

Terms and Conditions

TERMS OF SERVICE AND "ZENTYAL SERVER" LICENSING

These terms of service and licensing 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 installation of the "Zentyal Server" Software or access to the Zentyal Support Portal).

Legal Notice and Privacy Policy is part of this Agreement, as long as it does not contradict what is established in these Terms and Conditions.

1. Definitions

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

Software: Zentyal Server Software indicated in Your Purchase Order.

Services: Support and Maintenance Services:

- Support and Maintenance Services: Services to provide support and maintenance on the Zentyal Server Software in accordance with the conditions established in the "**Zentyal Support Customer Guide**", a copy of which has been made available to You and that is available at the Zentyal Support Portal.

Parties: the parties to this agreement

- Licensor or "We" or "Us": Gesforeda, S.L. (hereinafter, "ZENTYAL"), a Spanish Company with NIF B44254571 and business address at Zaragoza (Spain), Paseo Ruiseñores, 14-16, 10 B.
- Licensee or "You": the person who accepts the Purchase Order and uses the Software and the Services under the terms specified in this Agreement.

Users: any and all the differentiable accounts created in the Software implemented by You and that allow its use in a specific way depending on the profile, permissions, configuration, rights and limitations. For these purposes, the concept of User encompasses both individuals (natural persons) who in any way provide services to the organization or are empowered to use it and other system users, with specific roles and functions and configurations that can be used by one or more natural persons. The Licensee must take into account that the connection or interoperability of the Software with other resources, such as servers, applications or systems, may imply or require the creation or activation of Users for such purposes.

Documentation: technical documentation and user manuals relating to the Software and Services provided by ZENTYAL.

Term: duration of Your license or Services and this Agreement, as set out in the Purchase Order or any renewal or extension.

2. Your rights

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

2.1 Zentyal Server Software. Licensor grants You a worldwide, non-exclusive and non-transferable license (for own use) to use and reproduce the Software in accordance with the Terms and Conditions of Zentyal and the purchase order. This, however, will not prevent the transfer of the contract in the exclusively limited cases mentioned in the clause 10 of these conditions.

2.2 Maintenance and Technical Support. During the Term established in the purchase order, the Licensor shall provide maintenance services and/or technical support for the Software in accordance with the conditions established in the "Zentyal Support Customer Guide" (attached in Annex) or any updated support policy in force upon renewal, made available to You by the Licensor. The Licensor will provide You access to maintenance patches and Software updates, which will be governed by this Agreement. The Licensor may assign or subcontract with third parties (partners) the total or partial provision of any maintenance and support services, design, development or customization, prior communication to You and provided that the same guarantees and responsibilities as those provided herein are maintained.

2.3 Software development. When agreed by the Parties, the Licensor can provide You software design and development services (remotely or on site) on the basis of a budget submitted by the Licensor and accepted by You (in the "Statement of Work") and upon acceptance by You to pay the agreed fees. Unless otherwise agreed in the Statement, any software developed by the Licensor under this clause will be considered as "Software" owned by the Licensor and licensed to You under these terms at no extra charge.

2.4 Users. Your Purchase Order ("PO") indicates the Zentyal Server version and the maximum number of users allowed 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. switching from the "Small" edition to "Medium"). We will extend the Agreement to enable You to use the Software and Services with respect to such change. You agree to pay the additional fees corresponding to such change, according to the terms and prices in force at that time.

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 Your 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. We do not acquire any rights whatsoever over Your data processed in the Services ("Customer data"). You are the solely responsible for the accuracy, quality, integrity, legality, reliability, suitability and intellectual or industrial property rights of the Customer Data. You grant us a non-exclusive right to reproduce and use said data for the provision

of the Services. In any case, the processing of Your personal data for the purpose of providing the Services will be carried out in accordance with the [Legal Notice and Privacy Policy](#).

3.3 Backups. While using the Software, You must regularly back-up Your data and computer system(s) processed by the Software on separate media. You acknowledge that any failure to back-up data and systems may cause You to lose data stored or processed by the Software 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.

3.4 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 the ability to provide Services, and (b) if reasonable access to such information is not provided, ZENTYAL and/or its "partner" 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. Intellectual Property Rights, License

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 the property of the Licensor and its own licensors. 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.

The scope of the License and the rights that it additionally includes, including the number of Users, features, version of the Software, access to updates and support, among others, will be determined in the Purchase Order (PO) specifically, without prejudice to what indicated herein. In general, the License and rights will be limited to the specific version purchased, without the Licensee having included, as per the current Purchase Order, the upgrade to higher versions. In case we detect use that exceeds the limits that You have hired, we will contact You to regularize the situation and, where appropriate, we may apply additional charges, suspend the License or, ultimately, terminate the contract in advance for breach.

4.2 Open Source Components. Licensor is the beneficiary and part of all licenses over all third party software components included in the Software and distributed under open source software licenses, which are typically indicated in the Documentation. At Your request, Licensor will provide You a full copy of the corresponding source code of the open source software components. Nothing in this Agreement may reduce, restrict, condition or otherwise prejudice Your rights in these licenses regarding third party open source software components integrated in the Software.

4.3 Trademarks. This Licence does not grant permission to use our trade names or trademarks, 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. Fees and Payments

5.1 Fees. You agree to pay the Licensor, or depending on the service contract to Your partner, the Fees established in the Purchase Order. Upon renewal of an agreement, the applicable fee shall be established in the general price list of the Licensor for the Software and Services in force at that time, or a price agreed in writing by the parties. Any failure to pay

the fees will result in automatic termination of this License and all rights and licenses granted hereunder. All License and Service fees are non-refundable once paid.

5.2 Payment. Payment of the Fees shall be made (a) in advance by PayPal or bank transfer or (b) otherwise as indicated in the Purchase Order. Recurring 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. The price shall include all direct or indirect local or national taxes (such as Value Added Tax) that may be imposed on the transactions contemplated by this Agreement, except those directly attributable to the Licensor or the partner, including without limitation any tax withholding or similar deductions. You will pay the Licensor or partner an additional amount equivalent to any tax or withholding tax.

6. Warranties / Limitations

6.1 Intellectual property. The Licensor warrants that the granting of rights to the Software set forth in this License does not infringe the intellectual property rights of third parties and that it has the power and authority to grant this License.

6.2 Limited warranty. Licensor warrants that for a period of six months 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 in the Documentation at the date of the agreement. During this period, the Licensor is obliged to assign the necessary material and human resources to correct the errors and incidents reported by the Licensee or replace 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 instructions provided the Licensor, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, (d) is used in hazardous activities, or (e) problems, errors or defects are caused by updates or modifications in the system, network or applications environment after the contract is signed.

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 following paragraph 7.2, 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, noninfringement of intellectual property rights other than copyright as stated in the paragraph 7.1 of these terms. This disclaimer of warranty is an essential part of the Agreement and a condition for the grant of any rights to the Work.

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.

6.5 Your warranties. You state 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 Indirect damages/Loss of profits. Except in the cases of wilful misconduct or damages directly caused to natural persons, the Licensor will not be hold liable for any indirect damages or loss of profit (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, the Licensor 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 the total liability of ZENTYAL 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, re-routing, 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 wilful misconduct, or with respect to death or corporal damage to any person.

8. Term and Termination of the License

8.1 Effective date. This Agreement is effective from the date of acceptance of the Purchase Order or delivery of the Software by the Licensor or access to the Support Portal by You and lasts for the Term set out in the PO, unless terminated early pursuant to this clause 8.

8.2 Early termination. Licensor 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 Non-payment. Without prejudice to the foregoing, in the event of non-payment of a subscription, the following process will be followed: automatic warnings will be sent 7 and 15 days before expiration. In the event the fees are not paid, the subscription will terminate automatically on the expiration date and the Services included in the subscription will no longer be provided and the Software will stop working. To renew use of the Software, You must pay a license fee for the renewed subscription for all periods as from the last date of previous subscription.

8.4 Termination. Upon termination of this Agreement, we recommend to cease to use of the Software as You do not have access to updates, support services or warranty and we assume no responsibility with respect to any circumstances that affect its operation, including the processing of personal data. This 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.

9. Privacy

9.1 Data Privacy. Both parties shall observe the content of the regulations in force concerning personal data privacy compliance, and 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. The parties acknowledge that, within the framework of the provision of the hired Services, ZENTYAL does not require access or perform any activity to process the personal data of any third parties housed in the Licensee's systems. Consequently, ZENTYAL will be prohibited from any activity that involves the capture, access, consultation, registration, custody, interconnection, extraction or any other operation on the personal data of the systems, supports or resources of the Licensee.

Notwithstanding the previous paragraph, in the event that access to said data, supports or resources of the information system, for any reason, and without prejudice to the obligation between the parties to sign the corresponding contract for the order of treatment, ZENTYAL undertakes to keep the strictest secrecy regarding them, committing to the obligation of confidentiality that is established in this clause.

Apart from this, the personal data related to this agreement, and any others of the Licensee or third parties related to it obtained or provided in any way in compliance with it, will be treated by ZENTYAL as responsible for the treatment, for supervision, maintenance and execution of this contract, as well as to comply with the legal, administrative, fiscal and accounting obligations of ZENTYAL, being this the legal basis of the aforementioned treatment. The data will be kept for the duration of the contractual relationship or legal business between the parties and, in any case, until the prescription of possible legal liabilities that may arise.

ZENTYAL also informs You that Your data will be treated confidentially, and appropriate and sufficient legal, technical and organizational measures will be applied to guarantee Your privacy and the correct exercise of the rights that correspond to You by law. The data will not be transferred to third parties without Your express authorization, except in the cases expressly permitted or required according to the Law.

In any case, those affected may, at any time, exercise their rights of access, rectification, opposition, deletion, limitation to the processing and portability of their data, under the legally foreseen conditions and by writing to the addresses indicated in this document. Likewise, the Licensee and third parties related to it are informed that they have the right to make a claim before the Spanish Agency for Data Protection in case it considers that the processing of their data is not appropriate.

9.3 Termination. On termination of the agreement, 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.

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 of ZENTYAL. In this sense You are responsible to ZENTYAL if the acquirer can not assume all obligations derived from this license.

You may not assign, delegate, or otherwise transfer any of Your rights, interests, or obligations under this Agreement without our prior written consent of ZENTYAL. 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. ZENTYAL, however, may assign its position in this contract to any entity insofar as it assumes all of its rights and 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 be modified by ZENTYAL whenever it is due to legal requirements, and in any case prior communication to You in advance. Once the indicated period has elapsed, it shall be understood that You accept the established modifications provided that You continue to use the Services.

10.4 Notices. Any notice required by this Agreement or given in connection with it, shall be in writing and shall be sent by email to Your address, indicated in the Purchase Order.

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 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 our responsibility will be limited to the extent of said law.

10.7 Reservation. The Parties commit to comply with all the terms set forth in this agreement. The Parties recognize the potentially causal damage that may result from the breach of the obligations contained in this agreement, whether due to willful misconduct or mere negligence. ZENTYAL, as Licensor, expressly reserves the right to exercise as many legal actions as it deems appropriate, in order to compensate the damage and the damages that may be caused.

10.8 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. Any exclusion or limitation in its terms will be considered as not set forth.

10.9 Confidentiality. The Parties acknowledge that the content of this agreement, including the Software and any specification or technical documentation related to it, is considered confidential information, and to this end the Parties agree not to disclose its content to any third party except:

- (i) The open source components included in the Software
- (ii) In compliance with a legal obligation or a judicial or administrative order
- (ii) To demand or allow compliance with the rights or obligations derived from this Agreement or for information from its advisors or auditors, as long as both agree to keep it confidential by means of an express agreement or in accordance with its professional standards.

11. Jurisdiction and Applicable law

11.1 Jurisdiction. The Parties expressly waive any other jurisdiction that may correspond to them, except those cases in which such resignation is not legally possible in accordance with the regulations on consumers and Users; agree to submit, any disputes and disputes that may arise in relation to the existence, validity, interpretation, scope, content, execution, suspension or termination of this license agreement to the jurisdiction of the Courts and Tribunals of the city of Zaragoza (Spain) .

11.2 Applicable law. This Agreement will be governed by the laws of Spain in matters not expressly provided for.

Annex: [Zentyal Support Customer Guide](#)

Annex: [Contract for treatment of personal data](#)