



## Customer Agreement

This Customer Agreement is between Zetaris Pty Limited ABN 24 158 548 997 (**Zetaris**) and the purchaser of the Product specified in the Order (**Customer**).

available by Zetaris at all times and takes all reasonable measures to protect the security, confidentiality and integrity of the Software.

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### 1 Grant of Rights

**1.1 Use rights.** Zetaris grants Customer a non-exclusive and non-transferable right to use, and permit its End Users to use, the Product, solely for the Approved Purpose during the Subscription Term, subject to compliance with the terms of the Agreement.

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### 2 Use of Product

**2.1 Product Restrictions.** Customer must ensure that:

- (a) neither Customer nor any End User reverse engineers, decompiles or disassembles the Product, views or gains access to the source code to the Product, or uses the Product to provide any product or service that is an alternative, substitute or competitor to the Product;
- (b) neither Customer nor any End User copies, develops any modification, enhancement, derivative work or other development of the Product or incorporates any Customer, End User or third party material into the Product (except as expressly permitted under the Approved Purpose);
- (c) neither Customer nor any End User uploads to the Product any material that is unlawful, harmful, malicious, threatening, defamatory, obscene, infringing, offensive, sexually explicit, violent or discriminatory;
- (d) neither Customer nor any End User removes any product identification, proprietary, trade mark, copyright or other notices applied to or contained in the Product;
- (e) no person other than Customer, and its authorised End Users, accesses or uses the Product;
- (f) it promptly notifies Zetaris in writing if Customer wishes to permit a person other than Customer, or its authorised End Users, to access and use the Product;
- (g) neither Customer nor any End User installs, hosts, accesses, uses, uploads data or logic to, uses the output of, or otherwise exploits the Product, except as permitted under clause 1.1.
- (h) neither Customer nor any End User accesses or uses the Product by any unauthorised means, including using any bot, script, spider, crawler, scraper, API or automated device;
- (i) where Customer has purchased the Software:
  - (i) it must only install and host the Software in the Environment; and
  - (ii) it downloads, installs and uses the current version of the Software made

**2.2 Support Services.** Zetaris must provide Support Services for the Product for the duration of the Subscription Term (the Service includes the provision of the Support Services at no additional cost). Customer must provide all information and assistance reasonably required by Zetaris to perform the Support Services.

**2.3 Service Credits.** If Customer wishes to purchase Service Credits from Zetaris, the parties must agree a SOW. Once executed by both parties, a SOW forms part of the Agreement.

**2.4 Evaluation use.** If Zetaris permits Customer to evaluate the Product prior to purchasing a subscription:

- (a) the right in clause 1.1 is limited to access and use of the Product for a period of up to 30 days (**Evaluation Period**) solely for Customer's internal evaluation of the Product (without any right to use the Product for commercial, external or any other purpose);
- (b) Zetaris provides the Product "as is" and excludes all warranties, indemnities, obligations and liabilities under the Agreement for the duration of the Evaluation Period; and
- (c) upon expiry of the Evaluation Period, Customer must immediately cease using and delete any copy of the Product unless Customer purchases a subscription to the Product, in which case all terms of the Agreement apply from commencement of the paid Subscription Term.

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### 3 Customer responsibilities

**3.1 Usage responsibilities.** Customer uses the Product at its own risk and is solely responsible for:

- (a) ensuring that the Product, accessed and used (and in the case of the Software is installed and hosted) strictly in accordance with the Agreement. Customer is responsible for each act and omission of an End User in connection with the Product as though it were an act or omission of Customer;
- (b) ensuring that the Approved Purpose, Customer's and each End User's use of the Product, and all data and logic uploaded to the Product, complies with all applicable laws, regulations and contractual obligations;
- (c) obtaining all consents, licences and approvals necessary to lawfully collect, upload, store, process and disclose all data and logic (including that protected by Intellectual Property Rights, confidentiality, or privacy) uploaded to the Product, all output of the Product and the Approved Purpose;

- (d) where the Customer has purchased the Service, implementing all steps and controls necessary to secure and keep confidential all user credentials issued to Customer and its End Users when using the Service;
- (e) where the Customer has purchased the Software, secure the Environment and Software to the standards required under applicable laws, regulations and contractual obligations;
- (f) providing all support and maintenance required by its End Users other than the Support Services; and
- (g) the accuracy, truthfulness, completeness, veracity and legality of the output of the Product and the Approved Purpose.

**3.2 Case of Damage** Under no circumstances shall Zetaris or any of its affiliates be held liable for any indirect, incidental, special, exemplary, punitive, reliance, or consequential damages of any kind, including but not limited to damages for loss of business profits, business interruption, or loss of business information, arising out of or in connection with the use or inability to use the product, regardless of the legal theory upon which any claim for such damages may be based, and even if Zetaris or any of its affiliates have been advised of the possibility of such damages

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#### 4 Fees, invoicing and payment

**4.1 Fees.** The Fees are payable in consideration of Zetaris' supply of the Product and any ancillary services. Customer must provide information relating to its use of the Product as required to enable Zetaris to calculate the Fees payable. Zetaris may increase the Fees at any time, unless agreed otherwise with Customer.

**4.2 Invoicing and payment.** Zetaris must issue invoices for the Fees to Customer at the times specified in the Order or applicable SOW. Customer must pay all Fees invoiced by Zetaris, without any set-off or deduction and in immediately available funds, by the method and within the period specified in the Order or SOW. All Fees invoiced by Zetaris are non-cancellable and non-refundable.

**4.3 Late Payment.** If Customer fails to pay any Fees (that are not disputed in good faith) by the due date for payment, Zetaris may:

- (a) suspend Customer's right to use the Product, provided that Zetaris has given Customer notice of the failure and Customer has not rectified the failure within 14 days of the date of such notice; and
- (b) charge interest at a rate of 2 percent per annum above the current published overdraft rate of the Commonwealth Bank of Australia,

in each case, from the due date for payment until the date that payment is made by Customer.

**4.4 Verification.** Zetaris may on 14 days' notice conduct an audit of Customer's use of the Product and compliance with the Agreement from time to

time during the Subscription Term. Customer must provide all access to the Environment (in the case of the Software), End Users, records, premises and personnel reasonably requested by Zetaris in connection with any such audit. Zetaris must bear the costs of any such audit unless the audit reveals that Customer has used, or permitted the use of, the Product in breach of the Agreement (including use in excess of any limitations set out in the Order), in which case, Customer must immediately:

- (a) pay to Zetaris all additional Fees payable in respect of any excess use (at Zetaris' then current list prices) in addition to Zetaris' reasonable audit costs; and
- (b) take all other steps required to remedy the breach of the Agreement and prevent its recurrence at its own cost.

**4.5 Taxes.** The Fees are exclusive of all taxes, levies, withholdings, duties and other amounts imposed by taxing authorities. Where a supply is a taxable supply, all amounts payable must be increased by the amount of GST, VAT, sales tax, or other consumption tax payable in relation to the supply. All such taxes must be paid at the time any payment for any supply to which it relates is payable (provided a valid tax invoice has been issued for the supply).

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#### 5 Intellectual Property Rights

**5.1 Ownership.** All Intellectual Property Rights in and to the Product and output of the Service Credits, including those in any copy, modification, enhancement, configuration, derivative work or other development of the Product developed by or on behalf of Customer and End Users, vests or remain vested in Zetaris or its licensors. If any such Intellectual Property Right vests in Customer or End Users, Customer hereby assigns, and must procure that each End User assigns, that Intellectual Property Right to Zetaris with immediate effect. Customer must take all further steps (including execution of documents) necessary to give effect to this clause.

**5.2 No other rights.** Neither Customer nor any End User receives any right, title or interest in or to the Product other than the right to use it expressly granted to Customer under clause 1.1.

**5.3 Notice of infringement.** Customer must immediately notify Zetaris in writing upon becoming aware of any:

- (a) infringement or unauthorised use of the Product by any person, including any End User; or
- (b) claim by any person that use of the Product by Customer in accordance with the Agreement infringes any copyright or patent owned by that person in Australia (**IP Claim**).

**5.4 Remedial action.** If the Product is the subject of an IP Claim, Zetaris may (at its cost and option) either:

- (a) procure the right for Customer to continue using the Product;
- (b) modify the Product such that it no longer infringes the relevant Intellectual Property Rights; or

- (c) terminate the Agreement and provide Customer with a pro-rata refund of any Fees paid in advance for use of the Product.

This clause 5.4 and clauses 9.4 sets out Customer's sole and exclusive remedy in respect of any IP claim.

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## 6 Customer Data, Usage data and Analyses

**6.1 Rights.** As between Zetaris and Customer, all rights in and to the Customer Data vest or remain vested in Customer at all times.

**6.2 Licence.** Customer:

- (a) grants Zetaris, its sub-processors and their respective personnel the right to Process the Customer Data; and
- (b) warrants that it has obtained all consents, licences and approvals from individuals, End Users and other third parties necessary to enable Zetaris, its sub-processors and their respective personnel to Process the Customer Data,

in each case, solely for the purpose of providing, the Product, Support Services and as set out in this clause.

**6.3 Usage data and analyses.** Zetaris may:

- (a) use data relating to Customer's and End User's use of the Product for billing, capacity planning, compliance, security, integrity, availability, providing and improving the Product; and
- (b) freely create, use, disclose and Process analyses, materials, data, insights, works and other things derived from (wholly or partly) use of the Product and the Customer Data in anonymised and aggregated form such that neither Customer nor End Users are identifiable.

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## 7 Privacy and data protection

**7.1 Privacy.** Each party must comply with all Privacy Laws applicable to that party (whether as controller or processor) in Processing any Personal Data comprised in the Customer Data. Customer acknowledges that Personal Data, other than that comprised in the Customer Data, will be Processed in accordance with Zetaris' privacy policy.

**7.2 Data Security.** Zetaris must implement reasonable technical and organisational security controls to protect the Customer Data stored in the Service against loss, unauthorised access, modification and disclosure (**Data Breach**) in accordance with applicable Privacy Laws, including:

- (a) not disclosing the Customer Data except to its sub-processors and their respective personnel for the purpose of performing the Agreement; and
- (b) maintaining appropriate business continuity and disaster recovery measures for the Service, provided that Customer remains responsible for regularly downloading and backing up its own Customer Data using the Service.

**7.3 Data Breaches.** If either party becomes aware of any actual or suspected Data Breach affecting the Customer Data stored in the Service:

- (a) that party must promptly notify the other party in writing, including in such notice all known details of the actual or suspected Data Breach;
- (b) Zetaris must provide Customer with information and assistance reasonably required by Customer to investigate and assess the actual or suspected Data Breach;
- (c) Customer is solely responsible for determining whether the actual or suspected Data Breach is notifiable under Privacy Laws, subject to clause 7.3(e);
- (d) Customer must not reference Zetaris in any notification or communication relating to the actual or suspected Data Breach without Zetaris' prior written approval as to the form and content of the reference; and
- (e) Zetaris may make a notification or communication about the Data Breach if Customer fails to do so and Zetaris is required to do so under applicable Privacy Laws.

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## 8 Confidentiality

**8.1 Obligation of confidence.** Each party (**Recipient**) must ensure that it keeps confidential and does not use or disclose any Confidential Information of the other party (**Discloser**) except as permitted by this clause 9.

**8.2 Permitted use.** The Recipient may use the Confidential Information of the Discloser solely to the extent necessary to exercise its rights and obligations under the Agreement.

**8.3 Permitted disclosures.** The Recipient may disclose Confidential Information of the Discloser:

- (a) to the Affiliates, personnel and professional advisers of the Recipient that need to know the Confidential Information for the purposes of the Agreement and that are subject to binding obligations of confidence at least as stringent as those set out in this clause;
- (b) to the extent required by law or the rules of any stock-exchange; and
- (c) with the prior written consent of the Discloser.

To avoid doubt, either party may make public statements about the existence of the Agreement and the fact that it is a supplier or customer of the other (as applicable), including referencing the other party's name and logo, without being in breach of this clause.

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## 9 Warranties and indemnities

**9.1 Warranties.** Zetaris warrants that:

- (a) the Service will operate substantially in accordance with its published specifications during the Subscription Term
- (b) the Software will operate substantially in accordance with its published specifications for a period of 90 days following being made available to Customer; and

- (c) it will provide the Product, Support Services and any Service Credits with due care and skill.

Zetaris must, as Customer's sole and exclusive remedy, repair, replace or resupply any part of the Product, Support Services or Service Credits which do not comply with the warranties in this clause within a reasonable period of confirmation of the non-compliance.

**9.2 No other terms.** To the extent permitted by law, Zetaris excludes all conditions, warranties and guarantees other than those set out expressly in the Agreement. Without limitation, Zetaris does not warrant that the Product, Support Services or any Service Credits will be:

- (a) continuous, free from errors, omissions, defects, security risks or vulnerabilities; or
- (b) fit for any purpose or meet the requirements of Customer or any End User.

**9.3 Non-excludable terms.** If any condition, warranty or guarantee cannot be excluded at law, then to the extent permitted by law, Zetaris' liability for breach of such condition, warranty or guarantee is limited (at Zetaris' option) in the case of:

- (a) the Software, to the repair or replacement of the Software, the supply of equivalent Software, or payment of the cost of the same; and
- (b) the Service, Support Services or Service Credits, to the resupply of the Service, Support Services or Service Credits, or payment of the cost of the same.

**9.4 Customer indemnity.** Customer indemnifies Zetaris and its Affiliates against and must pay on demand all loss and damage suffered or incurred by any of them arising out of or in connection with:

- (a) any claim relating to the installation, access to, use of, uploading of data or logic to, use or reliance on any output of the Product or Approved Purpose by Customer or End Users, including any claim made by a third party; and
- (b) any breach of clause 1.1, 2, 3, 4, 5, 6, 7 and 8, in each case, except to the extent that the claim or breach is caused or contributed to by Zetaris.

**9.5 Conduct of claims.** The indemnification obligation of a party (**indemnifying party**) under clause **Error! Reference source not found.** or 9.4 in respect of any third party claim is subject to the other party:

- (a) promptly notifying the indemnifying party of the third party claim;
- (b) permitting the indemnifying party to control the defence of the third party claim; and
- (c) providing (at the indemnifying party's cost) all information and assistance reasonably requested by the indemnifying party in connection with the defence of the third party claim.

**9.6 Sole and exclusive remedy.** Without prejudice to the termination rights of each party:

- (a) clause **Error! Reference source not found.** sets out Customer's sole and exclusive remedy in respect of the matters indemnified by Zetaris; and
- (b) clause 9.4 sets out Zetaris' sole and exclusive remedy in respect of the matters indemnified by Customer.

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## 10 Liability

**10.1 Exclusion of Indirect Loss.** To the extent permitted by law, each party excludes any and all liability arising out of or in connection with the Agreement, whether in contract, tort (including negligence) or any other basis in law or equity for any Indirect Loss.

**10.2 Limitation of liability.** The liability of a party arising out of or in connection with the Agreement, whether in contract, tort (including negligence) or any other basis in law or equity, in any Subscription Year is limited to an amount equal to the Fees paid or payable by Customer under the Agreement in that Subscription Year, subject to clause 10.3.

**10.3 Unlimited liability.** The limitation of liability in clause 10.2 does not apply to the liability of a party:

- (a) under any indemnity given by that party;
- (b) to pay Fees that are due and payable; or
- (c) for any matter in respect of which liability may not be limited at law.
- (d) Injunctive relief. Customer acknowledges that damages are not a sufficient remedy for any breach of clause 1.1, 2, 3, 4, 5, 6, 7 and 8, of the Agreement and that Zetaris is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or anticipated breach of those clauses (in addition to any other remedies).

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## 11 Term, suspension and termination

**11.1 Subscription Term.** The Agreement will remain in force for the Term, unless terminated earlier in accordance with this clause 11.

**11.2 Suspension.** Zetaris may suspend the right granted pursuant to clause 1.1:

- (a) during any period in which Customer is in breach of the Agreement (subject to clause 4.3(a) in the case of late payment); or
- (b) to prevent or mitigate actual or suspected illegal activity, damage to Zetaris' systems, or threat to the integrity of the Product.

**11.3 Termination for cause.** A party may terminate the Agreement with immediate effect on written notice if the other party:

- (a) commits a material breach of the Agreement and fails to remedy that breach within 14 days of receipt of a notice specifying the breach and requiring it to be remedied. Any breach by Customer of clauses 1.1, 2, 3, 4, 5, 6, 7 and 8, is a material breach for the purposes of this clause; or
- (b) becomes subject or threatens to become subject to, any form of insolvency or bankruptcy proceeding, appoints a liquidator,

receiver or administrator, enters into an arrangement with its creditors, ceases to trade or do business in the ordinary course or is otherwise unable to pay its debts as and when they fall due.

**11.4 Consequences of termination or expiry.** On termination or expiry of the Agreement:

- (a) all rights to the Product granted under the Agreement cease immediately and Customer must immediately cease using Product, and delete all copies of the Software in its possession or control; and
- (b) where the Customer has purchased the Service, Zetaris has no further obligation to retain the Customer Data, provided that Zetaris permits Customer to access the Service for the sole purpose of downloading the Customer Data from the Service for a period of 30 days following expiry or termination; and
- (c) Customer must immediately pay Zetaris all Fees due and payable as at the date of termination or expiry and, if Zetaris terminates pursuant to clause 11.3, all Fees payable for the remainder of the Subscription Term.

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## 12 Miscellaneous

**12.1 Entire agreement.** This Customer Agreement, the Order and any SOW are the entire agreement between the parties in respect of their subject matter. In the event of any inconsistency between the terms of this Customer Agreement, the Order and any SOW, the terms of the document listed first will prevail to the extent of the inconsistency.

**12.2 Amendment.** Zetaris may amend this Customer Agreement at any time by posting the amended version of this Customer Agreement on its website (<https://www.zetaris.com>). Any amended version of this Customer Agreement will only apply to Orders entered into following the date of the amendment to this Customer Agreement.

**12.3 Force Majeure Events.** Zetaris is not liable for any delay nor failure to perform its obligations under the Agreement to the extent such delay or failure is due to a Force Majeure Event.

**12.4 Severance.** If a provision of the Agreement is unenforceable, the provision will be read down to the extent necessary to avoid that result and if the provision cannot be read down to that extent, it will be severed without affecting the validity and enforceability of the remainder of the Agreement.

**12.5 Transfer.** Customer must not assign, subcontract, novate or otherwise dispose of its rights or obligations under the Agreement without the prior written consent of Zetaris.

**12.6 Waiver.** A party waives a right under the Agreement only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

**12.7 Third party rights.** No person other than Zetaris and Customer has the right to enforce any term of the Agreement (whether at law or otherwise) or approve any amendment to the Agreement.

**12.8 Relationship of the parties.** The parties are and will remain independent contractors. Nothing contained in the Agreement will be construed to create an agency, joint venture, partnership or other relationship between the parties.

**12.9 Governing Law.** The Agreement is governed by the laws of Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia (and relevant appellate courts) and waives any objection to proceedings being brought in those courts.

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## 13 Definitions

In this Customer Agreement, these terms have the following meanings:

**Affiliate** means of a party means an entity that Controls, is Controlled by, or is under common Control with that party.

**Agreement** means the agreement consisting of this Customer Agreement, the Order and any SOW.

**Approved Purpose** means a specific approved use of the Product specified in the Order.

**Confidential Information** means information that is marked, designated or by its nature confidential relating to the business or affairs of a party or its Affiliate:

(a) including the terms of the Agreement and, in the case of Zetaris, all source code to, Zetaris Data comprised in, and pricing for the Product; but

(b) excluding any such information that is in the public domain (other than as a result of a breach of confidence).

**Control** in respect of a person, includes the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise, and includes the following:

(a) direct or indirect ownership of more than 50% of the voting rights of such person; or

(b) the right to appoint the majority of the members of the board of directors of such person (or similar governing body) or to manage on a discretionary basis the assets of such person.

**Credits** means any support, implementation, training, data migration or other services provided to Customer in conjunction with Product, not forming part of the Support Services, specified in the Order.

**Customer Data** means any data, information or material uploaded to, or Processed through, the Service by Customer or End Users, excluding Zetaris Data.

**End User** means any person who accesses or uses the Service through Customer's subscription or the Software licensed to Customer.

**Environment** means, in the case of the Software, the Customer's computing environment specified in the Order, and in the case of the Service, Zetaris' computing environment specified in the Order.

**Evaluation Period** is defined in clause 2.4(a).

**Fees** means the fees, costs and expenses for the supply of the Product and specified in the Order and any Service Credits specified in the applicable SOW.

**Force Majeure Event** means any incident, event, act or omission beyond the reasonable control of that party, including any acts of God, strikes, civil strife, riots, wars, fire, explosion, storm, flood, earthquake, failure of communications networks, subsidence, pandemics or epidemics.

**Indirect Loss** means:

- (a) loss of profit, loss of revenue, loss of anticipated savings, loss of opportunity, loss of use, loss or corruption of data, loss of reputation, loss of goodwill, or loss of contract; and
- (b) any loss that does not arise naturally or according to the usual course of things from a breach, act or omissions relating to the Agreement.

**Intellectual Property Rights** means intellectual property rights, including existing and future copyright, rights in designs, patents, semiconductors and circuit layouts and rights in trade marks, trade names and service marks, in each case, whether registered or unregistered and existing in Australia or elsewhere in the world and whether created before or after the date of the Agreement.

**IP Claim** is defined in clause 5.3(b).

**Order** means an order form setting out the details of Customer's purchased subscription to the Product as specified in any:

- (a) Zetaris Order Form in respect of the Product executed by the parties; or
- (b) online order form completed by Customer and logged in Zetaris' customer relationship management system,

including details of the applicable Approved Purpose, Environment, Fees, Credits and Subscription Term.

**Personal Data** means information about an identified individual or an individual who is reasonably identifiable, including 'personal information' and 'personal data' as defined in applicable Privacy Law.

**Privacy Law** means any applicable law governing the Processing of Personal Data, including (to the extent applicable) the *Privacy Act 1988* (Cth), *General Data Protection Regulation (EU) 2016/679*, *UK Data Protection Act 2018 (DPA)*, *UK General Data Protection Regulation as defined by the DPA as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019*, the *Privacy and Electronic Communications Regulations 2003*, and *California Consumer Privacy Act (2018)*.

**Process** means to collect, store, use, copy, disclose or perform any other set of operations on.

**Product** means the Service or Software, as specified in the Order.

**Service** means the Zetaris Lightning Platform delivered by the internet as a service, including any updates.

**Service Credits** means any support, implementation, training, data migration or other service not forming part of the Service or Support Services.

**Software** means the object code form of the Zetaris Enterprise Software specified in the Order, including any Updates.

**SOW** means a statement of work in the form of Schedule 1 setting out the details of the Service Credits to be provided by Zetaris, including the agreed scope and fees for the Service Credits.

**Subscription Term** means:

- (a) the initial term of Customer's subscription to the Product specified in the Order, including any Evaluation Period; and
- (b) successive 12 month renewal terms thereafter, unless Customer provides notice of non-renewal at least 60 days' prior to the expiry of initial term or renewal term (as applicable).

**Subscription Year** means a period of 12 months from the commencement of Subscription Term or an anniversary of that date.

**Support Services** means:

- (a) online, email or telephone support for Product defects that require access or changes to the source code for the Product (in the case of the Software, this only applies to the current and immediately prior version of the Software); and
- (b) making Updates available from time to time,

in each case, in accordance with the Zetaris Support Services Policy. The Support Services exclude help desk, diagnostic, onsite and other first and second line support services.

**Updates** means any new version, release, update, patch, fix, configuration or other modification of the Product made available by Zetaris to its customers generally during the Subscription Term.

**Zetaris Data** means data, information or material comprised in the Product as provided by Zetaris.

**Zetaris Support Services Policy** means the document set out in Schedule