

# End User License Agreement of znt Singapore Pte Ltd

## 1 Scope

- (1) The following license terms ("EULA") shall apply to all agreements for licensing software and the related documentation between znt Singapore Pte Ltd, #08-41 Vertex Tower A, 33 Ubi Avenue 3, Singapore 408868 ("ZNT") and each of its customers that entered into a License Agreement by executing an Order Note ("Licensee"). The most recent version of the EULA available at the time of entering into the License Agreement shall apply.
- (2) Provided that Licensee does not accept the EULA or wishes to agree on different license terms, no license shall be granted to Licensee, unless a ZNT Company and Licensee agree in writing on deviating terms and conditions.

## 2 Definitions

**Affiliate** in relation to a Party means any corporation, company, partnership or other entity, which (i) is controlled by such Party; (ii) controls such Party; or (iii) is under common control with such Party. Controlled and/or control means: (a) more than fifty percent (50 %) of the controlled entity's outstanding shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the controlling entity, and/or (b) the controlling entity possesses, directly or indirectly, the power to influence the decision-making process, the direction of management, and the policies of the controlled entity.

**Delivery** means the manner in which the ZNT Software (in executable form) and the Documentation shall be provided to Licensee.

**Documentation** means manuals, instructions for installation and operation and/or other information on the ZNT Software containing a description of the ZNT Software, its possible applications, the required hardware and/or instructions for the use of the ZNT Software as made available to Licensee irrespective of the storage medium or provided via online access. Marketing and advertisement documentation as well as oral statements are not included.

**License Agreement** means the Order Note including the relevant appendices and the terms and conditions contained herein.

**Maintenance** means the removal of reported errors from the ZNT Software as well as the delivery of new versions of the ZNT Software with new and/or modified functionalities.

**Order Note** means the written definition describing in particular the ZNT Software, the license, the area of use, the license fee, the sublicensing right, if any, the support and maintenance services to be provided by the ZNT Companies broken down to type, scope and duration, as well as the support and maintenance fee, including the relevant due dates, as well as the term of the license and the contract currency, if applicable.

**Party** means ZNT and Licensee.

**Support** means the service of receiving error reports and assistance in the analysis of the cause of the error in the ZNT Software.

**ZNT Companies** means ZNT and its Affiliates (each a “ZNT Company” and together the “ZNT Companies”).

**ZNT Software** means computer programs of the ZNT Companies and configuration files within the scope of this License Agreement as itemized in the Order Note.

**ZNT Technology** means the ZNT Software, the Documentation and the know-how of the ZNT Companies, including all developer tools, products, processes, designs, algorithms, user interfaces and other information, incorporated or not incorporated.

### **3 Subject Matter of the License Agreement**

- (1) The subject matter of this License Agreement is the right to use the ZNT Software specified in the Order Note under the terms and conditions set forth in this License Agreement, as well as the Support and Maintenance services of ZNT Companies for the ZNT Software described in the Order Note.
- (2) Other services offered by ZNT Companies, such as the implementation of the ZNT Software to the expected operating environment, are not within the scope of this License Agreement.
- (3) Several License Agreements may be entered into by the Parties.

### **4 License Grant**

- (1) Upon execution of the License Agreement, ZNT grants to Licensee the non-exclusive right to use the ZNT Software subject to the conditions specified in the Order Note.
- (2) Licensee has the right to create backup copies of the ZNT Software, provided that it is required for the future use of the ZNT Software, the data or the overall system.
- (3) Licensee is, without the prior written consent of ZNT, not entitled to assign, transfer or sublicense any contractual rights to the ZNT Technology, as a whole or in part, to any third party or otherwise authorize any third party to use the ZNT Technology. In the Order Note Licensee may be granted the right to combine the ZNT Software with Licensee's own software and/or hardware and to sublicense the rights in the so created new software product to third parties (“Sublicensing Right”).
- (4) Licensee is not granted any other rights, the ZNT Companies being their sole owner.
- (5) In particular, Licensee is not entitled
  - a. to allow third parties to use the ZNT Technology, e.g. by way of leasing, renting, temporary authorization to use (e.g. via electronic access) or similar actions;
  - b. to alter or modify the ZNT Technology;

- c. to make available the ZNT Technology, as a whole or in part, to third parties. This also applies to the partial or complete liquidation of Licensee's business. Any use of the ZNT Technology outside Licensee's premises (outsourcing) requires the prior written approval of ZNT;
  - d. to decompile, disassemble or otherwise fragment the ZNT Software, except to obtain necessary information to create interoperability between an independently developed computer program and the ZNT Software, provided that a ZNT Company does not or does not sufficiently provide such necessary information to create interoperability between an independently developed computer program and the ZNT Software despite reasonable detailed written notice from Licensee to the ZNT Company;
  - e. to use the ZNT Technology to develop or improve a competitive product or service or to create a product using ideas, qualities, functions or graphics similar the ones of the ZNT Software. Likewise, Licensee shall not copy ideas, qualities, functions or graphics of the ZNT Technology or monitor the performance of the ZNT Technology and/or use it for benchmark or marketing purposes;
  - f. to reproduce or distribute the Documentation or make it available to the public. If Licensee needs copies of the Documentation for the use of the license as set forth in the License Agreement, then a ZNT Company will provide Licensee with such copies subject to reimbursement of the costs.
- (6) As part of the ZNT Software, ZNT Companies use software free of any restrictions of use from generally available libraries. Such software, the license terms and conditions license (GPL, LGPL, EPL or Apache), the disclaimer of guarantee and liability, as well as the opportunities to obtain such software are described in the Documentation. Licensee is permitted to use such software integrated in this context.

## **5 Implementation**

- (1) Implementation means the configuration of the ZNT Software applying the means specified in the Documentation so as to be able to operate the ZNT Software in the expected operating environment.
- (2) Such implementation may only be performed to the extent as described in the Order Note and only by Licensee's employees or independent contractors who signed a non-disclosure agreement in line with the duties set forth in section 16 hereof. Licensee shall make sure that the ZNT Software is implemented for the contractual use as set forth in the Order Note on an exclusive basis and that no competitor of ZNT Companies is involved in such implementation. Any implementation of the ZNT Software outside the premises of Licensee (outsourcing) requires the written approval of ZNT.

- (3) Licensee is not entitled to any other alteration or modification of the ZNT Software.

## **6 Support and Maintenance**

- (1) ZNT Companies provide Support for the licensed ZNT Software to the extent as set forth in the Order Note.
- (2) If the Parties agreed on Support, the ZNT Companies will also maintain the ZNT Software for the agreed period of time and may decide at its discretion to deliver to Licensee new versions of the ZNT Software for use within the scope of this License Agreement. Nothing in this License Agreement shall be construed to require ZNT Companies to develop new versions of the ZNT Software and make those available to Licensee.
- (3) The obligation to provide Support and Maintenance services shall commence with the effective date of the Order and Delivery of the ZNT Software and shall end 12 months after its commencement. Within 30 days before the obligation to provide Support and Maintenance services ends, Licensee may extend such obligation by additional 12 months by giving written notice to ZNT. The Support and Maintenance conditions as well as the fees most recently communicated to Licensee shall apply to such an extension.
- (4) In case Licensee did not order Support and Maintenance services continuously since the time of Delivery of the ZNT Software, Licensee may enter into an agreement with a ZNT Company to provide future Support and Maintenance services, provided that Licensee pays an amount equal to the offered or agreed fee for Support and Maintenance which would have been incurred within the period in which Licensee did not obtain the Support and Maintenance services, plus a surcharge of 25%.

## **7 Delivery**

- (1) ZNT will deliver the ZNT Software in object code and the Documentation to Licensee either via remote data transmission or on a data media or in any other appropriate manner. In no event will ZNT deliver the source code. The same applies to new versions.
- (2) ZNT remains owner of the data media and/or the written Documentation.
- (3) Upon termination of the License Agreement, Licensee shall return such data media and/or Documentation to ZNT and – where the physical surrender is not possible – delete the ZNT Software and/or Documentation in a verifiable form.

## **8 Fees**

- (1) The fee defined in the Order Note for the ZNT Software and/or the Support and Maintenance services shall be due by the payment dates specified therein and upon issuance of an invoice.

- (2) All the fees are net values only. Statutory value-added tax and/or withholding tax, if any, as well as other statutory charges shall be paid additionally.
- (3) All payments to ZNT Companies shall be made in the currency specified in the Order Note into the bank account shown in the invoice.
- (4) If Licensee defaults on its obligations, especially its payment obligations, as a whole or in part, then the ZNT Companies may withhold the performance of all contractual duties until Licensee satisfies all its payment obligations, including default interest, if applicable.

## **9 Co-operation**

- (1) Licensee obtained information on the functional features, the intended use and the possible operating environment of the ZNT Software and bears the risk that it will conform to its desires and requirements.
- (2) The installation of a functional and sufficiently dimensioned hardware and software environment for the ZNT Software is Licensee's responsibility, unless otherwise agreed upon.
- (3) Licensee shall back up the data in line with the state of the art on a regular basis.

## **10 Defects / Warranty**

- (1) The Parties are aware of the fact that programs do not work free of errors under all operating conditions. If Licensee uses the ZNT Software without considering the operating conditions outlined in the Documentation of the ZNT Companies, then the ZNT Companies will not provide any warranty. The same applies if Licensee amends the ZNT Software in another manner than provided in the Documentation for the implementation.
- (2) The Parties are also aware of the fact that defects may occur in the routine of the ZNT Software although it is operated as intended in an appropriate operating environment. ZNT shall correct such defects free of charge within a reasonable time period, provided that they occur and are reported by Licensee to ZNT within one year of the Delivery of the ZNT Software. Notwithstanding the above, ZNT shall correct minor defects only if it can reasonably be expected to do so. If ZNT within a reasonable time is unable to remedy defects or by-pass them to allow Licensee to use the affected ZNT Software as intended, then Licensee may claim a reasonable reduction of the fee. In case ZNT refuses to correct defects that are not minor, Licensee may withdraw from the contract or claim a reasonable reduction of the fee. Licensee shall provide to ZNT verifiable documents on the type and occurrence of the defects and co-operate in the localization of the defects. There is no entitlement to any other warranty and/or damage claims.
- (3) Licensee is not entitled to any claims against any ZNT Company if the cause of the defects is not attributable to the ZNT Software, but e.g. to any third-party hardware or software.

## **11 Limitation of Liability**

- (1) Each Party shall be liable irrespective of the legal grounds, for damages caused by a negligent or willful material breach of a contractual duty in a manner jeopardizing the achievement of the purpose of the License Agreement. Liability is limited to the damage amount typical for the type of contract and reasonably expected by each Party upon entering into the License Agreement due to the circumstances known at the time. ZNT Companies shall not be liable for Licensee's lack of commercial success. Based on the circumstances known to the Parties upon entering into the License Agreement, the Parties will define in the Order Note the damage amount as typical for the type of contract. ZNT will arrange for third-party insurance with at least such coverage.
- (2) ZNT will only be liable for the loss of data and their recovery as set forth in paragraph (1) above provided that such a loss could not have been prevented by way of reasonable data backup measures of Licensee.
- (3) The liability of the Parties shall not be affected by the foregoing in case of (i) violation of life, body or health, caused by a breach of duty of a Party, its legal representatives or agents with vicarious liability, (ii) damages caused by a breach of duty of confidentiality of a Party, its legal representatives or agents with vicarious liability, (iii) any other damages caused by the grossly negligent or willful breach of duty of a Party, its legal representatives or agents with vicarious liability, (iv) damages of Licensee in the form of third-party claims successfully asserted against Licensee and based on the infringement of copyrights or other third-party intellectual property rights due to the use of the ZNT Software as intended or (v) claims based on the German Product Liability Act (Produkthaftungsgesetz).

## **12 Property Rights, Third-Party Claims**

- (1) Licensee acknowledges that the ZNT Software is protected by copyright and the ZNT Technology constitutes protected intellectual property. The ZNT Companies are the holder of all other intellectual property rights such as trademark rights and labelling rights as well as authors' rights of use and other rights in the ZNT Technology. The ZNT Companies own all rights, if any, to suggestions, proposals, ideas, improvement proposals and other information of Licensee relating to the ZNT Technology.
- (2) ZNT will defend Licensee against all claims derived from any violation of intellectual property rights or copyrights by contractual use of the ZNT Software. ZNT will pay to Licensee (i) the inevitable expenses of defending counsel according to the legal regulations in the respective country or if such legal regulations don't exist a reasonable amount for the legal defense and (ii) damage compensation amounts pursuant to section 11, provided that Licensee informed ZNT of such claims in writing without delay and all remedies and settlement negotiations remain with ZNT.

- (3) If claims have been asserted or are to be expected against Licensee pursuant to paragraph (2) above, ZNT may at its own expense modify or exchange the ZNT Software to an extent Licensee can be reasonably expected to accept. If this or obtaining a right to use is not possible with reasonable effort, then either Party may terminate the License Agreement for the relevant ZNT Software with immediate effect. If terminated ZNT will only be liable to Licensee for damages caused by the termination pursuant to section 11 (1).
- (4) ZNT has no obligations if the claims pursuant to paragraph (2) above are based on programs or data not within the scope of this License Agreement and made available by Licensee or based on the fact that the ZNT Software and/or the data pool it contains are not used in an unchanged original version as delivered by ZNT or used in an operating environment other than specified in the Documentation.

### **13 Inspection Right**

- (1) During the term of the License Agreement and for 12 months after termination, ZNT Companies have the right upon a short-term notice (minimum 10 working days) and during normal operating hours to inspect or have an auditing firm inspect all the operating facilities and offices possibly connected with the License Agreement and where typically the ZNT Software is used, as a whole or in part. In doing so, the ZNT Companies have the right to verify whether or not Licensee uses or used the ZNT Software according to the provisions of this License Agreement.
- (2) Licensee agrees that ZNT Companies may equip their ZNT Software with monitoring programs to examine the use of the ZNT Software in reasonable intervals in order to find out whether or not such use is in conformity with this License Agreement and to send the examination results automatically to the ZNT Companies. In the event that Licensee restricts automatic transmission, Licensee has to send the examination results to ZNT on request within a notice period of 10 working days.
- (3) If Licensee should use the ZNT Software not as contractually agreed upon, Licensee shall reimburse ZNT for the costs of the examination and the monitoring within 10 working days upon the invoice date and concurrently pay the fee corresponding to the actual use. Such fee comprises in general the license fee and maintenance fee for the period of non-contractual use and will be determined by ZNT in its reasonably applied discretion based on ZNT's price lists valid during the period of non-contractual use. Additional damage claims, if any, shall not be affected by the foregoing.

### **14 Non-Encroachment**

Licensee covenants that even after the termination of this License Agreement it shall not take any judicial or other measures against ZNT Companies to determine that the ZNT Software is

not protected under copyright or other intellectual property rights. Likewise, Licensee shall not do anything to cause others take any similar action or support others with such actions.

## **15 Term of the License Agreement**

- (1) The right to use the ZNT Software shall commence with the execution of this License Agreement subject to the condition precedent of the payment of due fees.
- (2) Notwithstanding the above, the right of both Parties to terminate the License Agreement or any Order Note for good cause shall remain unaffected. Licensee's failure to make timely payment for the subjects defined in an Order Note with payment overdue for two weeks despite notice shall be deemed good cause to terminate such Order Note.
- (3) ZNT is also entitled to terminate the License Agreement with immediate effect if a competitor, directly or indirectly, gains control over the business shares and/or the executive management of Licensee giving rise to concern that the competitor might get knowledge of confidential information or trade secrets of ZNT Companies.

## **16 Confidentiality / Data Protection**

- (1) The Parties undertake even beyond the term of this License Agreement, to keep confidential the trade secrets and the information designated as confidential by either Party (hereinafter referred to as "Confidential Information") and to protect them at least in the same manner as they do with their own trade secrets. The Parties agree that the ZNT Technology is Confidential Information as defined herein.
- (2) In addition, the Parties undertake even beyond the term of this License Agreement to use the Confidential Information only and exclusively to perform this License Agreement and to meet their duties hereunder. In no event has any Party the right to disclose the Confidential Information to third parties who are not associated with the company. Information is not considered Confidential Information as defined herein that was generally available to the public without violation of any obligation of confidentiality, or that either of the Parties can prove to have known prior to the disclosure by the other Party. If a Party bound by confidentiality discloses such a fact, then that Party shall inform the other Party within a reasonable time so as to allow the latter to take the required action to safeguard confidentiality and/or to reasonably satisfy the information requirement by other means.
- (3) Licensee shall make available the ZNT Technology only to such employees who need to know the ZNT Technology for the performance of their tasks. Third parties may only be allowed access to the ZNT Technology for Maintenance work, the inspection or the like if such third parties have been bound to non-disclosure at least to such an extent as equivalent to the confidentiality



agreed in this License Agreement. Competitors shall by no means be allowed to get access to the ZNT Technology.

- (4) In order to facilitate the performance of this Agreement, the Parties will exchange and use certain personal data of their respective employees acting as a contact person for the other Party. The type of personal data includes personal master data and communication data. The Parties shall comply with all applicable rules and regulations regarding data protection in connection with such use of personal data, i.e. in Europe the General Data Protection Regulation (EU) 2016/679 (the "GDPR"). Any processing of personal data beyond the purpose stated herein requires a separate written agreement between the Parties whenever required according to applicable rules and regulations, i.e. in Europe the GDPR.

## **17 Miscellaneous**

- (1) Licensee agrees to be identified as reference for the performance of ZNT Companies and agrees that Licensee's corporate logo may be used by ZNT Companies for such purpose on their websites and in other marketing material.
- (2) ZNT Companies have the right to assign the rights and duties under this License Agreement to a third party with discharging effect. ZNT Companies must give prompt notice to Licensee about any transfer of rights. Within a period of two (2) months upon receipt of notice about such transfer, Licensee may terminate this License Agreement with written notice to ZNT.
- (3) Licensee covenants to observe applicable export restrictions of the Federal Republic of Germany, especially the regulations of the German Foreign Trade Act (AWG) and the German Foreign Trade Ordinance (AWV), of the EU, especially the Regulation (EC) No. 428/2009 (so called Dual Use Regulation), of Singapore, of the United States of America as well as those regulations of any other country or jurisdiction which may apply, and not to take any measures which could be considered as an evasion of the export restrictions.

## **18 Final Provisions**

- (1) The Parties agree on the written form. This also applies to modifications of this License Agreement, including any modification of this written form clause. No oral collateral agreements have been made.
- (2) This License Agreement shall be governed by the law of the Republic of Germany excluding the U.N. sales law and the private international law.
- (3) Venue of court for disputes under this License Agreement shall be Singapore.
- (4) If any of the provisions of this License Agreement should be invalid and/or if this License Agreement should be incomplete, then the validity of the remaining part of the License

Agreement shall not be affected. The invalid and/or incomplete provision shall be deemed replaced by another provision resembling as closely as possible the invalid or missing provision in terms of its commercial effect.

- (5) Prior to pursuing any legal action, the Parties undertake to conduct mediation proceedings with a trained mediator. The claiming Party shall inform the other Party of its intention to conduct mediation proceedings concurrently nominating a mediator. If the other Party fails to accept the mediation by the nominated mediator within two weeks, the proceedings shall be deemed failed. If mediation takes place and does not come to an end within no later than three months after the mediation request date, then either Party may declare it failed. Only after the failure of mediation the Parties will be entitled to bring action before a court of law. This shall not apply if a Party intends to obtain judicial relief.