



## TERMS AND CONDITIONS

### 1. DEFINITIONS

**1.1 “Affiliate”** means any entity controlling, controlled by, or under common control with, a party.

**1.2 “Authorized Users”** means employees or contractors authorized by Subscriber to use the Product solely for the internal use of Subscriber and its Affiliates, subject to the terms and conditions of this Agreement.

**1.3 “Documentation”** means the user manuals, release notes, and other technical materials published by ZINATT with respect to the Product.

**1.4 “Open Source Product”** means third party open source software incorporated in the Product or otherwise provided by ZINATT to Subscriber hereunder.

**1.5 “Order”** means an order executed by the parties in the form attached to this Agreement, or another mutually agreed form, which sets forth the Products, and any Professional Services, acquired by Subscriber pursuant to such order and this Agreement. No Order will be deemed accepted by either party unless and until such party has executed such Order in writing. The terms and conditions of any other purchase orders or acknowledgements will not apply.

**1.6 “Personal Data”** means information provided to ZINATT by Subscriber, in the course of ZINATT's performance under the Agreement that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, email addresses, IP addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers,

passwords or PINs, user identification and account access credentials or passwords, financial account numbers, and other personal identifiers). Subscriber's business contact information is not by itself deemed to be Personal Data.

**1.7 “Product”** means the software-as-a-service products specified in the Order (including any updates and upgrades to the Product provided by ZINATT in its sole discretion).

**1.8 “Professional Services”** means ZINATT's provision of consulting services with respect to the Product, including implementation planning, configuration, and training. Professional Services will be described in individual Statements of Work to this Agreement executed by the parties.

**1.9 “Services”** means, collectively, the Professional Services and the Support Services.

**1.10 “Support Services”** means the support services provided by ZINATT to Subscriber as described in the Support Services Schedule attached to this Agreement.

**1.11 “Software”** means ZINATT's and its licensors' proprietary software programs, including the Documentation, any Updates (as defined in the Support Services Schedule attached to this Agreement), releases, enhancements or modifications thereto, and any derivative works thereof. The term “Product” does not include Open Source Product.

**1.12 “Statement of Work”** means any statement of work executed by the parties and referencing this Agreement, which describes the specific Professional Services to be provided by ZINATT to Subscriber with respect to the Product.

**1.13 “Subscriber Data”** means all data and/or content uploaded to the Product by Subscriber (or its Authorized Users). For the avoidance of doubt, Subscriber Data does not include Usage Data.

**1.14 “Subscription Term”** means the period of time during which Subscriber is subscribed to the Product, as specified in an Order.

**1.15 “Suppliers”** shall have the meaning set forth in Section 9.2 hereof.

**1.16 “Usage Data”** means data generated in connection with Subscriber’s or its Authorized Users’ access and use of the Product and data derived from it.

## **2. ACCESS AND USE**

**2.1 Grant of Use Right.** Subject to the payment of all applicable fees set forth in the Order and the other terms and conditions of this Agreement, ZINATT grants Subscriber, during the Subscription Term, a non-exclusive, non-transferable right to access and use (and permit Authorized Users to access and use) the Product and applicable Documentation solely for Subscriber’s internal business purposes in the quantity and for the Scope of Use specified in the applicable Order. Subscriber will operate the Product in accordance with the Documentation and be responsible for the acts and omissions of its Authorized Users and their compliance with the terms hereof.

**2.2 Restrictions.** Subscriber shall not (directly or indirectly): (i) copy, modify, translate or otherwise create derivative works of any part of the Product or Documentation; (ii) sell, resell, encumber, rent, sublicense, lease, time-share, distribute, use as a service bureau, transfer or otherwise use or exploit or make available any Product, to or for the benefit of any third party; (iii) use the Product to infringe on the intellectual property rights, publicity rights, or privacy rights of any third party, or to store defamatory, trade libelous, or otherwise unlawful data; (iv) reverse engineer, reverse assemble, decompile or convert or apply any procedure or process to the Product in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code, source listings, design, architecture, logic or algorithms for the Product, or any trade secret information or process contained in the Product (except for purposes of interoperability only to the extent permitted by and subject to strict compliance under applicable law); (v) disclose the results of any system performance metrics or

benchmarking of the Product; (vi) alter, change or remove any proprietary notices or confidentiality legends placed on or contained within the Product and Documentation; or (vii) access the Product or Documentation in order to build a competitive product or service, to build a product or service using similar ideas, features, functions or graphics of the Product, or to copy any ideas, features, functions or graphics of the Product. Subscriber’s authorized use of the Product is subject to the purchased quantities and features set forth in the applicable Order for the Product.

**2.3 Authorized Users.** Subscriber is solely responsible for ensuring: (i) that only appropriate Authorized Users have access to the Product, (ii) that such Authorized Users have been trained in proper use of the Product, and (iii) proper usage of passwords and access procedures with respect to logging into the Product. ZINATT reserves the right to refuse registration of, or to cancel, login IDs that it reasonably believes to violate the terms and conditions set forth in this Agreement.

**2.4 Ownership.** All right, title, and interest in and to the Product and Documentation, in any modification thereto, and in all related technology, information, documents, deliverables, files, and other materials, including all intellectual property and proprietary rights in connection therewith (but excluding any data or files uploaded to the Product by Subscriber), are and will remain with ZINATT or its Suppliers. Subscriber shall inform ZINATT as soon as possible of any actual or potential unauthorized access to, or use of, the Product or Documentation.

**2.5 Open Source Licenses.** The Product includes open source software programs that are made available by third parties under their respective open source licenses as indicated in the Documentation (“OSS Licenses”, respectively). Nothing herein shall derogate from mandatory rights Subscriber may have under any OSS Licenses, if any.

**2.6 Third Party Products.** Notwithstanding the foregoing, any third party vendor software with respect to which access and use is provided under an Order shall be subject, in addition to these terms, to such third party’s license terms; and, in the event of any conflict between these terms and any such third party terms, such third party terms shall govern with respect to the use of such third party software.

**2.7 No Other Rights.** Except for the limited rights and licenses to access and use the Product and Documentation expressly granted hereunder, no other license is granted, no other use is permitted and ZINATT (and its licensors) shall retain all rights, title and interests (including all intellectual property and proprietary rights) in and to the Product and Documentation.

**3. USE OF DATA.** Subscriber owns all right, title and interest in all Subscriber Data. Subscriber grants ZINATT and its Affiliates the non-exclusive right to view and use the Subscriber Data for the purpose of providing and improving the Product, and performing the Services hereunder. ZINATT shall be permitted to collect and use the Usage Data for Subscriber's benefit and for ZINATT's other business purposes; provided, that, in the event ZINATT wishes to disclose the Usage Data or any part thereof to third parties (either during the Subscription Term or thereafter), such data shall be anonymized and presented in the aggregate so that it will not identify Subscriber or its Authorized Users.

**4. SUPPORT SERVICES.** As part of its provision of the Product, ZINATT shall make available technical support to Subscriber in accordance with the Support Services Schedule attached hereto. ZINATT has no obligation to operate or support any version of the Product other than the then current version, or to backup, retain or re-deliver any Subscriber Data.

**5. PROFESSIONAL SERVICES.** From time to time, Subscriber may request, and ZINATT may agree to provide, certain implementation, integration, configuration, data analysis, development, training or other Professional Services related to the Product. ZINATT will provide Professional Services at ZINATT's then current consulting rates (or at such rates as may be otherwise agreed by the parties). The provision of Professional Services by ZINATT is subject to ZINATT's Professional Services Schedule attached to this Agreement.

## **6. FEES; TAXES**

**6.1 Fees.** In consideration for the Products subscribed, the rights granted, and the Services provided hereunder, Subscriber will pay ZINATT the total fees and expenses specified in each executed Order or Statement of Work within 30 days after the date of each ZINATT invoice for such Products and Services. If an executed Order contains different payment terms, then those terms will apply.

Subscriber will pay all amounts due under this Agreement in U.S. currency. Except as otherwise expressly set forth herein, all fees hereunder are non-cancelable and non-refundable.

**6.2 Expenses.** Subscriber will reimburse ZINATT for any reasonable out-of-pocket expenses incurred by ZINATT in performing the Services as well as for reasonable travel and living expenses incurred in connection with the Services.

**6.3 Taxes.** All payments required by this Agreement are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments (including without limitation, sales taxes, use taxes and value added taxes), and Subscriber agrees to bear and be responsible for the payment of all such charges, excluding taxes based upon ZINATT's net income. All amounts due hereunder shall be grossed-up for any withholding taxes imposed by any foreign government. If Subscriber claims exemption from any tax, then it shall furnish ZINATT with a valid tax exemption certificate issued by or acceptable to the applicable taxing jurisdiction or entity.

**6.4 Overdue Payment.** If Subscriber fails to make any payments when due, interest will accrue at the rate of 1.5% per month or the highest rate permitted by law, whichever is lower, from the original due date until paid. Subscriber will also reimburse ZINATT for all amounts incurred by ZINATT (including reasonable attorneys' fees) in collecting amounts due hereunder.

**6.5 Audit.** Subscriber will permit ZINATT and its independent accountants to audit Subscriber's books, systems, records, facilities, and accounts pertaining to use of the Product to ensure compliance with Subscriber's obligations under this Agreement. If an audit reveals that Subscriber is using any Product beyond the scope of the access and use rights granted herein then, in addition to any other remedy that may be available to ZINATT, Subscriber will pay ZINATT the underpaid subscription fees therefor, based on ZINATT'S then-current price list. If the underpayment exceeds 5% of the amount due, then Subscriber will also reimburse ZINATT for the cost of the audit.

## **7. CONFIDENTIALITY**

**7.1 Confidential Information.** "Confidential Information" means the written, oral and visual information about past, present or future products, hardware, software, or marketing and business

data, training materials, or administrative, management, financial, marketing, manufacturing, or development activities of a party which is marked or designated as confidential or proprietary. The non-public technical and non-technical information related to the Product and Documentation shall be deemed to be ZINATT Confidential Information, whether or not marked as confidential.

**7.2 Use and Nondisclosure Obligations.** The receiving party will: (a) hold the disclosing party's Confidential Information in confidence and take reasonable precautions to protect such Confidential Information (including all precautions the receiving party employs with respect to its own confidential materials), (b) not divulge any such Confidential Information or any information derived therefrom to any third person (except as set forth herein), and (c) not make any use of such Confidential Information except to carry out its rights and obligations under this Agreement. Any employee or consultant given access to any such Confidential Information must have a legitimate "need to know" and must be similarly under a duty of confidentiality no less protective of the disclosing party than this Section. Neither party will disclose to any third party the specific terms of this Agreement without first obtaining the written consent of the other party.

**7.3 Authorized Disclosures.** The receiving party may disclose Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, that, to the extent allowed by law, the receiving party must give reasonable notice to the disclosing party to allow the disclosing party to contest such order or requirement or seek confidentiality treatment. Each party may disclose Confidential Information of the other party on a confidential basis: (i) to legal or financial advisors, (ii) pursuant to a registration report or exhibits thereto filed or to be filed with the Securities and Exchange Commission, listing agency or any state securities commission, or any other associated filings, or (iii) in connection with any financing transaction or due diligence inquiry.

**7.4 Exceptions.** Without granting any right or license, the disclosing party agrees that Section 7.2 does not apply to any information that the receiving party can document by its written records (a) is or (through no improper action or inaction by the receiving party or any Affiliate, agent, consultant or employee) becomes generally available to the public, (b) was properly in its possession or known by it without restriction before receipt from the disclosing party, (c) was rightfully disclosed to it by

a third party without restriction, or (d) was independently developed without use of any Confidential Information of the disclosing party.

**7.5 Feedback.** To the extent Subscriber or its users provide or otherwise make available to ZINATT any feedback, suggestions, recommendations, data, or other input regarding the Product or Documentation or resulting from Subscriber's or such users' use thereof ("Feedback"), Subscriber hereby grants to ZINATT a non-exclusive, perpetual, irrevocable, royalty-free right and license to use such Feedback for any purpose, including without limitation to improve and enhance the Product, to develop new features or functionality, and to otherwise use and exploit such Feedback for ZINATT's business purposes.

## **8. Personal Data**

**8.1 Use of Personal Data.** As between ZINATT and Subscriber, Subscriber is solely responsible for (i) the content, quality and accuracy of Subscriber Data as made available by Subscriber and by Authorized Users, (ii) providing notice to Authorized Users with regard to how any Personal Data included in the Subscriber Data will be collected and used for the purpose of the Product, (iii) ensuring Subscriber has a valid legal basis for processing any such Personal Data and for sharing such Personal Data with ZINATT (to the extent applicable), and (iv) ensuring that any such Personal Data as made available by Subscriber complies with applicable laws and regulations including (where applicable) the EU General Data Protection Regulation (2016/679) ("GDPR"), any applicable laws of EU member states implementing the GDPR (including the UK Data Protection Act 2018), and the California Consumer Privacy Act, in each case as amended, consolidated, re-enacted or replaced from time to time and only if and insofar as they apply (collectively, "**Applicable Data Protection Laws**").

**8.2 Data Protection Laws.** The parties shall comply with their respective obligations under the Applicable Data Protection Laws. In particular, if Subscriber is established in the European Economic Area ("EEA"), in the United Kingdom ("UK") or in California, or will, in connection with the use of the Product, provide ZINATT with Personal Data relating to an individual located within the EEA, the UK or California, the parties shall comply with the Data Processing Addendum found at \_\_\_\_\_ ("DPA") which in such case is hereby incorporated into this Agreement.

**8.3 Security of Subscriber Data.** ZINATT shall (i) ensure that it has in place appropriate administrative, physical and technical measures designed to protect the security and confidentiality of any Personal Data included in the Subscriber Data against any accidental or illicit destruction, alteration or unauthorized access or disclosure to third parties; (ii) have measures in place designed to protect the security and confidentiality of such Personal Data; and (iii) access and use such Personal Data solely to perform its obligations in accordance with the terms of this Agreement, and as otherwise expressly permitted in this Agreement.

## **9. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES**

**9.1 Limited Product Warranty.** ZINATT warrants that, during the applicable Subscription Term, the Product will perform in substantial conformity with the Documentation. The foregoing warranty shall be void if the nonconformance has resulted from negligence, error, or failure to use the Product in accordance with the Documentation and this Agreement, by Subscriber, the Authorized User or by anyone other than ZINATT. Subscriber shall be required to report any breach of warranty to ZINATT within a period of thirty (30) days of the date on which the incident giving rise to the claim occurred. ZINATT's sole and exclusive liability, and Subscriber's sole and exclusive remedy, for breach of this warranty will be for ZINATT, at its expense, to use reasonable commercial efforts to promptly correct such nonconformity; and, if ZINATT is unable to correct the breach, ZINATT may terminate the affected Order and, in such event, ZINATT shall provide Subscriber with a pro-rata refund of any unused pre-paid fees paid for the period following termination for the affected Product.

**9.2 Disclaimer.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS. ZINATT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. ZINATT DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE, THAT THEIR USE WILL BE UNINTERRUPTED OR THAT THEY WILL MEET

SUBSCRIBER'S REQUIREMENTS. ZINATT'S DISCLAIMER ALSO APPLIES TO ANY OF ITS INDEPENDENT CONTRACTORS, SUPPLIERS, LICENSORS OR PROGRAM DEVELOPERS (COLLECTIVELY, "**SUPPLIERS**").

**9.3 Inherently Dangerous Applications.** The Products are not are not fault-tolerant and are not designed, manufactured or intended for use as on-line control equipment in hazardous environments or high risk applications regarding fail-safe performance, such as in life support devices or systems or for use in aviation, nuclear or any other inherently dangerous application in which the failure of the Products could lead directly to death, personal injury or severe physical or environmental damage ("**High Risk Activities**"). ZINATT and its Suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities. Subscriber will defend, indemnify and hold ZINATT harmless from and against any claims for losses, costs, damages, or liability arising out of or in connection with Subscriber's use of the Products in High Risk Activities.

## **10. LIMITATION OF LIABILITY**

**10.1** IN NO EVENT WILL (A) EITHER PARTY (INCLUDING, IN THE CASE OF ZINATT, ITS SUPPLIERS) BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR OTHER DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND (B) THE LIABILITY OF ZINATT (INCLUDING, IN THE CASE OF ZINATT, ITS SUPPLIERS) UNDER ANY CLAIM ARISING OUT OF THIS AGREEMENT EXCEED IN THE AGGREGATE THE TOTAL AMOUNT PAID BY SUBSCRIBER HEREUNDER FOR THE PRODUCT GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.

**10.2** THE FOREGOING LIMITATIONS IN SECTION 10.1 WILL NOT APPLY TO (A) SUBSCRIBER'S BREACH OF THE TERMS AND RESTRICTIONS SET FORTH IN SECTION 2 (ACCESS AND USE) OR ANY INFRINGEMENT OF ZINATT'S INTELLECTUAL PROPERTY RIGHTS, AND/OR (B) CLAIMS RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**10.3** THE LIMITATIONS OF LIABILITY SET FORTH HEREIN ARE INDEPENDENT OF EACH OTHER AND ANY LIMITED REMEDY AND WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE LIMITATIONS OF LIABILITY REFLECT A DELIBERATE AND BARGAINED FOR ALLOCATION OF RISKS BETWEEN ZINATT AND SUBSCRIBER AND CONSTITUTE THE BASIS OF THE PARTIES' BARGAIN, WITHOUT WHICH ZINATT AND SUBSCRIBER WOULD NOT HAVE AGREED TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

## **11. TERM AND TERMINATION**

**11.1 Term.** This Agreement will commence on the Effective Date and will continue until terminated in accordance with this Agreement. The initial Subscription Term for use of a Product shall be as set forth in the applicable Order. Upon expiration of the initial Subscription Term for the Product, the Subscription Term will automatically renew for additional, consecutive periods equal to the length of the initial Subscription Term (the "Renewal Terms"). Either party may elect non-renewal of a Subscription Term by providing written notice thirty (30) days prior to the expiration of the initial Subscription Term or Renewal Term then in effect, as applicable. Additional Orders and/or SOWs may be executed at any time during the initial Subscription Term, Renewal Term(s) or as part of a renewal.

**11.2 Termination.** Each party may terminate this Agreement if the other party defaults under any term of this Agreement and the defaulting party fails to cure such default within thirty (30) days after receiving notice of such default from the non-defaulting party (or, if the default cannot be cured, immediately upon receipt of such notice). Termination is not an exclusive remedy. In addition, either party may terminate this Agreement or an Order, upon thirty (30) days prior written notice, for convenience, provided however that: (i) if ZINATT so terminates the Order, it will refund the fees paid to it for the unused Subscription Term to the Subscriber, pro-rated, and (ii) if Subscriber so terminates the Order, it shall not be entitled to any refund.

**11.3 Immediate Termination.** ZINATT or Subscriber may immediately terminate this Agreement upon written notice if the other party: (a) ceases to carry on business as a going concern, (b) becomes the object of the institution of voluntary

proceedings in bankruptcy or liquidation, or (c) becomes the object of the institution of involuntary proceedings in bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets, if such petition or proceeding is not dismissed or receiver discharged within 30 days of filing or appointment.

**11.4 Effect of Termination.** Upon termination or expiration of an Order: (i) Subscriber will have no further right to access or use the Product; and (ii) each party shall within thirty (30) days after written request return or destroy any tangible Confidential Information of the other party within its possession or control that is not contained on the Product. Subscriber acknowledges that it is responsible for exporting any Subscriber Data contained on the Product to which Subscriber desires continued access after termination/expiration, and ZINATT shall have no liability for any failure of Subscriber to retrieve such Subscriber Data and no obligation to store or retain any such Subscriber Data after the sixty (60) calendar day period immediately following the effective date of termination/expiration of Subscriber's Subscription Term. Following termination of the Product, ZINATT may immediately deactivate Subscriber's account. Any accrued rights and obligations will survive termination.

**11.5 Injunctive Relief.** The breach of Sections 2.1, 2.2, 2.4 or 7 would cause irreparable harm to one or both parties, the extent of which would be difficult to ascertain. Accordingly, in addition to any other remedies to which such other party may be legally entitled, each party will have the right to seek immediate injunctive relief in the event of a breach of such sections by the other party without the requirement of posting a bond.

**11.6 Survival.** The rights and obligations of the parties contained in Sections 1, 2, 3, 6 (6.5 for only two years), 7, 8, 10, and 12, and any other provisions that may reasonably be assumed to be intended to survive termination, will survive termination of this Agreement.

## **12. GENERAL**

**12.1 Relationship of the Parties.** The parties to this Agreement are at all times independent contractors, and nothing in this Agreement will be construed as creating a partnership, employment, agency or other joint venture relationship. Neither party will have the power to bind the other or incur

obligations on the other's behalf without the other's prior written consent.

**12.2 Publicity.** Subscriber agrees to allow the use of Subscriber's name and logo on ZINATT's website and marketing materials to represent that Subscriber is a customer. Also, if so indicated on an Order, Subscriber will provide a testimonial regarding its use and endorsement of the Products for use in a press release and marketing materials by ZINATT.

**12.3 Governing Law.** This Agreement will be exclusively governed and construed in accordance with the laws of the State of Arizona without regard to conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act as it may be enacted in the applicable jurisdiction will not apply to this Agreement. The parties agree to submit to the personal and exclusive jurisdiction of the courts located within Pima County, Arizona. If either party employs attorneys to enforce any rights arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs from the other party. For purposes of this section only, "prevailing party" means the party that prevails on a majority of causes of action in such dispute.

**12.4 Force Majeure.** Except for Subscriber's obligations to pay ZINATT hereunder, neither party will be liable to the other party for any failure or delay in performance due to causes beyond its reasonable control, including but not limited to, fire, earthquake, pandemic, war, riot, act of God or governmental action.

**12.5 Export.** The exportation of the Products, and all related technology and information thereof are subject to U.S. laws and regulations pertaining to export controls and trade and economic sanctions, including the U.S. Export Administration Act, Export Administration Regulations, the Export Control Reform Act, and the Office of Foreign Assets Control's sanctions programs, and the laws of any country or organization of nations within whose jurisdiction Subscriber operates or does business, as amended, and the rules and regulations promulgated thereunder. Specifically, Subscriber hereby undertakes not to export, re-export or grant access to the Products and all related technology, information, materials and any upgrades thereto to: (a) anyone on the U.S. Commerce Department's Denied Persons, Entity, or Unverified Lists or the

U.S. Treasury Department's list of Specially Designated Nationals and Consolidated Sanctions list (collectively, "Prohibited Persons"); (b) any country to which such export, re-export or grant of access is restricted or prohibited per the foregoing applicable laws; or (c) otherwise in violation of any applicable export or import restrictions, laws or regulations. Customer also certifies that it is not a Prohibited Person nor owned, controlled by, or acting on behalf of a Prohibited Person.

**12.6 Government Rights.** The Software provided under this Agreement is "commercial computer software" as that term is described in Defense Federal Acquisition Regulation Supplement ("DFARS") 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202 and its successors. The use of the Software and Documentation is further restricted in accordance with the terms of this Agreement, or any modification thereto.

**12.7 Third Party Beneficiaries.** Unless otherwise expressly agreed in writing by the parties, no provisions of this Agreement are intended or will be construed to confer upon or give to any person or entity other than Subscriber and ZINATT any rights, remedies or other benefits under or by reason of this Agreement.

**12.8 Amendment and Waiver.** No modification, amendment or waiver of any provision of this Agreement will be effective unless in writing and signed by the parties' duly authorized representatives. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

**12.9 Precedence.** To the extent there is a conflict between the terms in the main text of this Agreement and any terms in the Schedules and the other referenced documents, then the following precedence will apply: (1) Order; (2) the main text

of the Agreement; and (3) the other Schedules and referenced documents.

**12.10 Severability.** In the event any provision of this Agreement, or part thereof, is found to be invalid, illegal or unenforceable, that provision or part thereof will be enforced to the maximum extent permitted by law and the remainder of this Agreement will remain in full force.

**12.11 Assignment and Subcontracting.** Subscriber may not assign or transfer this Agreement, whether in whole or part, or any of its rights, duties or obligations arising under this Agreement without the prior written consent of ZINATT. Any attempted assignment in violation of this section will be void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. ZINATT may provide Services under this Agreement by using ZINATT-selected independent contractors

**12.12 Notices.** All notices, demands or consents required or permitted under this Agreement will be in writing and will be deemed to have been fully given and received on the earlier of actual receipt or: (a) when sent by confirmed facsimile, (b) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (c) one business day (two business days for international addresses) after deposit with an express commercial courier, with written verification of such receipt. All communications will be sent to the party's official address, or at such address as the party may specify herein or may specify later in writing for such purposes.

**12.13 Counterparts and Headings.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. The headings used in this Agreement are for reference only and do not change the meaning of any provision of this Agreement, and will not be used in interpretation of any provision of this Agreement. When used herein, "include" or "including" means "including but not limited to".

**12.14 Entire Agreement.** This Agreement, including all Orders, any Schedules, Statements of Work and referenced documents represent the complete and exclusive statement of the terms of the agreement between the parties regarding the subject matter hereof, and supersede any and all

other prior or contemporaneous agreements, representations, discussions, communications or understandings, whether written or oral, between them relating to the subject matter hereof.





## **SUPPORT SERVICES SCHEDULE**

### **(Subscription Agreement)**

This Support Services Schedule describes ZINATT's Support Services, as referenced in the Subscription Agreement by and between ZINATT and Subscriber. Unless otherwise specified, terms defined in the Agreement will apply to these Support Terms.

In consideration for the annual Subscription fees paid by Subscriber, ZINATT will use commercially reasonable efforts to provide the Support Services set forth below for the Product subscribed by Subscriber.

For purposes of this Schedule, the term "**Product**" will include Open Source Product and any third party Add On software included within Subscriber's Order.

### **1. DESCRIPTION OF SUPPORT SERVICES**

ZINATT shall use reasonable efforts to provide workarounds for, and to correct reproducible programming errors in, the Product attributable to ZINATT that prevent the Product from performing in accordance with its operating specifications. Upon identification of any programming error, Subscriber shall notify ZINATT of such error and shall provide ZINATT with information sufficient to locate and duplicate the error. ZINATT does not guarantee that it will be able to correct every error.

As a condition to the provision of Support Services, Subscriber will: (i) appoint two (2) employees (the "Support Representatives"), who are reasonably familiar with the Product and its functionality, to serve as primary contacts between Subscriber and ZINATT, and will ensure that Subscriber's support inquiries are initialized and handled through these contacts; and (ii) provide ZINATT with reasonable access to all necessary personnel to provide information regarding errors or problems reported by Subscriber. Subscriber shall be solely responsible for ensuring that its data has been backed up prior to ZINATT's performance of Support Services.

ZINATT will provide reasonable assistance for support requests by the Support Representatives via [e-mail](mailto:support@zinatt.com) at [support@zinatt.com](mailto:support@zinatt.com) or via telephone at 520.838.0346 during the hours 8:00 A.M. to 8:00 P.M. Monday through Friday Mountain Standard Time (excluding U.S. Federal and ZINATT-designated holidays). A Support Representative must provide the name of their company and contact information, when contacting ZINATT's help desk.

### **3. UPDATES**

If, during the Subscription Term, ZINATT commercially releases any Update to the Product, ZINATT will implement such Update to the Product, as part of the Support Services. For purposes hereof, "Update" means any published (i) new release of the Product which is not designated by ZINATT as a new product for which it charges separately; and/or (ii) error correction or functional enhancement to the Product. ZINATT shall not be required to release any Updates, and ZINATT shall determine, in its sole discretion, whether and when an Update shall be made to the Product. Subscriber shall not have the right to reject an Update to the Product that ZINATT chooses to implement.

#### **4. EXCLUSIONS**

ZINATT shall not be required to provide Support Services with respect to problems resulting from: (i) any alterations of, or additions to, the Product; (ii) any request for additional work not falling within the scope of ZINATT's Support Services outlined in this Schedule; (iii) use of the Product in a manner for which it was not designed or subscribed for, or that otherwise does not conform to the Documentation; or (iv) Subscriber's negligence or other causes beyond the reasonable control of ZINATT.

#### **5. MODIFICATION/DISCONTINUANCE**

ZINATT reserves the right to modify the terms and conditions of Support Services, provided that any such modification will not substantially diminish the level of Support Services that Subscriber is receiving during the then current Subscription Term.



## **PROFESSIONAL SERVICES SCHEDULE (SUBSCRIPTION AGREEMENT)**

This Schedule describes ZINATT's standard Professional Services terms and conditions, as referenced in the Subscription Agreement (the "**Agreement**"), by and between ZINATT and Subscriber. Unless otherwise specified, capitalized terms used but not defined herein shall have the meanings assigned to them in the Agreement.

### **1. GENERAL.**

**a.** Subscriber may request that ZINATT provide Subscriber with Professional Services. If ZINATT agrees to do so, the parties will enter into a Statement of Work which describes the Professional Services to be supplied. Upon signature by both parties, each Statement of Work is hereby incorporated into and becomes a part of the Agreement. In the event of any inconsistency between the terms and conditions of this Schedule and the terms and conditions of the applicable Statement of Work, the terms and conditions of the applicable Statement of Work will govern and control.

**b.** Each Statement of Work may also set forth, as applicable, objectives to be accomplished; assumptions upon which the Statement of Work is based; the responsibilities of the parties; a description of any works of authorship and deliverables (other than the Product) to be delivered to Subscriber ("**Work Product**"); an estimated schedule (including commencement date and duration of Services); pricing; and other applicable information. If a Statement of Work contains an estimated schedule, each party agrees to make reasonable efforts to carry out its responsibilities according to that schedule.

**c.** Subscriber shall provide information, access to systems or facilities, and assistance as reasonably required by ZINATT to perform Professional Services; and ZINATT will not be responsible for delays caused by events or circumstances beyond its reasonable control or Subscriber's failure to provide information, access or assistance as reasonably required by ZINATT.

**2. MODIFICATIONS TO A STATEMENT OF WORK.** Either party may request changes to a Statement of Work (a "Change Order"). Any change in the Statement of Work may affect the charges, estimated schedule, or other terms. When the parties agree to change a Statement of Work, ZINATT will prepare a written description of the agreed-upon change which must be signed by both parties. While the parties are discussing a Change Order request, ZINATT will continue to work in accordance with the existing Statement of Work.

**3. SUBSCRIBER MATERIALS.** Subscriber will provide prompt and timely delivery of any required Subscriber materials identified in the applicable Statement of Work. Subscriber hereby grants ZINATT a non-exclusive, royalty-free license to use, copy, modify and create derivative works of the Subscriber materials for the purpose of providing Professional Services to Subscriber under this Agreement.

**4. OWNERSHIP OF WORK PRODUCT.** Except as otherwise provided in a Statement of Work, ZINATT (or its licensors) shall own all right, title, and interest to all Work Product (including all copyrights, patents, trade secrets and other intellectual property rights therein). ZINATT will deliver one copy of each Work Product to Subscriber, and hereby grants Subscriber the nonexclusive right to use copies of each such Work Product solely in connection with its use of the Product to the same extent and pursuant to the same terms and conditions as provided in this Agreement for such Product. In addition, nothing herein shall preclude ZINATT from using for itself, or for performing services to others, any general knowledge, skills, experience, ideas, concepts, know-how, methods and techniques used or developed by ZINATT in the performance of the Professional Services.

**5. TERMINATION OF A STATEMENT OF WORK.** Either party may terminate a Statement of Work any time upon ten days prior written notice to the other party. In the event of any termination under this Section, Subscriber will be liable to make any payments which are due hereunder to ZINATT for work performed up to the date of such termination.