFICATION OR ADDITION, THEN YOU DO NOT HAVE A LICENSE TO USE THE SOFTWARE AND YOU SHOULD CONTACT ZAP.

1. DEFINITIONS

Key definitions for this agreement can be found in APPENDIX 1.

2. LICENSE GRANT AND RESTRICTIONS

2.1 License Grant. ZAP grants you a limited, non-exclusive, non-transferable, non-sub licensable license of the scope described in this Agreement to Use the Software only upon the following conditions:

2.1.1 You or someone acting on your behalf and at your direction, such as your Reseller, has or will:

2.1.1.1 Place an order with ZAP for either an initial license or an upgrade (such as for more users, additional modules, etc.) and ZAP has accepted such order; and

2.1.1.2 Accepted all of the terms and conditions of this Agreement either before or during installation of the Program.

2.1.2 **If you purchase a Subscription License**, you may Use the Software only for the license term or subscription period for which ZAP has received your Subscription License fee. Your license term or subscription period will normally be stated on your invoice but may be communicated to you in another way.

2.1.3 **If you purchase a Perpetual License**, you may Use the Software only if you pay the required Perpetual License fees when due. Where you have purchased a Perpetual License, this will normally be stated on your invoice but may be communicated to you in another way.

2.1.4 You may Use the Software to process the data of an Affiliate only if:

2.1.4.1 Your aggregate Use of the Software is limited to a single dataset unless you have paid the relevant fees for your Affiliates to access and Use the Software in which case your Affiliates may access and Use the Software in accordance with terms of this Agreement;

2.1.4.2 You understand and agree that where any Affiliate accesses and Uses the Software, any act or omission your Affiliates shall be deemed to be your act or omission and that you shall have in place appropriate measures including, but not limited to, organizational and technical measures to ensure that your Affiliates are aware of and comply with the terms of this Agreement as if they were a party to it. If you become aware of any breach of the terms of this Agreement by your Affiliates, you must notify ZAP immediately in writing of the breach and you must, at your own cost, take any corrective action as directed by ZAP;

2.1.4.3 You maintain an accurate list of Affiliates on file with ZAP; and

2.1.4.4 You promptly notify ZAP if any company is no longer an Affiliate, in which case such Affiliate shall automatically lose any rights of Use relating to the Software.

2.1.5 Subject always to ZAP's prior written consent, you may from time to time retain third parties to provide information technology services to you and on your behalf (eg. a managed or outsourced provider) in connection with the ZAP Software. If such a third party needs to install the Software in order to provide information technology services to you, then (a) that third party can install your copy of the Software so long as you do not install it as well, (b) the third party must not Use the Software or allow anyone else to Use it; and (c) you must enter into a written agreement with that third party which does not increase or otherwise adversely affect ZAP's obligations, liabilities, costs or other burdens in respect of this Agreement and must include those provisions which are necessary in order to protect ZAP and its licensors' interests and the relevant license granted to you under this Agreement including, but not limited to, ZAP and its licensors' intellectual property rights relating to the Software and any modifications or changes to it. If you become aware of any breach of the provisions this Agreement or your own agreement with the third party, you must notify ZAP immediately in writing of the breach and you must, at your own cost, take any corrective action as directed by ZAP. You remain responsible to ZAP for your and the third parties' compliance with this Agreement. You should be aware that ZAP has not tested the Software for Use other than directly by you in accordance with the Documentation.

2.1.6 You may permit a Reseller to provide you with access to the Software using Cloud Solution Services but prior to Using the Software in this way you are responsible for checking to ensure that the Reseller has the necessary accreditations and authorizations from ZAP (as well as from any other relevant third party) before it can provide such Cloud Solution Services to you. If you access and Use the Software using Cloud Solution Services you are responsible for maintaining your own access to the Internet so that your users can access the Software. You also understand and agree that due to the nature of Using the Software in this way, there may be times when your users are unable to access and Use the Software (for example due to maintenance or circumstances beyond ZAP's control). If you obtain Cloud Solution Services from your Reseller, your Reseller (and not ZAP) is fully responsible and liable for the provision of any Cloud Solution Services to you including, without limitation, your access (or inability to access) the Software together with any other related services that it provides to you. If you obtain Cloud Solution Services from your Reseller, you must enter into a written agreement for the Cloud Solution Services which does not increase or otherwise adversely affect ZAP's obligations, liabilities, costs or other burdens in respect of this Agreement. If there is any conflict between this Agreement and the agreement you have for the Cloud Solution Services with your Reseller, then the provisions of the separate agreement will apply in relation to the Cloud Solution Services (and any other services provided to you by the Reseller) but you will still remain responsible and liable to ZAP for your compliance with this Agreement.

2.1.7 You must Use the Software in connection with the Environment and the Environment must be in full working order with a full operating system. The Environment must be selected from ZAP's published list of supported designated Environments, as amended by ZAP from time to time. The Software may be transferred from the Environment to a replacement Environment and, if it is transferred, the Software must be irretrievably deleted from the replaced Environment.

2.2 Limits of License. The license contained in this Agreement does not include the right to perform, and you shall not perform or allow any third party to perform, any of the following:

2.2.1 Except as expressly set forth in **Section 1.18.4 above**, make any copy of the Software.

2.2.2 Except as expressly set out in **Sections 2.1.5 and 2.1.6 above**, rent, lease, loan, lend, sell, reuse, distribute, license, sublicense, market or commercialize any part of the Software or Use the Software as part of a facility management, timesharing, or service bureau arrangement or for software or application development.

2.2.3 Use the Software for personal, family, household, or other non-business purposes.

2.2.4 Other than to the extent permitted by applicable law or with ZAP's prior written consent, alter, modify, merge, translate, adapt, decompile, disassemble, reverse-engineer or create any derivative work based upon the Software, either in whole or in part.

2.2.5 Remove, change or obscure any copyright or trademark notices in the Software.

2.2.6 Share or disclose with any third party any license keys, passwords or system IDs provided to you by either ZAP or your Reseller for the Program.

2.2.7 You must not Use or copy (irrespective of the extent of copying) the whole or any part of the graphic user interface, operating logic or underlying database structure and database fields of the Program for incorporation into or the development of any software or other product or technology.

2.2.8 Use or try to Use the Software in a way which ZAP has not specifically allowed. For example, you must not try to make the Software work in a particular way if it does not usually work in that way.

2.2.9 Use the Software in excess of (i) the limitations set forth in this Agreement, and (ii) the number and types of users, datasource connections or features for which you have purchased a license. If you have either

a Perpetual License or a Subscription License, the maximum number of users, the types of user, Software components or modules and your license term or subscription period (where relevant) are normally specified on your invoice or order form but may be communicated to you in another way. Use of the Software in excess of the number and type of licenses you purchased (or which you may have downgraded to) constitutes a material breach of this Agreement and (a) you agree to pay to ZAP the additional license or subscription fees due for the unpaid use calculated in accordance with the applicable ZAP retail price list in effect at the time payment is made; and (b) failure to make the foregoing payment within 30 days of ZAP's invoice date is also a material breach of this Agreement and results in the automatic termination of this Agreement without notice.

2.3 Additional Restrictions.

- 2.3.1** Any report-writing software contained within the Program may be subject to a restriction such that its use may be limited to accessing only the data that is created by, or used by, the Program.
- 2.3.2** You may not Use, export, re-export or otherwise transfer the Software in violation of any domestic or foreign laws or regulations in effect from time to time in the jurisdiction in which you are a resident or in which the Software is Used. You represent and warrant that you are not located in, under the control of, or a national or resident of, any restricted country or of any entity or person designated as restricted.
- 2.3.3** Any right to Use, transmit, reproduce, distribute, download, or exploit the Program not expressly licensed to you in this Agreement is strictly prohibited. All rights not expressly set out in this Agreement are reserved by ZAP.
- 2.3.4** Where any functionality of the Software is provided by a ZAP entity using Cloud Solution Services you agree not to - and will not facilitate or aid a third party - to Use that functionality to:

- 2.3.4.1** provide ZAP with fraudulent information;

- 2.3.4.2** send spam or other unsolicited or duplicative messages in violation of applicable laws;

- 2.3.4.3** store, distribute or transmit material that is (i) obscene, threatening, libelous or otherwise unlawful or tortious (including material harmful to children or in violation of third party privacy or intellectual property rights), or (ii) contains viruses or other harmful or malicious code that may compromise the security or functionality of any website, program, process, business or data;

- 2.3.4.4** use any tool, process, or method to (i) collect or detect email addresses, financial information, or other information from ZAP or other ZAP customers; or (ii) attempt to gain unauthorized access to the Software, other accounts, computer systems or networks connected to or supporting the Software through hacking, password mining or by any other means;

- 2.3.4.5** post, upload, use framing techniques to use or otherwise distribute copyrighted material without the consent of the copyright holder;

- 2.3.4.6** Use the Software in any way that threatens the integrity, performance or reliability of the Cloud Solution Services infrastructure (including performance or stress testing), or in any manner that works around any technical limitations in either the whole or any part of the Software; or

- 2.3.4.7** make or attempt to make a local non-cache copy of any part of the Software.

You will comply with all policies and other instructions that ZAP informs you about in relation to your Use of the Cloud Solution Services.

- 2.3.5** Where any functionality of the Software is provided by a ZAP entity using Cloud Solution Services:

- 2.3.5.1** ZAP will use reasonable commercial efforts to ensure that the relevant functionality will be accessible to connection from the Internet, however, you understand that the functionality may be interrupted by routine maintenance. ZAP will use its commercially reasonable efforts to minimize such interruption and to schedule such maintenance at non-peak hours;

- 2.3.5.2** you acknowledge and agree that it is subject to limitations, security vulnerabilities, delays and other problems inherent to the operation of the Internet and other electronic communications and that ZAP and/or its licensors will not be liable or responsible to you for any such delays, interruptions, security problems, delivery failures or other damage resulting from such problems;

- 2.3.5.3** ZAP may suspend access to the Cloud Solution Services without telling you and without liability, but wherever practicable ZAP will give you reasonable prior notice:

- 2.3.5.3.1** if there is an attack on the servers of ZAP's hosting provider or other event for which ZAP reasonably believes the suspension of the Cloud Solution Services is necessary to protect you, other ZAP customers, ZAP or our third party hosting provider;

- 2.3.5.3.2** if required by law or regulation or as compelled by a law enforcement or government authority.

- 2.3.6** You will be responsible for providing and maintaining your own compatible equipment, software and communications lines which are required to connect you to the Internet and access the Cloud Solution

Services and for your compliance with any third party license terms or other third party agreements in relation to your use of your equipment, software and communications lines.

2.3.7 ZAP reserves the right to introduce any substitute or replacement Software which substantially fulfills the same functions as the Software which it substitutes or replaces.

2.3.8 You acknowledge that certain components within the Program may enable or assist you to access the website content of, correspond with, and purchase products and services from third parties via third-party websites and that if you make such purchases you do so solely at your own risk. ZAP makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed and any contract entered into by you with any such third party. Any contract entered into and any transaction completed via any third-party website is between you and the relevant third party and not ZAP. ZAP recommends that you refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. ZAP does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Program.

3. INTELLECTUAL PROPERTY RIGHTS. The copyright and all other intellectual property rights of whatever nature in the Software and any modifications or changes to it and all patents, trademarks and copyrights relating to it are and shall always remain the property of ZAP and/or its licensors, and any rights in any other work prepared or carried out by ZAP and/or its licensors shall vest in ZAP and/or its licensors, as the case may be, on creation of it. You shall notify ZAP immediately if you become aware of any unauthorized Use of the Software in whole or in part by any third party.

4. CONFIDENTIALITY. You acknowledge that the Software contains intellectual property rights and know-how, system design and proprietary information which is the exclusive and valuable property of ZAP or its Affiliates ("**Confidential Information**"). You will not, without the prior written consent of ZAP, disclose the Confidential Information to any third party. You will take reasonable and customary precautions to prevent disclosure of such Confidential Information to any such third party. You shall be permitted to disclose aspects of the Software to your personnel only to the extent necessary and to those personnel having a legitimate need to know. You are responsible for ensuring that your personnel are made aware, prior to disclosure of any Confidential Information to them, that all Confidential Information is the confidential and proprietary material of ZAP or its Affiliates, and that such personnel owe a duty of confidence to ZAP. This section shall not apply to Confidential Information if you can demonstrate that: (a) it was in the public domain at the time of ZAP's communication thereof to you or it subsequently entered the public domain through no fault of yours; (b) it was in your possession free of any obligation of confidence at the time of ZAP's communication of it to you, or it was subsequently rightfully communicated to you free of any obligation of confidentiality; or (c) it has been communicated by ZAP to a third party free of any obligation of confidence; or (d) as compelled by relevant law. The obligations contained in this section shall survive any termination of this Agreement, howsoever caused.

5. LIMITED WARRANTIES AND DISCLAIMERS

5.1 Software. Subject to **Sections 5.2 and 5.4 below**, ZAP warrants that, during the 90 day period (the "**Software Warranty Period**") that commences on the Commencement Date, the Program, when properly Used, shall perform substantially in accordance with the Documentation. If you report to ZAP in writing within the Software Warranty Period any nonconformity between the Documentation and the Program (a "**Warranty Claim**"), and if ZAP is able to replicate and verify that such nonconformity exists, ZAP shall make commercially reasonable efforts to correct such nonconformity and, if successful, shall supply you with such correction at no additional cost to you. If such efforts are unsuccessful and the nonconformity is material, your sole remedy for a breach of the warranty described in this section, shall be as follows:

5.1.1 If you acquire a Perpetual License then (a) except for Maintenance Software, you may terminate this Agreement, discontinue Use of and return all copies you have of the Software, and ZAP will ensure that you receive a refund of the license fee you paid for the Software Warranty Period; and (b) for Maintenance Software, you may terminate your maintenance and support, discontinue Use of and return all copies you have of the Maintenance Software to ZAP, and ZAP will ensure that you receive a refund of or credit for the fee you paid for the purchase of the terminated maintenance and support plan.

5.1.2 If you acquire a Subscription License, you may terminate this Agreement, discontinue Use of and return all copies you have of the Software to ZAP, and ZAP will ensure that you receive a refund of the Subscription License fees you paid for the Software Warranty Period.

5.2 ZAP does not warrant or make any representation:

5.2.1 That the Software will meet your requirements;

5.2.2 That you will be able to Use the Software in a particular way;

- 5.2.3 That the operation of the Software will be uninterrupted or error free; or
- 5.2.4 Regarding the Use of and/or output from the Software or the results of such Use in terms of content, correctness, accuracy, reliability or otherwise.

5.3 Customer Support. ZAP warrants that provided you have paid all required maintenance and support fees and where ZAP provides Customer Support directly to you, ZAP will use qualified personnel to provide Customer Support in a professional manner consistent with industry standards. Your sole remedy under this subsection is limited to ZAP's re-performance of the Customer Support services giving rise to your claim. You may request that ZAP performs additional consultancy, implementation or other services, which ZAP may at its discretion agree to do, subject to and on the terms of a separate services agreement.

5.4 DISCLAIMERS. OTHER THAN THE EXPRESS, LIMITED WARRANTIES STATED IN THIS **SECTION 5**, ZAP, ITS LICENSORS AND ITS SUPPLIERS EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES OF ANY KIND OR NATURE WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES, CONDITIONS, OR GUARANTEES (I) OF MERCHANTABILITY, (II) SATISFACTORY QUALITY, (III) OF FITNESS FOR A PARTICULAR PURPOSE, (IV) OF NON-INFRINGEMENT OF PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, AND (V) ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE. YOU UNDERSTAND AND AGREE THAT: (1) THE UTILITY OF A BUSINESS MANAGEMENT COMPUTER PROGRAM DECREASES AS TECHNOLOGY EVOLVES AND THE BUSINESS ENVIRONMENT CHANGES, (2) YOU ARE FREE TO DECIDE, AND ARE RESPONSIBLE FOR DECIDING, WHEN TO UPGRADE YOUR SOFTWARE, AND (3) ZAP DISCLAIMS ANY RESPONSIBILITY TO DELIVER LATER-RELEASED SOFTWARE OR OTHERWISE RENDER ANY CUSTOMER SUPPORT SERVICES NOT INCLUDED IN MAINTENANCE AND SUPPORT THAT YOU HAVE NOT PAID FOR IN FULL.

5.5 Other Limitations. ZAP will have no responsibility under these limited warranties for any Software that has been modified, lost, stolen, or damaged by accident, abuse, or misapplication. No employee, agent, or representative of ZAP, nor any reseller (including your Reseller) or any other third party, is authorized to make any warranty with respect to the Software, except those expressly stated in this Agreement, and you may not rely on any such unauthorized warranty. You acknowledge and agree that you have chosen your Reseller and that such Reseller is an independent party and not an agent of ZAP.

6. EXCLUSIONS OF AND LIMITATION OF LIABILITY

6.1 Nothing in this Agreement excludes ZAP's liability for:

- 6.1.1 Death or personal injury caused by ZAP's negligence;
- 6.1.2 Fraud or fraudulent misrepresentation; or
- 6.1.3 Any other matter ZAP cannot limit or exclude by applicable law.

6.2 You acknowledge and understand that software is inherently complex and may not be free from errors and that you have been advised to verify the work produced by the Program. Neither ZAP, its licensors nor its suppliers shall be liable to you whether in tort (including negligence or breach of statutory duty), delict, contract, misrepresentation, restitution or otherwise (even if ZAP knew or should have known there was a possibility you could suffer or incur such loss or damages) for:

- 6.2.1 Any special, indirect, incidental, consequential, or punitive damages resulting from any defect in the Software;
- 6.2.2 Any loss of time, loss of or corruption to data, loss of anticipated profits, lost opportunity cost, loss of use of the Software, depletion of goodwill, or similar losses however caused; or
- 6.2.3 Any damages or costs incurred in connection with obtaining substitute software, receiving support services, claims made against you by others, or similar costs.

6.3 WITH EXCEPTION TO LIABILITIES RESULTING FROM INTELLECTUAL PROPERTY DISPUTES AS DESCRIBED IN SECTION 7, IN NO EVENT SHALL ZAP'S LIABILITY TO YOU ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE, MAINTENANCE AND SUPPORT, OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT, DELICT OR OTHERWISE, EXCEED:

- 6.3.1 IF YOU HAVE PAID FOR A PERPETUAL LICENSE, THE FEE ACTUALLY PAID BY YOU TO PURCHASE THE PERPETUAL LICENSE; OR
- 6.3.2 IF YOU HAVE PAID FOR A SUBSCRIPTION LICENSE, THE FEES ACTUALLY PAID BY YOU FOR THE SUBSCRIPTION LICENSE IN THE 12 MONTHS IMMEDIATELY PRECEDING YOUR CLAIM OR

ANY SHORTER PERIOD IF THIS AGREEMENT TERMINATES FOR ANY REASON PRIOR TO THE END OF THE FIRST 12 MONTHS.

You acknowledge and agree that this Agreement allocates risk between you and ZAP as authorized by applicable law, and that the pricing of ZAP products reflects this allocation of risk and the exclusions and limitations of liability contained in this Agreement. If any remedy hereunder is determined to have failed of its essential purpose, all other limitations of liability and exclusion of damages set forth in this Agreement shall remain in full force and effect.

- 6.4** You acknowledge that unless you and ZAP agree in writing for ZAP to provide software implementation services to implement the Program at your place of business, you are responsible for engaging a qualified party to provide implementation services for you on terms you negotiate. You also acknowledge that ZAP does not endorse any reseller (including your Reseller) or other service provider and you are responsible for independently investigating the skills and qualifications of such party to ensure that they provide you with the level of skill and service your business requires. You agree that ZAP shall have no liability whatsoever for any failure associated with such implementation services, even if the party you engage is a Reseller, consultant, or installer of ZAP products.
- 6.5** In the event that you wish to bring a claim or other civil proceeding arising out of or in connection with this Agreement, you represent and warrant to ZAP that the involvement of you and any of your Affiliates in such a claim or proceeding shall not give rise to any increase in or multiplication of any cap placed on ZAP's liability.

7. INDEMNIFICATION

- 7.1** If you receive notice of any claim that your use of any part of the Software infringes any third party's intellectual property right in a patent, copyright, or trade secret (an "**Indemnity Claim**"), ZAP shall defend and shall indemnify and hold you harmless by paying any resulting costs and damages finally awarded by a court of competent jurisdiction with respect to any such Indemnity Claim provided that you:
- 7.1.1** Notify ZAP in writing promptly upon becoming aware of the Indemnity Claim;
 - 7.1.2** At ZAP's request and expense, give ZAP such information and assistance as is reasonable under the circumstances; and
 - 7.1.3** Do not independently defend or respond to any claim or threatened claim and give ZAP the right to settle the Indemnity Claim in ZAP's sole discretion and at ZAP's expense.
- 7.2** This indemnification does not extend to any Indemnity Claim:
- 7.2.1** Arising from the combination of the Software with other elements not under ZAP's sole control;
 - 7.2.2** Arising from any part of the Software that you or a third-party modify, or that incorporates specifications, designs or formulas that you provide;
 - 7.2.3** Which arises as a result of your continued Use of the Software after you have been notified that it infringes the rights of a third party; or
 - 7.2.4** If in relation to an Indemnity Claim you do not comply with **Section 7.1 above**.
- 7.3** If you are prevented from Using the Software because of an actual or threatened infringement, then at ZAP's option, ZAP shall promptly either:
- 7.3.1** Obtain for you the right to continue Using the affected part of the Software; or
 - 7.3.2** Replace or modify the affected part of the Software so that it becomes non-infringing.
- 7.4** If having used all reasonable commercial efforts ZAP cannot achieve either of the circumstances in **fs 7.3.1 or 7.3.2 above**, you may terminate this Agreement, and ZAP shall ensure that:
- 7.4.1** If you acquired a Perpetual License you receive a refund or credit for (i) the maintenance and support fees you incurred to purchase or renew your maintenance and support for the then-current term, and (ii) a pro rata portion of the Perpetual License fees you incurred for the purchase of your initial Perpetual License and all upgrades, which pro rata portion will be determined on the basis of the remaining period of a useful life of 5 years, where the five-year useful life begins on the date you purchase your initial license.
 - 7.4.2** If you acquired a Subscription License, you receive a refund of or credit for any prepaid but unused portion of the Subscription License fees paid by you for the Software.

8. MAINTENANCE AND CUSTOMER SUPPORT

- 8.1** If you purchased Maintenance Software and/or Customer Support directly from ZAP, information about such Maintenance Software and Customer Support will be provided to you by the ZAP entity with which you contracted for the Software (and which may be either in printed or electronic form including by reference to any customer services handbooks, support guides and any URL which ZAP may notify to you from time to time). If you acquired a Subscription License that includes support, your license will also include Maintenance Software and Customer Support.
- 8.2** If the ZAP entity with which you contracted for the Software allowed you to purchase Maintenance Software and/or Customer Support from a Reseller, such Maintenance Software and/or Customer Support will be provided to you in accordance with the Reseller's own documentation and instructions and the provisions of **Section 8.1 above** will not apply to you. If you acquired a Subscription License that includes support, ZAP will provide Maintenance Software and Customer Support to your Reseller and the Reseller will provide the same to you in accordance with the provisions of this **Section 8.2**.
- 8.3** If you acquired a Perpetual License you will be required to pay for Maintenance Software and Customer Support during the first year of your license, and every year thereafter. Information about the provisions of such Maintenance Software and Customer Support will be provided to you by the ZAP entity with which you contracted for the Maintenance Software and Customer Support (and which may be either in printed or electronic form including by reference to any customer services handbooks, support guides and any URL which ZAP may notify to you from time to time), If the ZAP entity with which you contracted for the Software allowed you to purchase Maintenance Software and Customer Support from a Reseller, such Maintenance Software and Customer Support will be provided to you in accordance with the Reseller's own documentation and instructions.
- 8.4** Where ZAP provides Maintenance Software and/or Customer Support directly to you, ZAP will not be required to provide such Maintenance Software and/or Customer Support where errors arise from:
- 8.4.1** use of any third party equipment, hardware, software or communication lines;
 - 8.4.2** incorrect use of the Software or operator error;
 - 8.4.3** your failure to fulfil or observe your obligations in **Section 2** of this Agreement;
 - 8.4.4** your failure to ensure that your network and systems comply with the relevant specifications provided by ZAP from time to time; or
 - 8.4.5** any other circumstances where it is stated in the information provided to you by ZAP that such Maintenance Software and/or Customer Support will not be provided.

9. FEES AND PAYMENTS

- 9.1** ZAP may increase its license and other fees at any time without notice so fees due for new or additional Software license or subscription purchases may be more than a previous purchase.
- 9.2** You must pay the relevant fees and any other charges arising under this Agreement as stated on ZAP's invoice or order form and within 30 days of the date on the invoice or order form, or as otherwise agreed with ZAP. All invoices or order forms to you and payments from you to ZAP will be in the currency specified on your invoice or order form. Fees quoted do not include applicable sales taxes but all applicable taxes will be included in the amount ZAP charges you.
- 9.3** Fees may include late payment fees or penalties incurred because your financial institution fails to honor a check or electronic charge, direct debit or transfer. Late payments will accrue interest at the highest rate permitted by the law of the ZAP entity with which you contracted for the Software or as otherwise agreed with your local ZAP entity.
- 9.4** You are obligated to pay all fees irrespective of whether you receive an invoice. If you purchased your Perpetual License or your Subscription License (as the case may be) from a Reseller, the Reseller may be responsible for paying all fees to ZAP on your behalf (if the ZAP entity with which you contracted for the Software permits this). If ZAP has not received payment of the applicable fees either from you or from your Reseller (as the case may be) or if ZAP has received notification from your Reseller of your non-payment of the same, then without prejudice to ZAP's other rights and obligations ZAP may suspend or terminate either your Perpetual License or your Subscription License (as the case may be).

9.5 If at any time during your Perpetual License or Subscription License (as the case may be) you want to increase the number of your users which can access the Program or to access additional components or modules in the Program, you must pay ZAP's applicable fees.

9.5.1 If you have a Subscription License:

9.5.1.1 the additional fees payable will be pro-rated from the date such additional users, Solutions, services or features are added to your license and/or the date access to the additional Program components or modules is made available to you until the commencement of your next renewal date for your Subscription License; and

9.5.1.2 any decrease in the number of users; or reduction in access to additional Program components or modules will be made from the next renewal date of your Subscription License.

9.5.2 If you have a Perpetual License:

9.5.2.1 the additional fees will be payable from the date such additional users are added to your license and/or the date access to the additional Program components or modules is made available to you; and

9.5.2.2 there will be no refund or credit of the license fees which you have previously paid and any decrease in the fees payable for Maintenance Software and/or Customer Support will be reflected in your next invoice for renewal of Maintenance Software and/or Customer Support.

9.6 If you purchased a Perpetual License, then unless you agreed otherwise with the ZAP entity from which you purchased your Maintenance Software and Customer Support, payment is required in advance for the full length of your Initial Support Term and each subsequent Support Renewal Term (as described in **Section 10.1.2.1**) and is non-cancellable and non-refundable.

9.7 If you purchased a Subscription License, subject to **Section 9.5 above**, ZAP may not increase the license fees more than once in any 12-month period following your initial purchase by more than the amount stated by the ZAP entity with which you contracted for the Software. ZAP will use its reasonable endeavours to give you (or your Reseller if you purchased the Subscription License from a Reseller) 60 days' written notice prior to your next renewal date of any price increase (unless the ZAP entity from which you purchased your Subscription License has agreed to give you a different number of days written notice of any price increase). If you continue to Use the Software after the fee change takes effect, you will be deemed to (a) agree to the increase in the fees and (b) authorize ZAP to collect the new fees amount using the agreed payment method.

9.8 You are responsible for providing ZAP with your most current contact and billing information. If you purchased a Subscription License you agree that, so long as your license is active, ZAP may automatically bill the same credit card or debit the same bank account you provided to ZAP on the same periodic basis as previously agreed with you, unless subsequently agreed otherwise.

9.9 If the ZAP entity with which you contracted for the Software allowed you to purchase the relevant license through a Reseller, then except for **Section 9.4**, the terms in that agreement in relation to payment of fees for a Perpetual License, a Subscription License, support, maintenance and any other services provided by the Reseller to you will prevail over the payment terms in this **Section 9**.

10. TERM AND TERMINATION

10.1 This Agreement is effective from the Commencement Date and continues until terminated in accordance with this section.

10.1.1 If you acquire a Perpetual License you may terminate this Agreement at any time, at which point your license hereunder will terminate; if you do so, there will be no refund or credit or your license fees either in whole or in part. You shall be responsible for retrieving your data from the Software prior to this Agreement terminating and any failure by you to extract your data will not prevent this Agreement from terminating.

10.1.2 Subject to **Section 8.3**:

10.1.2.1 if you have purchased Maintenance Software and Customer Support directly from a ZAP entity, the initial period for such Maintenance Software and Customer Support will be for one (1) year unless you are offered and select a shorter or a longer period in which case the shorter or longer term will be your initial period ("**Initial Support Term**"). Your Initial Support Term will

automatically continue to renew thereafter for the same period of time (your “**Support Renewal Term**”) unless a different term is agreed otherwise with the ZAP entity from which you purchased your Maintenance Software and Customer Support. You may choose not to renew your Initial Support Term or subsequent Support Renewal Term (as the case may be) by providing at least 60 days’ written notice of your non-renewal to the ZAP entity from which you purchased your Maintenance Software and Customer Support (unless you agreed a different notice period with such ZAP entity in which case such different notice period will apply). If no notice is provided, the Maintenance and Support Fees will auto-renew for a further 12 months. If you terminate the provision of your Maintenance Software and Customer Support you will still have the right to continue to Use the Software in accordance with the terms of this Agreement, however, you understand and agree that you will not have the right to receive any further Maintenance Software and Customer Support;

10.1.2.2 if you have purchased Maintenance Software and Customer support from a Reseller, you may terminate your Reseller’s provision of Maintenance Software and Customer Support in accordance with the terms of your agreement with your Reseller and, if you do so, you will still have the right to continue to Use the Software in accordance with the terms of this Agreement, however, you understand and agree that you will not have the right to receive any further Maintenance Software and Customer Support.

10.1.2 If you acquire a Subscription License:

10.1.2.1 The “**Initial Term**” will run for one (1) year unless you are offered and select a shorter or a longer period when you acquire your initial Subscription License; in such event, the shorter or longer subscription term will be your Initial Term. Your Initial Term will automatically continue to renew thereafter for the same subscription term (your “**Renewal Term**”) unless a different license term or subscription period is agreed otherwise with ZAP. Payment is required in advance for the full length of your Initial Term and each Renewal Term and is non-cancellable and non-refundable (except as described in **Subsections 5.1.2, 7.4.2 and 10.1.2.2**), even if you cancel or choose not to renew your Subscription License.

10.1.2.2 You may choose not to renew your Subscription License, or to reduce the number of your users, or to reduce your access to certain Program components or modules by providing your non-renewal or reduction request in writing to ZAP. Your request must include your ZAP customer number, your company name, a company contact name, a company phone number and/or email, and be received by ZAP within the time period prescribed by the ZAP entity with which you contracted for the Software in order for the request to take effect at the end of that term (the “**Termination Date**”). If no such time period was prescribed by the relevant ZAP entity then the relevant notice period will be 60 days’ written notice. If your non-renewal or reduction request is received with less than the required notice you will be required to pay the fees prescribed by the ZAP entity with which you contracted for the Software. Requests received after the Termination Date will be applied to the following Renewal Term. If no notice is provided, your Subscription will auto-renew for a further 12 months.

10.1.2.3 ZAP may accept a request to terminate this Agreement prior to the conclusion of your Subscription Term. A termination fee corresponding to the remaining time (in days) of your Subscription term will however apply.

10.1.2.4 You shall be responsible for all Subscription License fees and processing fees that fall due before or after the Termination Date.

10.1.2.4 If this Agreement terminates for any reason, your data will remain your data and you are entitled to extract it before the end of this Agreement. However, your failure to extract your data will not prevent this Agreement from ending.

10.1.3 Notwithstanding the foregoing, this Agreement and the license granted to you will terminate automatically and without notice if:

10.1.3.1 You fail to pay any fees when due and ZAP gives you 10 working days’ written notice of such late payment and after 10 working days you still have not paid the amount due (unless the ZAP entity from which you purchased the relevant license has agreed a different notice period within which you must pay your fees);

10.1.3.2 You fail to comply with any term of this Agreement and, if capable of remedy, do not rectify your non-compliance within 30 days of ZAP’s written notice requiring you to remedy your non-compliance. Where a breach is a material breach or a breach not capable of remedy, ZAP may in its sole discretion terminate this Agreement on written to you with immediate effect; or

10.1.3.3 ZAP is notified that any finance arrangement you may have made with a third party for the payment of any license fees has ended for any reason other than it being satisfied in full; or

10.1.3.4 To the extent applicable in your local jurisdiction, if you cease to exist, cease to trade, become bankrupt, go into liquidation, suffer or make any winding up petition, make an appointment with your creditors, have an administrator, administrative receiver or other receiver appointed, benefit from a statutory moratorium of your debts, or if you are affected by any similar circumstances.

10.2 Either party may terminate this Agreement in accordance with any other section which by its express provisions allows a party to terminate this Agreement.

10.3 Within 10 days after the termination or expiration of your Perpetual License or your Subscription License, or this Agreement, you shall uninstall the Software and certify in writing to ZAP that you have done so.

10.4 Any provision in this Agreement which when reasonably read as intended to survive the termination of this Agreement shall survive, including without limitation, the disclaimer of warranties and limitations of liability.

11. ANTI-BRIBERY AND CORRUPTION

11.1 Each party will and will procure that persons associated with them:

11.1.1 Comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (the “**Relevant Requirements**”);

11.1.2 Not engage in any conduct which would constitute an offence under any of the Relevant Requirements;

11.1.3 Not do, or omit to do, any act that may lead the other party to be in breach of any of the Relevant Requirements;

11.1.4 Promptly report to the other party any request or demand for any undue financial or other advantage received by it in connection with this Agreement; and

11.1.5 Have and maintain in place during the term of this Agreement its own policies and procedures to ensure compliance with the Relevant Requirements and will enforce them where appropriate.

12. DATA PROTECTION

12.1 Where, as part of the functionality of the Software ZAP processes on your behalf data classified as personal data or special categories of personal data as such terms are defined in the Data Protection Laws, ZAP shall process such personal data in accordance with the Data Protection Laws and other applicable privacy laws. In particular, ZAP shall:

12.1.1 Maintain technical and organizational security measures and safeguards sufficient to comply with at least those obligations imposed on controllers by the Data Protection Laws; and

12.1.2 Act only on instructions from you (as controller) in respect of such personal data and to process it only for the purposes of: (a) performing ZAP’s obligations under this Agreement and to prevent or address service or technical problems; and (b) as compelled by law; or (c) as you expressly permit in writing,

and (at ZAP’s option) allow you to either audit ZAP’s compliance with the requirements of the Data Protection Laws on reasonable written notice at reasonable intervals or provide you with reasonable evidence of ZAP’s compliance.

12.2 While such personal data is in ZAP’s possession ZAP will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with ZAP’s obligations under this Agreement, except as otherwise specified within this Agreement.

12.3 For more information on (a) how ZAP uses the information you provide to ZAP and (b) any additional country specific information in connection with the Data Protection Laws, you should refer to the Global Privacy Policy which is posted on the ZAP website.

13. GENERAL

13.1 Independent Contractors. Each party is an independent contractor and neither party will represent itself as agent, servant, franchisee, joint venture or legal partner of the other.

13.2 Export. The Software may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any United States government denied-party list. You shall not permit your users of the Service to access or use the Service in a United States embargoed country or in violation of any United States export law or regulation.

- 13.3 Transfer and Assignment.** You shall not transfer, delegate, or assign this Agreement in whole or in part, directly or indirectly, by operation of law, merger, acquisition, or otherwise without ZAP's prior written consent. This Agreement is assignable by ZAP and ZAP is entitled to sub-contract any of its obligations under this Agreement provided that any such sub-contracting will not relieve ZAP of its obligations to you.
- 13.5 Jurisdictional Rights.** This Agreement gives you specific legal rights and you may also have other rights which vary from jurisdiction to jurisdiction. Some jurisdictions do not allow the exclusion or limitation of implied warranties or of liability for incidental or consequential damages, so some of the provisions in this Agreement may not apply to you in which case the provisions of **Section 13.15** will be applicable.
- 13.6 Waiver.** No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver or continuing waiver of such rights. Such rights may only be waived in writing signed by both parties.
- 13.7 Audit Rights.** With or without prior notice, ZAP may audit your Use of the Software to ensure that you comply with the terms and conditions of this Agreement. If an audit reveals that you have underpaid fees or owe fees to ZAP, ZAP will invoice you for the underpayment or amount due based on the ZAP price list in effect at the time the audit is completed.
- 13.8 Monitoring.** The Software may contain technologies that monitor, record and report to ZAP, information regarding your Use of the Program, i.e. information concerning the devices used to access the Program; and the frequency, type and manner of Use (collectively, "**Usage Data**"). You agree that ZAP may, in its sole discretion, collect and use Usage Data to support, maintain, and improve the Software, and to enforce ZAP's rights under this Agreement. To the extent any Usage Data is personal information within the meaning of applicable law, and ZAP Global Privacy Policy.
- 13.9 Force Majeure.** ZAP will have no liability to you under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control.
- 13.10 No Third Party Beneficiaries.** Except as expressly set out in this Agreement, a person who is not a party to this Agreement will have no rights to enforce any terms in this Agreement.
- 13.11 Notices and Electronic Communications.** Your day to day communication with ZAP must be via the contact details given in ZAP's relevant documentation and ZAP's communication to you will be via those details given to ZAP when you accepted this Agreement (or any new details which you subsequently notify to ZAP). Each party will use the appropriate communication medium, including e-mail, and in the case of ZAP communicating with you, by publishing notices on its website. Any formal notice required to be given under this Agreement will be in writing and will be sent by pre-paid mail or recorded delivery or by email to the party required to receive the notice at the address given for that party. Any notice will be deemed to have been duly received if sent by: (a) pre-paid mail, 48 hours after posting; or (b) recorded delivery on the next business day; or (c) email at 0900 on the next business day after the email is sent, or earlier if the intended recipient has confirmed receipt (either specifically or by conduct).
- 13.12 PUBLICITY.** UNLESS YOU SEND ZAP A WRITTEN NOTICE THAT YOU DO NOT WISH TO BE INCLUDED IN PROMOTIONAL MATERIALS, NOTIFICATIONS AND ADVERTISEMENTS, A BRIEF ANNOUNCEMENT THAT YOU HAVE ENTERED INTO THIS AGREEMENT MAY BE SENT TO RELEVANT PRESS ORGANIZATIONS IN ORDER TO GAIN PR COVERAGE FOR BOTH YOU AND ZAP. IN ADDITION, ZAP (OR ANY COMPANY WITHIN THE ZAP GROUP OF COMPANIES) MAY INCLUDE YOUR NAME OR TRADE MARK IN ITS LIST OF CUSTOMERS ON ITS CORPORATE WEBSITES OR PRINTED MATERIALS. IF AT ANY TIME YOU DO NOT WANT ZAP TO USE YOUR COMPANY NAME AND/OR TRADE MARK IN THE WAYS DESCRIBED IN THIS **SECTION 13.12** PLEASE LET ZAP KNOW BY SENDING AN EMAIL TO YOUR USUAL ZAP REPRESENTATIVE. FOR MORE INFORMATION ABOUT HOW ZAP USES INFORMATION ABOUT YOU, PLEASE REFER TO ZAP'S PRIVACY NOTICE ON THE WEBSITE OF THE ZAP ENTITY WHICH YOU CONTRACTED WITH FOR THE SOFTWARE (WHICH ZAP RESERVES THE RIGHT TO MODIFY IN ITS REASONABLE DISCRETION FROM TIME TO TIME).
- 13.13 Entire Agreement.** This Agreement represents the complete and exclusive understanding between you and ZAP regarding the Program, including maintenance and support, and supersedes any prior purchase order terms, confirmation, advertising, representation, or other communication. For clarity, if you are also required to indicate your acceptance by clicking on an "I Accept" or similar button during the installation process as well as sign a paper copy of this Agreement, the parties agree that the terms in the physical signed document shall

prevail over the terms of the agreement to which you indicate your electronic acceptance during the installation process. The parties agree that notwithstanding the fact you may be required to click on the "I Accept" or similar button during the installation process, such action does not indicate your acceptance of such terms and that the terms of such agreement shall have no effect. The parties acknowledge that in entering into this Agreement they have not relied on and will have no rights or remedies in respect of any statement, representation, assurance or warranty other than as expressly set out in this Agreement. Nothing in this section shall limited or exclude the parties' liability for fraudulent misrepresentation.

13.14 Modification. This Agreement may not be modified except by a written agreement signed by you and an authorized ZAP representative.

13.15 Severability. If any provision of this Agreement is found to be void, invalid, or unenforceable, it shall be severed from and shall not affect the remainder of this Agreement, which shall remain valid and enforceable. Any such severed provision shall be replaced with a similar provision which conforms to applicable law of the ZAP entity from which you purchased a license for the Software and embodies as closely as possible the original intent of the parties.

13.16 Dispute Resolution. If a dispute or other disagreement arises between the parties, then:

13.16.1 Each party agrees to promptly raise the matter internally to the relevant account managers for resolution and if the account managers are unable to rectify the matter within 30 days of being requested to do so, the parties will each escalate the matter to senior managers for resolution who will attempt to resolve the dispute within a further period of 30 days;

13.16.2 If the senior managers are unable to resolve the matter within 30 days of being requested to do so, the parties will each escalate the matter to a director or vice president. The director or vice president will then in good faith attempt to resolve the matter within a further period of 30 days;

13.16.3 Where the matter has not been resolved following the procedure in **Sub-sections 13.16.1 and 13.16.2**, then either:

13.16.3.1 where you Use the Program primarily in North America, Argentina, Caribbean (except French Caribbean), Chile, Columbia, Cuba, Ecuador, Guatemala, Mexico, Panama, Peru, Puerto Rico or Uruguay, then any cause of action or claim arising out of or relating to this Agreement or the breach thereof, including without limitation, the validity, enforceability or scope of this Agreement, shall be settled by binding arbitration conducted in Atlanta, Georgia. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In addition, you agree that any cause of action or claim will be arbitrated individually and that you will not consolidate or seek class treatment for any claims, unless previously agreed to in writing by you and ZAP; or

13.16.3.2 otherwise either party is free to pursue alternative remedies in accordance with **Section 13.17**.

Neither party can commence any litigation or court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute in accordance with this **Section 13.16** except where a party seeks interim injunctive relief or to issue a claim within an applicable limitation period.

13.17 Governing Law and Jurisdiction. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of the ZAP entity that you are contracting with.

Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of the country and state (as applicable) of the ZAP entity that you are contracting with over any claim or matter arising out of or in connection with this Agreement or the legal relationships established by it.

APPENDIX 1: DEFINITIONS

1. **“Affiliate”** means any entity that controls you, that you control or that is under common control with you, where **“control”** means the ownership, directly or indirectly, of equity securities or other ownership interests which represent more than 50% of the voting power of such affiliate.
2. **“Agreement”** means these terms and conditions for your Subscription to the Service including the Exhibits as amended and updated by ZAP from time to time together with any other documents or addenda expressly incorporated into these terms and conditions by reference.
3. **“Commencement Date”** means the earliest date ZAP either accepts your Order for your Subscription or you do anything consistent with accepting this Agreement such as Using the Service, signing a copy of this Agreement or ticking a box or clicking on a button (or something similar) when you are asked to confirm that you accept this Agreement during the sign up to the Service unless ZAP agrees otherwise with you.
4. **“Cloud Solution Services”** means a service hosted in the cloud by ZAP or provided by a third party, and may be a Reseller of the Software or an add-on.
5. **“Customer Support”** means assistance ZAP provides or makes available to you on-line or by phone, email, chat or other means in accordance with the relevant Documentation provided by the ZAP entity from which you purchased your Subscription.
6. **“Data Protection Laws”** means such data protection laws applicable to the ZAP entity with which you have Subscribed to the Service.
7. **“Data source connection”**, refers a single connection to any source of data for Production data models used in Production environments; where two separate connections to the same data source account for two datasource connections.
8. **“Data warehouse”**, and **“Warehouse”** mean the database the Service generates that holds your data.
9. **“Data warehouse size”**, and **“DW Size”** mean the total size, expressed in Giga-Bytes (“GB”) of the Data warehouse, which is monitored by ZAP and may be subject to additional charges.
10. **“Device”** means any device that meets ZAP’s system requirements that you use to access any part of your Subscription.
11. **“Documentation”** means the prevailing documentation and information made available to you by ZAP and which may be updated by ZAP from time to time, including but not limited to specifications, technical and user guides including guidance as to minimum system requirements, that are set out in the Service help files and any release-related notes, guides or manuals ZAP publishes specific to the version of the Service which is made available, but excluding marketing materials and sales publications.
12. **“Environment”** means the servers, operating systems, databases and other operating software required for Use with the Software.
13. **“Exhibits”** or **“Appendix”** means the exhibits to this Agreement.
14. **“Force Majeure”** is a term that essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, denial of service attack, distributed denial of service attack or an event described by the legal term act of God (such as hurricane, flooding, earthquake, volcanic eruption, etc.), prevents one or both parties from fulfilling their obligations under the contract. Force majeure is generally intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the negligence or malfeasance of a party, which have a materially adverse effect on the ability of such party to perform its obligations.
15. **“Maintenance Software”** means, subject to Section 8, an updated version of the Software that ZAP delivers because you have paid for maintenance or which you have acquired with the purchase of a Subscription License that includes support.
16. **“Perpetual License”** means, subject to the termination provisions of this Agreement and where the ZAP agrees with you, a perpetual license to Use the Software according to the terms of this Agreement.

17. **“Program”** means the ZAP BI installer or application.
18. **“Order”** means the document evidencing your initial Subscription for the Service in written form specifying among other things, the subscription plan and included features, the applicable Subscription Fees, the Subscription Period and other charges or add-on as agreed between you and ZAP and any subsequent Order in written form evidencing some or all of the same; each such Order to be incorporated into and to become a part of this Agreement;
19. **“Party”** means either you or ZAP as the context requires and “parties” means you and ZAP together;
20. **“Privacy Policy”** or “Privacy policy” means the Global Privacy notice posted that is publicly accessible on the ZAP website.
21. **“Personal Data”** means that portion of Client Data that is subject to any Privacy Laws.
22. **“Region”** shall mean the geographical location where the Service resides.
23. **“Required Third Party Service”** means a required service, software, or Subscription functionality made available by a provider other than ZAP that ZAP makes available as part of your Subscription.
24. **“Reseller”** means an independent third party authorized or accredited by ZAP to distribute the Software through ZAP’s various authorized partner or other programmes.
25. **“Software”**, and “Service” means the provision by ZAP of the Software, installed on your premises or hosted in a privately Hosted platform provider.
26. **“Subscription License”** means a license to Use the Software according to this Agreement until your specified license term or subscription period ends or this Agreement terminates as described herein. For clarity, unless ZAP agrees otherwise in writing: (a) where your Use of the Software is via Cloud Solution Services (or via a managed or outsource provider in accordance with Section 2.1.5) such Use is only permitted under a Subscription License; and (b) where your Use of the Software is not via Cloud Solution Services (or via a managed or outsource provider accordance with Section 2.1.5) you must deploy and Use the Software on your own infrastructure.
27. **“Service Level Arrangement”** means any service level arrangements described in the documentation provided to you by ZAP pursuant to section 2.1.
28. **“Solution”** means a pre-built set of analytics and data model pipelines
29. **“Solution module”**, and “Module” means an area of a Solution, such as “Sales” which includes a set of Analytics and data model pipelines.
30. **“Supplemental Services”** means, if available, optional software or services you may elect to include in your Subscription.
31. **“Use”** means to install and execute the Program, provided that:
 - 30.1 You install the Program only on a computer system that you own or subject to Sections 2.1.5 and 2.1.6 only on a computer system not owned by you if you will be the only party with access to the installed Program (this includes third party hosting); and
 - 30.2 You execute the Program during the term of your license or subscription (i) for its intended purpose solely in connection with the management of the business that you and your Affiliates conduct, and (ii) solely to the extent of any and all applicable limitations (whether as to specific modules or other parts of the Program, or number of production or backup server computers) set forth in this Agreement; and
 - 30.3 If you Use the Program with a mobile device, you may need a further software application (commonly referred to as an “app”) to do so, for which you may incur additional fees. You are responsible for obtaining and maintaining any third party software, services and/or hardware to enable you to obtain mobile access as well as charges for data usage and connectivity. When using the Program with a mobile device you must continue to adhere to this Agreement and any additional terms and conditions accompanying the app. If you obtained the app from ZAP and it is not accompanied by terms and conditions, this Agreement will also apply to your Use of the app; and

- 30.4 Unless the ZAP notifies you otherwise or applicable law provides otherwise, you may make only a reasonable number of backup copies of the Program solely for the purpose of reinstalling the Program, if reinstallation becomes necessary; and
 - 30.5 ZAP provides otherwise or applicable law provides otherwise, you may make one copy of the Program for Use in a testing environment solely for testing purposes; and
 - 30.6 Unless ZAP provides otherwise or applicable law provides otherwise, you may make and install one copy of the Program at a disaster recovery site for your Use only for so long as a disaster or other emergency prevents you from Using the Program at your original installation site, provided you have paid the additional license fees, if any, for the Use of the Program in this way.
-
- 32. **“Users”**, **“Named users”** and **“Viewers”** means you and anyone you authorize to use the Software.
 - 33. **“you”**, **“your”**, and **“Customer”** means or refers to the organization or the account owner who subscribed to the Service or that ZAP has registered to Use the Service.
 - 34. **“Your Content”** and **“Customer Data”** mean the data and other information that you upload to or process through the Service.
 - 35. **“ZAP”** means the ZAP Holdings Limited entity or any other ZAP entity from which you have purchased the Software.
 - 36. **“ZAP Technology”** means images, text, software, music, sound, photographs, video, graphics, applets, Documentation, screen shots, displays, graphical user interfaces and software incorporated into the Service and all copyright, trade secret, patent and patent applications, trademark and other intellectual property rights in and to the Service, including, but not limited to, object code, the underlying source code, algorithms, formulae, data structures, scripts, application programming interfaces and protocols, all inventions (whether patentable or not), know-how, ideas, discoveries, compositions, products, schematics, databases, drawings, designs, samples, models, processes, procedures, data, information, manuals, notes, and any item marked "confidential" or "proprietary".

APPENDIX 2 THIRD-PARTY LICENSES

The ZAP BI application uses the following [third-party licenses](#). By using this Software, you agree to the terms of these third-parties.