



1. Definitions and interpretation

Definitions

In this Agreement the following terms have the corresponding meanings unless the context requires otherwise:

Additional Support Charges means charges for services not included in the Support Plan and calculated in accordance with a quotation provided by ZAP on a time-and-materials basis.

Confidential Information means all information whether or not in material form relating to the business or the affairs of the Parties including but not limited to tangible or intangible, visual or verbal paper based or electronic, present or future information such as (a) trade secrets; (b) financial information, including but not limited to financial reports and pricing; (c) technical information including but not limited to ideas, concepts, software, hardware or other technologies whatsoever; (d) business information including but not limited to operations, planning, marketing, interests, and products; (e) the terms of any agreement entered into between the Parties.

Customer Environment means the Customer's information technology, communications, internet, software and other relevant infrastructure that interfaces with the ZAP Software and/or Support Services.

Maintenance and Support Fees means the fees for the Maintenance Services and Support Services, as invoiced.

Maintenance Services includes error corrections, versions, releases, and enhancements published from time to time in respect of the ZAP Software specified in the Sales Order, as further described in Clause 2.

Sales Order means the Sales Order quotation issued by ZAP and accepted by the Customer.

SLA means a Service Level Agreement target as provided and updated from time to time in the relevant Support Plan.

Support Plan means the combination of Support Services to be delivered to the Customer. ZAP may provide multiple Support Plans and the applicable Support Plan is that identified on the most recent paid renewal invoice, or where not noted the Standard Support Plan will apply. The Support Plan may be updated from time to time. ZAP provides that any modification will not materially affect the level of service

Support Services means the services provided according to the Support Plan.

Term means the then current term of this Agreement whether the Initial Term or any Renewal Term.

Website means zapbi.com and each sub domain and related URL.



ZAP Software means ZAP Data Hub, or any other software offering that is described under the “Products” pages on the Website.

Interpretation

- 1.1 In these terms and conditions, the following rules of interpretation apply:
- (a) reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a body corporate;
 - (iv) a party means a party to these terms and conditions and includes the party’s executors, administrators, successors and permitted assigns;
 - (v) a statute, regulation or provision of a statute or regulation (“Statutory Provision”) includes:
 - A. that Statutory Provision as amended or re-enacted from time to time; and
 - B. a statute, regulation or provision enacted in replacement of that Statutory Provision.
 - (b) The word “including” and similar expressions are not words of limitation.
 - (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 - (d) If the Customer is constituted by more than one person, an obligation of the Customer is owed by each of the persons constituting the Customer jointly and severally and a right of the Customer is held by each of the persons constituting the Customer jointly and severally and any other reference to those persons is a reference to each of those persons separately.
 - (e) Headings and captions are for convenience only and do not form part of these terms and conditions or affect its interpretation.
 - (f) A provision of these terms and conditions must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of these terms



and conditions or the inclusion of the provision in these terms and conditions.

- (g) If an act must be done or if money is payable on a specified day which is not a Business Day, it must be done or paid instead on the next Business Day.

2. Maintenance

Subject to due and punctual payment of all Maintenance and Support Fees, ZAP will provide the Customer with:

- All releases of the ZAP Software which is licensed to the Customer, if any, and the corresponding Documentation; and
- Any bug fixes released by us which relate to the ZAP Software which is licensed to the Customer.

All software updates and enhancements provided to the Customer by ZAP pursuant to this Agreement shall be subject to the relevant terms of this Agreement.

- 2.1 ZAP will provide the Maintenance Services with all due care and skill and in a professional manner consistent with generally-accepted industry standards.
- 2.2 Maintenance Fees and Support Fees will be determined and payable in accordance with the Sales Order unless otherwise agreed by the parties in writing.

3. Provision of Support Services

- 3.1 During the Term ZAP will supply to the Customer the Support Services identified in the Support Plan in accordance with the terms of this Agreement subject to the Customer payments of Maintenance and Support Fees being in accordance with this Agreement.
- 3.2 To the extent that any ZAP representative is to visit the Customer's site, such a visit is subject to the terms of the ZAP Consulting Agreement; and prior to any site visit ZAP may require that the Customer agree to, and sign, a ZAP Consulting Agreement.

4. Payment

- 4.1 The Customer will pay the Maintenance and Support Fees and any applicable Additional Support Charges in accordance with clause 4.
- 4.2 Maintenance and Support Fees will be invoiced annually in advance starting on the commencement date. The Customer's payment is due within 30 days of the receipt by the Customer of an invoice from ZAP.

4.3 Prior to the start date of any Renewal Term, the Maintenance and Support Fees may be increased for that Renewal Term by an amount not exceeding the percentage increase in the Consumer Price Index (CPI).

4.4 In the event that:

- (a) the provision of the Support Services is delayed and the delay is attributable to the action or inaction of the Customer;
- (b) ZAP is required to perform services in circumstances other than those expressly or reasonably anticipated;
- (c) the provision of the Support Services requires a visit to the Site; or
- (d) there is a change in the timing or complexity of the Support Services;

and such circumstances are not a result of a breach of the Agreement by ZAP, then ZAP shall be entitled to apply an Additional Support Charge.

4.5 The Maintenance and Support Fees are exclusive of taxes, duties and charges imposed or levied in the connection with the supply of the Support Services. Without limiting the foregoing, the Customer shall be liable for any new taxes, duties or charges imposed subsequent to the date of the Agreement in respect of the Support Services.

4.6 The Customer must make all payments due to ZAP in the same currency as provided on the original sales order. If, for any reason, an amount received by ZAP from the Customer is not received in this currency, then the Customer must indemnify ZAP against any shortfall between the amount ZAP receives on converting the payment made into the required currency and the amount of the payment currency that ought to have been paid.

5. ZAP's obligations

5.1 ZAP warrants:

- (a) it will supply the Support Services with all due care and skill and in a professional manner consistent with generally-accepted industry standards and in accordance with the SLA targets provided in the relevant Support Plan Policy document; and
- (b) ZAP's entry into and performance of its obligations under this Agreement will not infringe the rights of any third party or



cause the Customer to be in breach of any obligations to a third party.

5.2 ZAP does not warrant that all identified issues can be corrected.

6. Both Parties obligations

ZAP and the Customer agree:

- (a) they have full power and authority to enter into and perform this Agreement;
- (b) to act reasonably in performing their obligations and exercising their rights under this Agreement;
- (c) that when communicating with each other, each Party is responsible for conducting appropriate virus checks on any electronic media sent or received to/from the other Party; and
- (d) to ensure any of their locations the other Party's personnel are required to attend, comply with all applicable legislative and regulatory requirements, including but not limited to as workplace occupational health and safety, equal opportunity and anti-discrimination legislation and no smoking policies.

7. Customer obligations

In order for ZAP to supply the Maintenance Services and Support Services:

- (a) Customer must have paid all undisputed amounts due for its license(s) of ZAP Software covered by this Agreement, Maintenance and Support Fees;
- (b) the customer must fulfil the obligations set forth in the then-current policy document for the support plan being provided under this agreement;

8. Service exclusions

- 8.1 Unless otherwise agreed in writing, ZAP has no liability in regard to the service exclusions set forth in the then-current policy document for the Support Plan being provided under this agreement;
- 8.2 The Maintenance and Support Services specifically exclude any other service offerings from ZAP which are the subject of a further agreement or additional terms and conditions. This may include such services as, consulting, training and the like.
- 8.3 ZAP may at its option provide the services stated in clause 8.1 or clause 8.2 for an Additional Support Charge.

9. Suspension of Support Services

ZAP may immediately suspend its provision of support service if:

- (a) Customer has not paid any undisputed Maintenance and Support Fee by the due date;
- (b) Customer has not paid any undisputed Additional Support Charge by the due date;
- (c) Customer has not paid any other undisputed amount due under any agreement to licence or purchase ZAP Software or maintenance services for ZAP Software;
- (d) Customer has requested a specific Support Service for which it has used all of its entitlements to under its Support Plan; or
- (e) Customer has not met one or more of its obligations under this Agreement which generally prevents or obstructs ZAP from delivering one or more Support Services.

10. Term and termination

10.1 The Support Services shall be provided by ZAP to the Customer for the Initial Term.

10.2 Upon payment of the Maintenance and Support Fees for the relevant year this Agreement may be renewed by the Customer for the Renewal Term as notified to ZAP in writing. If ZAP notifies the Customer in writing of any variation to the terms of this Agreement prior to the renewal of this Agreement, then upon renewal the Customer is deemed to have accepted those changes and this Agreement is varied to the extent of those changes.

10.3 Without limiting the generality of any other clause in these terms and conditions this Agreement will terminate automatically and with immediate effect if:

- (a) any licence agreement for the ZAP Software is terminated for whatever reason;
- (b) the Customer for any reason destroys, disposes of or loses custody of the ZAP Software;

10.4 Without limiting the generality of any other clause in this Agreement, either Party may terminate this Agreement immediately by notice in writing if:

- (a) the other Party is in breach of any term of this agreement and such breach is not remedied within 30 days of the first Party notifying it of the breach;

- (b) either Party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration or;
- (c) either Party ceases or threatens to cease conducting its business in the normal manner.

10.5 If this contract is terminated pursuant to clause 10.3 or clause 10.4; ZAP may, in addition to terminating the Agreement:

- (a) repossess any of its property in the possession, custody or control of the Customer;
- (b) retain any moneys paid in respect of products and services provided to the Customer prior to termination, provided that ZAP shall refund moneys previously paid by the Customer pursuant to this Agreement for goods or services not provided by ZAP to the Customer;
- (c) charge a reasonable sum for work performed in respect of work for which no sum has been previously charged;
- (d) be regarded as discharged from any further obligations under this Agreement; and
- (e) pursue any additional or alternative remedies provided by law.

10.6 Clauses 11, 12, 13, 17.2 and 17.3 survive termination of this Agreement.

11. Confidentiality

11.1 During the Term, the Parties may exchange Confidential Information, and each Party agrees to protect the Confidential Information of the other Party in accordance with this clause 11.

11.2 The Party receiving Confidential Information (a "Recipient") will use the Confidential Information disclosed to it by the other Party ("Discloser") only for the purposes of this Agreement, and will take reasonable steps to protect and safeguard the Confidential Information and to prevent (a) any use of Confidential Information in violation of this Agreement; (b) the Confidential Information being entered into a computer database or network that is not solely operated by it or its third party contractors who are bound by obligations of confidentiality at least as stringent as those set forth in Clause 11; and (c) communication of Confidential Information to any unauthorised third parties.

11.3 The Recipient may disclose Confidential Information only to those of its employees, directors, advisors and agents of third-party contractors (together "Authorised Persons") who (a) have a need

to know (and only to the extent that each has a need to know); and (b) are aware that Confidential Information must be kept confidential.

- 11.4 The Recipient will only have a duty to protect information disclosed to it by the Discloser (a) if it is clearly marked as “confidential” or with similar designation; (b) if it is identified by the Discloser as confidential before, during or promptly after presentation or communication; or (c) if it is disclosed in a manner in which the Recipient should reasonably have understood under the circumstances that the disclosure should be treated as confidential.
- 11.5 The obligations of confidentiality under this Agreement do not extend to information that (a) is rightfully known to or in the possession or control of the Recipient and not subject to an obligation of confidentiality on the Recipient; (b) is public knowledge (otherwise than as a result of a breach of this Agreement); (c) is independently developed by the Recipient without breach of this Agreement; (d) is disclosed by the Recipient with the Discloser’s written approval; or (e) the Recipient is required by law to disclose, provided that the Recipient shall immediately and before the disclosure is made, notify the Discloser in writing of such legal requirement.
- 11.6 The Recipient must at its expense (a) establish and maintain effective security measures to safeguard Confidential Information from access or use not authorised by this Agreement; (b) keep Confidential Information under the Recipient’s control; (c) ensure, at all times, that each person, to whom Confidential Information has been disclosed complies with this Agreement; (d) notify the Discloser immediately if it becomes aware of a suspected or actual breach of this Agreement; (e) immediately take all steps to prevent or stop the suspected or actual breach; and (f) ensure that any Authorised Persons of it to whom Confidential Information of the other Party is disclosed does each of those things.

12. Implied terms

- 12.1 Subject to clause 12.2, any condition or warranty which would otherwise be implied in the Agreement is hereby excluded.
- 12.2 Where legislation implies in the Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in the Agreement, however, the liability of ZAP for any breach of such condition or warranty shall be limited, at the option of ZAP, to one or more of the following:
- (a) if the breach relates to goods:

- (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of such goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
- (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again by a third party.

13. Liability of ZAP

Scope of Liability

- 13.1 Except in relation to liability for personal injury (including sickness and death), in no event will either Party be liable for indirect, consequential or special damages arising from or related to this Agreement. Neither Party's aggregate liability arising from or related to this Agreement shall exceed the payment received by ZAP hereunder.

Reliance

- 13.2 Subject to clause 12.2, the Customer warrants that it has not relied on any representation made by ZAP which has not been stated expressly in this Agreement or incorporated herein by reference or upon any description, illustration or specification contained in any document including any catalogue or publicity material produced by ZAP, but excluding the user documentation for the ZAP software.

No Representations

- 13.3 The Customer acknowledges that, to the extent that ZAP may have made any representation that is not otherwise expressly stated in this Agreement or incorporated herein by reference, the Customer has been provided with a reasonable and adequate opportunity to independently verify the accuracy of that representation.

Breach

- 13.4 Each Party will at all times indemnify and hold the other party, including its officers and employees, harmless from and against any loss (including reasonable legal costs and expenses but



excluding consequential losses, **lost profits, special, indirect or incidental damages**) or liability suffered or reasonably incurred by such Party, its officers or employees arising from any proceedings where such loss or liability was caused by:

- (a) a breach by such Party of its obligations under this Agreement; or
- (b) any wilful, unlawful or negligent act or omission by such Party, its officers or employees.

14. Force majeure

- 14.1 Neither Party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.
- 14.2 If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure the performance of that Party's obligations will be suspended.
- 14.3 If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds 60 days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.
- 14.4 If this Agreement is terminated pursuant to clause 14.3, ZAP shall refund moneys previously paid by the Customer pursuant to this Agreement for goods or services not provided by ZAP to the Customer.

15. Sub-contracts

ZAP may, without the consent of the Customer:

- (a) sub-contract for the performance of the Agreement or any part of the Agreement
- (b) engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of services pursuant to this Agreement.
- (c) all clauses in this agreement will equally apply to the sub-contractor, provided that no such sub-contract shall release ZAP from its obligations to provide services to the Customer hereunder. No additional agreement will be required between the Customer and the sub-contractor.

16. Disputes

16.1 Prior to initiating proceedings, other than with respect to disputes regarding unauthorized use or disclosure of Confidential Information, the parties must:

- (a) formally refer the dispute to their respective contract managers for consideration;
- (b) if the respective contract managers are unable to resolve the dispute after seven (7) days (or such other period as is agreed between the parties) from the date of referral, refer the dispute to the respective chief executive officers (or their delegates) of each Party;
- (c) if the respective chief executive officers (or their delegates) are unable to resolve the dispute after a further seven (7) days (or such other period as is agreed between the parties), the Parties may agree in good faith to undertake a formal mediation process with an independent mediator;
- (d) if the formal mediation process does not resolve the dispute after a further seven (7) days (or such other period as is agreed between the Parties) or the Parties do not elect to pursue formal mediation, each Party shall be permitted to pursue all rights and remedies available at law or in equity.

16.2 Nothing in this clause shall prevent a Party from seeking urgent equitable relief before an appropriate court.

17. General provisions

Assignment

17.1 The benefit of the Agreement may not be assigned by either Party without the other Party's written consent, provided that either Party may assign this Agreement (i) to any entity controlled by, controlling, or under common control with it, or (ii) to a successor or acquirer in connection with a merger or acquisition, or the sale of all or substantially all of such Party's assets or the sale of that portion of such party's business to which this Agreement relates, upon written notice.

Notices

17.2 All notices, demands, or consents required or permitted under the Agreement or required by law shall be in writing. Notices must be:

- (a) delivered in person or by receipt-verifiable electronic means;
- (b) sent by mail; or



(c) sent by overnight courier,

in each case properly posted and fully prepaid to the address above.

17.3 Either Party may change its address for notice by written notice to the other Party given in accordance with this Clause. Notices will be considered to have been given at the time of actual delivery in person or by receipt-verifiable electronic means if on a business day at the place of delivery, and otherwise as at 9.00am on the next business day, 3 business days at the place of delivery after deposit in the mail as set forth above, or one (1) business day at the place of delivery after delivery by the sender to an overnight courier service.

Waiver

17.4 No waiver of any provision of the Agreement shall be effective unless in writing and signed by the Party to be charged. No failure or delay by either Party in exercising any right, power, or remedy under the Agreement, except as specifically provided herein, shall operate as a waiver of any such right, power, or remedy, and will not in any way affect the validity of the whole or any part of the Agreement or prejudice such Party's right to take subsequent action. The express waiver by either Party of any provision, condition, or requirement of the Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition, or requirement.

Amendment

17.5 Subject to item 17.6 below, no modification or amendment of any provision of the Agreement shall be effective unless in writing signed by both parties. The terms and conditions of the Agreement will take precedence over all terms, provisions, or conditions of any purchase order, acknowledgment, or other business form that the Customer may use in connection with the acquisition of goods and services which will only apply to the extent that such documents are not otherwise inconsistent with the Agreement.

17.6 ZAP may make changes to any information, definition, or other provision which is referred to in this Agreement and published on any one of ZAP's websites, whether such information is also included in this Agreement or not, provided that any such changes made by ZAP will only be effective and will bind the Customer upon:

(a) The Customer's agreement to such revisions as evidenced in writing; or



- (b) The Customer's renewal of this Agreement after having been notified in writing of the proposed revisions.

Governing Law

- 17.7 This Agreement shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of California. The parties expressly agree that any legal action brought by either party shall be filed in a court of competent jurisdiction, and the parties consent and submit themselves to the personal jurisdiction and venue of said court for such purposes.

Independent Contractors

- 17.8 The parties are independent contractors. Neither Party shall be deemed to be an employee, agent, partner, nor legal representative of the other for any purpose and neither shall have any right, power, or authority to create any obligation or responsibility on behalf of the other.

Severability

- 17.9 If any provision of the Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

Entire Agreement

- 17.10 This Agreement contains the entire agreement between the parties about the subject matter; and, supersedes any previous understanding, agreement, representation, or warranty relating to the subject matter.