

## **Zentyal Server – Subscription Terms**

These Zentyal Server Subscription terms apply to the Software and Services (as defined below) and, together with your Purchase Order, form the agreement (“Agreement”) between you and us. You irrevocably accept this Agreement by accepting or signing any document in which these conditions are incorporated or by exercising any rights granted to you by Section 2 of this Agreement, such as the use of the Zentyal Software or access to the Zentyal Cloud Services.

### **1. Definitions**

In this Agreement, the following capitalized terms have the following meanings:

**Software:** Zentyal Server Software indicated in your Purchase Order.

**Services:** the Zentyal Cloud Service and the Support and Maintenance Services:

- **Zentyal Cloud Services:** cloud-based file sharing service operated by Zentyal for You, with central management of Users and automatic synchronization of all Zentyal Servers in the network.
- **Zentyal Support Services:** services to provide support and maintenance on the Zentyal Server Software and Cloud Services in accordance with the [Zentyal Support Customer Guide](#), a copy of which is available at the Zentyal Support Portal.

**Parties:** the parties to this License agreement.

- **Licensor or “we/us”:** Zentyal, S.L., a Spanish Company at C/ Eduardo Ibarra 6, BSSC, Zaragoza, Spain, with NIF B- 99201444,
- **Licensee or “You”:** the person who accepts the Purchase Order and uses the Software under the Agreement.

**Users:** any and all distinct accounts corresponding to end users of the instance/s of the Software deployed by you.

**Documentation:** technical documentation and user manuals relating to the Software and Services provided from time to time by Zentyal.

**Term:** term of your subscription and this Agreement, as set out in the Purchase Order or any renewal or update.

### **2. Your benefits: what we grant you**

In consideration for payment of the fees set out in your Purchase Order (and any update and renewals) and subject to compliance with these terms:

- 2.1. **Zentyal Server Software.** We grant you a world-wide, non-exclusive licence to use and reproduce the Zentyal Server Software in accordance with the terms of the [GNU GPL version 2 or later](http://www.gnu.org/licenses/old-licenses/gpl-2.0.html) license (terms online at <http://www.gnu.org/licenses/old-licenses/gpl-2.0.html>). This license includes, among other rights, the right to install the Software internally or with a third party provider who provides the functionalities of the Software to you on a remote basis; and to provide your Users with remote access to the Software functionalities. You have access to the source code and rights to reproduce and modify the Software (but we don't maintain your modifications).
- 2.2. **Zentyal Cloud services.** During the Term we shall provide You the Zentyal Cloud Services in accordance with the specifications set out in the Documentation and the service levels of the Zentyal Support Customer Guide.
- 2.3. **Zentyal Support Services.** During the Term, we shall use our reasonable efforts to provide technical support to you in accordance with the Zentyal Support Customer Guide (attached hereto), or any updated support policies in force on renewal, available from us. We will provide you access to maintenance patches, updates and upgrades of the Software, which will be governed by this Agreement.
- 2.4. **Software development.** When agreed by the Parties, we will provide you software design and development services (remotely or on site) on the basis of an agreed Statement of Work and payment of the price set out therein. Unless otherwise agreed in the Statement, the results of the software

development which are created by us in connection with the Software will be treated as Software and licensed to you hereunder under these terms at no extra charge.

- 2.5. **Users.** Your Purchase Order indicates the Zentyal Server Edition and the maximum number of users supported under your Agreement. In the event that the PO establishes a limit on Users, you may apply at any time to extend the Agreement to additional Users (e.g. upgrading to Business or Premium Edition - "Upgrade"). We will extend the Agreement to enable you to use the Software and Services with respect to such Upgrade. You agree to pay the additional fees corresponding to such Upgrade, on our then current terms and price.

### **3. Your responsibilities and data**

- 3.1. **Your responsibilities.** You shall be responsible for taking all necessary measures to control the access and use of the Services, it being understood that any use of the Services with your User access codes is deemed made by you or any of the Users for which you are responsible. You shall: (a) be responsible for all Users' compliance with the Agreement, (b) be solely responsible for the accuracy, integrity, and legality of your stored data and the means by which you acquire and use such data, (c) use the Services in accordance with applicable laws, rules, regulations (including, without limitation, export, data protection and privacy laws, rules and regulations) and the Documentation, (d) notify us immediately of any unauthorized use of, or access to, the Services or any account or password thereof, and (e) be responsible for the technology environment and connections required to access the Services.
- 3.2. **Your data.** Subject to the limited rights granted by you hereunder, we acquire no right, title or interest from you or your licensors under this Agreement in or to your data, including any intellectual property rights therein. You hereby grant us a worldwide, non-exclusive, fully-paid, royalty-free, transferable license to use, reproduce and display your data in order to provide the Services to you.
- 3.3. **Backups.** While using the Software, you must regularly back-up your data and computer system(s) on separate media. You acknowledge that any failure to back-up data and systems may cause you to lose data in the event of an error in the Software. Since only you, not we, can know the value of your computer systems and data, only you can implement back-up plans and safeguards appropriate to Your needs in the event that an error in the Software or Services causes computer problems or data loss.
- 3.4. **Return of data.** On termination, unless for your breach, we will make available to you for a period of 30 days from termination date a file with your data stored by us through the Services. After such 30 day period, all copies of the your data will be deleted from our systems, except as required to protect and defend our rights and for performance of any legal, judicial or administrative obligations and orders.
- 3.5. **Access to systems.** For the purpose of providing support, Zentyal and/or its partner may need access to your information, systems, software and IT resources. You agree to provide this access on reasonable request. You also understand and agree that (a) the completeness, accuracy of, and extent of access to, any information provided to Zentyal may affect Zentyal's ability to provide Services, and (b) if reasonable access to such information is not provided, Zentyal will be relieved from providing any Services dependent upon such access. If necessary, you will obtain any third party consents necessary to grant Zentyal access to this information.

### **4. IPR**

- 4.1. **Intellectual Property Rights.** This Agreement does not imply any transmission of rights not expressly regulated in it. Title to the Software and all patents, copyrights, trade secrets and other proprietary rights in or related to the Software are and will remain our property. You will not take any action that jeopardizes such proprietary rights or acquire any right in the Software, except the license specified in this Agreement. You shall not claim or allege any right or title on any of the Software or Documentation neither shall transfer any title to third parties; and unless authorised by us, you shall not eliminate, alter or destroy any property, trademark, patent or copyright signs located or contained in the Software, in the Documentation or in any other related material provided by us.
- 4.2. **Open Source Components.** You are the beneficiary and licensee of all licenses over all third party software components included in the Software and distributed under open source software licenses, which are typically found in a "Read Me" file or "About" file in the Software. At your request, we will provide you a full copy of the corresponding source code of the open source Zentyal Server software

components. Nothing in this Agreement may reduce, restrict, condition or otherwise prejudice the rights and obligations recognized to us or you under to those licenses.

- 4.3. **Trademarks.** This Licence does not grant permission to use our trade names, trademarks, service marks, or names of the Licensor, except as required for reasonable and customary use of the Software as well as in describing the origin of the Software and reproducing the content of the copyright notice.

## 5. Payments

- 5.1. **Fees.** You agree to pay us the Fees set out in the Purchase Order. On any renewal, fees shall be at our regular list price for the Software and Services, as published from time to time, or as otherwise agreed in writing with you. Any failure to pay the Fees will result in automatic termination of this Agreement and all rights and licenses granted hereunder. All Fees are non-refundable once paid.
- 5.2. **Payment.** Payment of the Fees shall be made (a) in advance by Credit Card or (b) otherwise within thirty (30) calendar days of invoice. Recurring monthly fees shall be credited against the payment method you specify or use, and you authorise this. In the event any overdue amount is not paid following eight (8) days written notice from us, then in addition to any other amount due, we may impose and you shall pay a late payment charge at the rate of one and a half percent (1.5%) per month on any overdue amount plus an administration fee of 200 Euros.
- 5.3. **Taxes.** You shall, in addition to the other amounts payable under this Agreement, pay all sales and other taxes, national, state, or otherwise, however designated, which are levied or imposed by reason of transactions contemplated by this Agreement, except those which arise as a result of income, including withholding taxes or similar deductions applicable to us. Without limiting the foregoing, you shall promptly pay us an amount equal to any such tax items actually paid, or required to be collected or paid by us.

## 6. Warranties

- 6.1. **Title.** We warrant that the copyright in the Software granted hereunder is owned by us or licensed to us and that we have the power and authority to grant the licences hereunder.
- 6.2. **Software warranty:** Licensor warrants that for a period of ninety (90) days from the date of delivery of Software: (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software substantially conforms to its published specifications. Your exclusive remedy and our entire liability under this limited warranty will be, at our or our partner's option, repair or replacement of the Software. This warranty does not apply if the Software (a) has been altered, except by us, (b) has not been installed, operated, repaired, or maintained in accordance with the Documentation, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (d) is used in hazardous activities.
- 6.3. **Limitation.** The Software is a work in progress, which is continuously improved by numerous contributors. It is not a finished work and may therefore contain defects or "bugs" inherent to this type of software development. For the above reason, except as expressly stated in the previous paragraph and to the maximum extent permitted by applicable law, the Work is provided under the Licence on an "as is" basis and without warranties of any kind concerning the Work, including without limitation merchantability, fitness for a particular purpose, absence of defects or errors or accuracy, non-infringement of intellectual property rights other than copyright as stated above. This disclaimer of warranty is an essential part of the Agreement and a condition for the grant of any rights to the Software and Services. **There is no warranty that the Software or Services will be uninterrupted or error free; nor any warranty as to the results that may be obtained from the use of the Software or Services or as to the accuracy, reliability or content of any information or services contained in or provided through the Services.**
- 6.4. **Service Warranty.** We warrant that the Services shall be performed diligently and professionally, in accordance with the levels set out in the Documentation. In the event of any breach of this warranty, we shall re-perform at no cost the deficient Services.
- 6.5. **Your warranties.** You represent and warrant to us that (i) you have the power and authority to enter into and perform your obligations under this Agreement; (ii) all information provided to us for the purpose of entering into a Order is true, accurate and up-to-date; and (iii) you have all necessary rights in the data submitted to us in the course of using the Services; and (iv) you will use the Services only for legal purposes and will not infringe any laws or third party rights.

## **7. Disclaimer of Liability**

- 7.1. **No liability for indirect damages.** Except in the cases of wilful misconduct or damages directly caused to natural persons, to the maximum extent permitted by applicable law, you will not hold us liable for any indirect damages (*lucro cesante*) of any kind, arising out of the Agreement or of the use of the Software and Services, including without limitation, incidental or indirect damages for loss of goodwill, work stoppage, computer failure or malfunction, loss of data or any commercial damage. However, we will be liable under statutory product liability laws as far such laws mandatorily apply to the Software.
- 7.2. **Liability Cap.** In no event, shall your liability to you or any third party arising out of or relating to this Agreement exceed the fees paid by you in the previous 12 month period, calculated from the date the liability first arose.
- 7.3. **Other limitations.** You agree that your order is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Zentyal regarding future functionality or features. You acknowledge that transmission of data through the Internet is relative, since they circulate on heterogeneous networks whose characteristics and technical capacities are diverse, which are from time to time overloaded and/or may be subject to dysfunctions, rerouting, or security breaches. Use of the Software and Services is in this respect made at your own risks and under your sole responsibility.
- 7.4. The above limitations do not apply to damage arising due to fraud or willful misconduct, or with respect to death or corporal damage to any person.

## **8. Term and Termination**

- 8.1. This Agreement is effective from the date of acceptance of the Purchase Order or delivery of the Software, whichever is earlier, and lasts for the Term set out in the PO, unless terminated early pursuant to this clause 8.
- 8.2. We may terminate this Agreement on 30 days' prior written notice at any time upon your breach of the Agreement except if such breach is corrected to our satisfaction within the corresponding 30 days. You may terminate this Agreement on giving one (1) month's prior written notice to Licensor, but you will not be entitled to any refund of any periodic or single payment fees.
- 8.3. Without prejudice to the foregoing, in the event of non-payment of a monthly subscription, the following process will be followed: automatic warnings will be sent 8 and 15 days after late payment. In the event the fees are not paid, after 30 days, the license grace period will terminate immediately and the Services will no longer be provided (you may continue to use the Server Software). To renew use of the Services, you must pay a license fee for the renewed subscription for all periods as from the last date of previous subscription.
- 8.4. Upon termination of this Agreement You agree to cease all use of the Software under the terms hereof. This termination is without prejudice to your right to use any part of the Software that is made available under or subject to an Open Source software license, provided you comply in all respects with the terms of such license. Clauses 7-11 survive termination.

## **9. Privacy**

- 9.1. **Data Privacy.** Both parties shall observe the content of the regulations in force concerning personal data privacy compliance, and the you shall hold us harmless from any responsibility derived from any infringement attributed to you. You authorize us (and our successors and assigns) to store and use the business contact information of the contact persons wherever we do business, in connection with our products and services or in furtherance of our business relationship with you.
- 9.2. **Data processing.** In the event of accessing or processing any personal identifiable data under your control ("Personal Data", as defined under Spanish Organic Law 15/1999 of 13 December on the Protection of Personal Data) or equivalent national legislation and implementing regulations (together "Privacy Laws")) during the performance of the Services, we will be considered a Data Processor under such Privacy Laws. In connection with such processing, we will: (a) adhere to all applicable Privacy Laws, (b) act only in accordance with the requirements of this Agreement and process Personal Data only on instruction from Customer; (c) will not process Personal Data for any other

purpose other than that specified by Customer and (d) will not communicate any Personal Data (not even for its preservation) to any third parties unless on instruction from you.

- 9.3. **Security measures.** We implement basic security measures on personal data protection in accordance with applicable Privacy Laws, including but not limited to, the Spanish Royal Decree 1720/2007, unless otherwise indicated by you (any higher level will be at your express request and expense). We use the same degree of care, but never less than a reasonable degree of care, to prevent unauthorized use, dissemination or publication of the Personal Data, as we use to protect its own information of similar nature.
- 9.4. **Termination.** On termination of the processing, we will return all such data to you or destroy any remaining copies of such data unless required to maintain such data by law, in which case it will remain blocked.
- 9.5. **Subcontracting.** In accordance with applicable law, you authorise us to subcontract for and on your behalf any Services provided hereunder, in particular to the technology platform provider for the Services, being Amazon Inc., provided compliance with the applicable regulations.

## 10. Miscellaneous

- 10.1. **Assignment.** You may not assign, delegate, or otherwise transfer any of your rights, interests, or obligations under this Agreement without our prior written consent. Notwithstanding the foregoing, either party may assign its rights and obligations hereunder to an acquirer of all or substantially all of such party's business or assets, whether by merger, sale, or acquisition, so long as such purchaser agrees to assume all of such Party's obligations hereunder and has the financial and technical capabilities to fulfill such obligations.
- 10.2. **Force Majeur.** We will not be held responsible for any failure, delay or interruption in the execution of the current agreement that may be caused by circumstances outside of its control, such as network failure, network connection failure, earthquake, flooding, strikes, embargos or acts of government.
- 10.3. **Modification.** The terms of this Agreement may not be modified except by a written agreement issued and signed by our duly authorized representatives.
- 10.4. **Notices.** Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized delivery service, or digitally signed email with confirmation of receipt, to the addresses set out for Commercial Contacts in the Summary Table.
- 10.5. **Severability.** If any provision of this Agreement is held illegal or unenforceable by any court of competent jurisdiction, such provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect or impair the validity or enforceability of the remaining provisions of this Agreement. The Parties hereto agree to replace any such illegal or unenforceable provision with a new provision that has the most similar permissible economic or other effect intended in the original provision.
- 10.6. **Relationship.** This Agreement is not an exclusive arrangement, and each party remains free to enter into similar agreements with other parties. Nothing in this Agreement shall be construed as making the Parties joint venturers, representatives or agents of each other, nor shall either party so hold itself out. Nothing in this Agreement shall obligate you to buy any additional service or product from us.
- 10.7. **Mandatory applicable law.** The present agreement does not intend to exclude nor limit any condition, guarantee, right or responsibility that may not be excluded nor limited in accordance with applicable law. Some laws do not allow the exclusion of certain guarantees or conditions nor the limitation of exclusions of responsibility for losses or damage caused by negligence, contractual non-compliance or non-compliance with implied terms or for incidental or indirect damages. Thus, only the limitations considered in the present agreement that adhere to applicable law will be applied, and the responsibility of We will be limited to the extent of said law.
- 10.8. **Reservation.** We reserve all those rights not expressly granted to you in the present Agreement. You agree that this Agreement will not create any right or cause of action for any third party, nor will we be responsible for any third party claims against you except as permitted by the *Limitation of Liability* sections above or for bodily injury (including death) or damage to real or tangible personal property for which we are statutorily liable.
- 10.9. **Authority to enter into agreement.** Each party to this Agreement represents and warrants that it has the authority to enter into this Agreement. The individuals signing the Agreement have the authority to

act as agents of their respective organizations. Each party acknowledges that they have read this Agreement and will abide by it.

- 10.10. **Confidentiality.** Each party agrees to maintain in strict confidentiality any confidential information received from the other, including the commercial terms of any agreement into which these terms are incorporated. These obligations do not apply to Open Source components included in the Software, as set out in the technical documentation.
- 10.11. **Electronic Communications.** We may send You required legal notices and other communications about the Software and Services, including Updates, upgrades, special offers and pricing or other similar information, customer surveys or other requests for feedback (“Communications”). We will send Communications via in-product notices or email to registered email addresses of named contacts, or will post Communications on its Websites. By accepting this Agreement, You consent to receive all Communications through these electronic means only and acknowledge and demonstrate that You can access Communications on Websites. You may notify us your desire not to receive any such Communications (which may have a technical impact on your use of the Software and the provision of the Support Services) by writing to [support@Zentyal.com](mailto:support@Zentyal.com) [info@zentyal.com](mailto:info@zentyal.com).

#### **11. Jurisdiction and Applicable law**

- 11.1. Any litigation resulting from the interpretation of this License, arising between the We and any Licensee, will be subject to the jurisdiction of the Courts of Zaragoza, Spain. Each Party agrees to make a good faith effort to amicably resolve any problem with the other Party before commencing any proceedings. Neither party will bring a legal action more than two years after the cause of action arose
- 11.2. This Licence shall be governed by the laws of Spain, without giving effect to the conflict of law principles thereof. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded

**Annex:** [Zentyal Customer Support Terms](#)