Zettasphere Ltd: Terms and Conditions

These terms and conditions are available in the English language only.

If you have any questions or complaints about Zettasphere services, please contact Zettasphere Ltd, as described on our website Contact page.

1.   Definitions and interpretation

1.1   In the Agreement:

"**Provider and Customer**" have the meanings specified in the Terms and Conditions which incorporate this document.

"**Customer Agreement**" means the agreement between the Provider and the Customer for the provision of the Zettasphere services, incorporating these terms and conditions and the Order, and any amendments to the Customer Agreement from time to time;

"**Business Day**" means any week day, other than a bank or public holiday in England;

"**Business Hours**" means between 09:00 and 17:30 London time on a Business Day;

"**Charges**" means the amounts payable by the Customer to the Provider under or in relation to the Customer Agreement (as set out in the order confirmation);

"**Compatible Third-Party System**" means any other system, application, program or software which we have confirmed in writing as compatible with Zettasphere services.

"**Confidential Information**" means the Customer Confidential Information and the Provider Confidential Information;

"**Customer**" means the customer specified in the order; "**Customer**

Confidential Information" means

(a)   any information disclosed (whether disclosed in writing, orally or otherwise) by the Customer to the Provider that is marked as "confidential", described as "confidential" or should have been understood by the Provider at the time of disclosure to be confidential;

(b)   the terms and conditions of the Customer Agreement (unless described as not being confidential in the order confirmation).

"**Customer Materials**" means all works and materials:

(a)   uploaded to, stored on, processed using or transmitted via the Zettasphere system, by or on behalf of the Customer or by any person or application or automated system using the Customer's account; and

(b)   otherwise provided by the Customer to the Provider in connection with the Customer Agreement;

"**Customisations**" means customisations to the Zettasphere system that the Provider and Customer agree the Provider will produce on behalf of the Customer;

"**Defect**" means a defect, error or bug having a major adverse effect on the appearance, operation or functionality of the Zettasphere system, but excluding any defect, error or bug caused by or arising as a result of:

(a)   an act or omission of the Customer, or an act or omission of one of the Customer's employees, officers, agents, suppliers or sub-contractors; or

(b)   an incompatibility between the Zettasphere system and something that is not a Compatible Third-Party system; or

(c)   an incompatibility between the Zettasphere system and a Compatible Third-Party system, caused in the sole opinion of Zettasphere by a problem or change in that system. The Provider will make reasonable efforts to overcome or reduce the impact of any problem with a Compatible Third-Party system, but cannot commit to succeeding.

"**Documentation**" means the documentation produced by the Provider and made available to the Customer;

"**Effective Date**" means the date that the Customer Agreement comes into force as specified in the Order;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Intellectual Property Rights** " means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Minimum Term**" means the period specified, if any, in the Order;

"**Permitted Purpose**" means using the services for the intended and within the acceptable use policy set out in Schedule 1;

"**Personal Data**" has the meaning given to it in the Data Protection Act 1998;

"**Zettasphere system**" **(also called "The System")** means the software system and associated infrastructure, that is owned and operated by Zettasphere Ltd, and that will be made available to the Customer as a service;

"**Zettasphere Ltd**" means Zettasphere Ltd, a company incorporated in England and Wales, registration number 7866005;

"**Provider Confidential Information**" means:

(a)   any information disclosed (whether disclosed in writing, orally or otherwise) by the Provider to the Customer during the Term that is marked as "confidential", described as "confidential" or should have been understood by the Customer at the time of disclosure to be confidential;

(b)   the terms and conditions of the Customer Agreement.

"**Services** " means all the services provided or to be provided by the Provider to the Customer under the Customer Agreement, including the Support and Consultancy Services;

"**Order**" means the document made available by the Provider to the Customer during the order process that specifies the identity of the Customer, and other matters relating to the Customer Agreement;

"**Support & Consultancy Services**" means knowledge services provided or to be provided by the Provider to the Customer;

"**Term**" means the term of the Customer Agreement.

1.2   In the Customer Agreement, a reference to a statute or statutory provision includes a reference to:

(a)   that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b)   any subordinate legislation made under that statute or statutory provision.

1.3   The Clause headings do not affect the interpretation of the Customer Agreement.

1.4 The ejusdem generis rule is not intended to be used in the interpretation of the Customer Agreement.

[Numbers 2-6 deliberately skipped]

7. **Rights in The System**

7.1.   For the avoidance of doubt, the Customer has no right to access the object code or source code of the Zettasphere system, either during or after the Term, save as expressly permitted by the order confirmation.

7.2.   All Intellectual Property Rights in the Zettasphere system shall, as between the parties, be the exclusive property of the Provider.

7.3.   the Customer must not frame or otherwise re-publish or re-distribute the Zettasphere system save as expressly permitted by the Documentation and order confirmation.

8. **Access Restrictions**

8.1.   The Provider reserves the right to restrict access to all or part of the Zettasphere system at the Provider's discretion.

8.2.   The Provider may disable the use of the Zettasphere system, in the Provider's sole discretion without notice or explanation.

8.3.   If the Provider provides the Customer with credentials (for example a user ID and password, or an access token) to enable the Customer to access the Zettasphere system, or if the Customer accesses the Zettasphere system using third-party credentials (for example a Twitter account), the Customer must ensure that the credentials are kept confidential.

8.4.   The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Zettasphere system using the Customer's credentials.

8.5.   If the Customer has any reason to believe that its credentials are not confidential, or have not been confidential, the Customer must inform us immediately.

8.6.   the Customer must comply at all times with the terms of the acceptable use policy set out in Schedule 1, and must ensure that all users of the Zettasphere system agree to and comply with the terms of that acceptable use policy.

9. **Trial period**

During any Trial Period, all of the provisions of this Customer Agreement shall apply, save as follows:

(a) the Customer shall have no obligation to pay in respect of the trial period;

(b)   either party may terminate the Customer Agreement immediately by giving written notice to the other party at any time before the end of the trial period (in

Zettasphere

which case no liability to pay will arise).

10. Charges

10.1 The Customer will pay the Charges to the Provider as described in the order confirmation, within 30 days of the date of issue of an invoice unless specified otherwise.

10.2 All Charges stated in or in relation to the Customer Agreement are stated exclusive of sales taxes such as VAT, unless the context requires otherwise. Sales taxes such as VAT will be payable by the Customer to the Provider in addition to the principal amounts.

10.3 Charges must be paid using such payment details as are notified by the Provider to the Customer from time to time.

10.4 If the Customer does not pay any amount properly due to the Provider under or in connection with the Customer Agreement, the Provider may:

(a) charge the Customer interest on the overdue amount at the rate of 10% per year above the base rate of NatWest Bank Plc from time to time (which interest will accrue daily and be compounded quarterly); or

(b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

10.5 The Provider may vary the Charges by giving to the Customer not less than 90 days' written notice of the variation.

10.6 The Provider may suspend access to the Zettasphere system and provision Services if any amounts due to be paid by the Customer to the Provider under the Customer Agreement are overdue.

12. Warranties

12.1 The Customer warrants to the Provider:

(a) that it has the legal right and authority to enter into and perform its obligations under the Customer Agreement.

(b) that it has permission from customers, subscribers, site visitors and other individuals affected, to allow the Provider to act on its behalf. This includes permission to store cookies, send status and emails.

12.2 The Provider warrants and represents to the Customer:

(a) that it has the legal right and authority to enter into and perform its obligations under the Customer Agreement;

(b) that it will perform its obligations under the Customer Agreement with reasonable care and skill;

(c) that the Zettasphere system will perform substantially in accordance with the Documentation and Order;

(d) the Zettasphere system (excluding for the avoidance of doubt the Customer Materials) will not infringe any person's Intellectual Property Rights in England and Wales and under English law; and

(e) the Zettasphere system is and will remain free from viruses and other malicious software programs.

12.3 The Customer acknowledges that:

(a) complex software is never wholly free from defects, errors and bugs, and the

Provider gives no warranty or representation that the Zettasphere system will be wholly free from such defects, errors and bugs;

(b) the Provider does not warrant or represent that the Zettasphere system will be compatible with any application, program or software not identified as a Compatible Third-Party system and named on the order confirmation; and

(c) the Provider will not and does not purport to provide any legal, taxation or accountancy advice under the Customer Agreement or in relation to the Zettasphere system and (except to the extent expressly provided otherwise) the Provider does not warrant or represent that the Zettasphere system will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.

12.4 All of the parties' warranties and representations in respect of the subject matter of the Customer Agreement are expressly set out in the terms of the Customer Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Customer Agreement will be implied into the Customer Agreement.

14. Limitations and exclusions of liability

14.1 Nothing in the Customer Agreement will:

(a) limit or exclude the liability of a party for death or personal injury resulting from negligence;

(b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;

(c) limit any liability of a party in any way that is not permitted under applicable law; or

(d) exclude any liability of a party that may not be excluded under applicable law.

14.2 The limitations and exclusions of liability set out in this Clause 14 and elsewhere in the Customer Agreement:

(a) are subject to Clause 14.1;

(b) govern all liabilities arising under the Customer Agreement or any collateral contract or in relation to the subject matter of the Customer Agreement or any collateral contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

14.3 Neither party will be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

14.4 Neither party will be liable for any loss of business, contracts or commercial opportunities.

14.5 Neither party will be liable for any loss of or damage to goodwill or reputation.

14.6 Neither party will be liable in respect of any loss or corruption of any data, database or software.

14.7 Neither party will be liable in respect of any special, indirect or consequential loss or damage.

14.8 Neither party will be liable for any losses arising out of a Force Majeure Event.

14.9 Neither party's liability in relation to any event or series of related events will exceed the total amount paid and payable by the Customer to the Provider under the Customer Agreement during the 3 month period immediately preceding the event or events giving rise to the claim.

14.10 Neither party's aggregate liability under the Customer Agreement will exceed the total amount paid by the Customer to the Provider under the Customer Agreement.

15.   Data protection

15.1   The Customer agrees that, as defined in the UK Data Protection Act, it is the Data Controller for all Personal Data disclosed to the Provider under this agreement, or collected or stored by the Zettasphere System under this agreement, and Zettasphere Ltd is a Data Processor.

15.2   The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider.

15.3   The Provider warrants that:

(a)   it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Provider on behalf of the Customer; and

(b)   it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Provider on behalf of the Customer.

(c)   Notwithstanding (a), most Personal Data is automatically deleted when it gets too old.

16.   Confidentiality and publicity

16.1   The Provider will:

(a)   keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 16;

(b)   protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care

16.2   The Customer will:

(a)   keep confidential and not disclose the Provider Confidential Information to any person save as expressly permitted by this Clause 16;

(b)   protect the Provider Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

16.3   Confidential Information of a party may be disclosed by the other party to that other party's officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information disclosed.

16.4   The obligations set out in this Clause 16 shall not apply to:

(a)   Confidential Information that is publicly known (other than through a breach of an obligation of confidence);

(b)   Customer Confidential Information that is in possession of the Provider prior to disclosure by the Customer, and Provider Confidential Information that is in possession of the Customer prior to disclosure by the Provider;

(c)   Customer Confidential Information that is received by the Provider, and Provider Confidential Information that is received by the Customer, from an independent third party who has a right to disclose the relevant Confidential Information; or

(d)   Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body, provided that the party subject to such disclosure requirement must where permitted by law give to the other party prompt written notice of the disclosure requirement.

16.5 Each party agrees that its name, logo, and trademarks may be used by the other in presentations, marketing materials, customer supplier or partner lists, financial reports, and Web site information about customers suppliers or partners. Each party therefore grants the other a limited license to do this, provided the other follows the party's standard logo/trademark/marketing usage guidelines.

16.6 Except as above, neither party will make any public disclosure relating to the Customer Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party.

17. Termination

17.1 Either party may terminate the Customer Agreement immediately by giving written notice to the other party if the other party:

(a) commits any material breach of any term of the Customer Agreement, and:

(i) the breach is not remediable; or

(ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so.

17.2 Either party may terminate the Customer Agreement immediately by giving written notice to the other party if:

(a) the other party:

(i) is dissolved;

(ii) ceases to conduct all (or substantially all) of its business;

(iii) is or becomes unable to pay its debts as they fall due;

(iv) is or becomes insolvent or is declared insolvent; or

(v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Customer Agreement).

17.3 Either party may terminate the Customer Agreement by giving at least 90 days' written notice of termination, unless a lesser period is agreed on the order, to the other party, expiring at any time after the end of the Minimum Term.

17.4 The Provider may terminate the Customer Agreement immediately by giving written notice of termination to the Customer where the Customer fails to pay to the Provider any amount due to be paid under the Customer Agreement by the due date plus 30 days.

18. Effects of termination

18.1 Upon termination of the Customer Agreement, all the provisions of the Customer Agreement will cease to have effect, save that the following provisions of the Customer Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 4.4, 10.5, 14, 16.1 to 16.4, 18 and 21.

18.2 Termination of the Customer Agreement will not affect either party's accrued liabilities and rights as at the date of termination.

18.3 Subject to Clause 18.5, within 30 days following the termination of the Customer Agreement, the Provider will irrevocably delete from the Zettasphere system all Customer Confidential Information.

18.4 Subject to Clause 18.5, within 30 days following the termination of the Customer Agreement, the Customer will irrevocably delete from its computer systems all Provider Confidential Information.

18.5 A party may retain any document (including any electronic document) containing the Confidential Information of the other party after the termination of the Customer Agreement if:

(a) that party is obliged to retain such document by any law or regulation or other rule enforceable against that party; or

(b) the document in question is a letter, fax, email, order confirmation, invoice, receipt or similar document addressed to the party retaining the document.

19. Notices

19.1 Any notice given under the Customer Agreement must be in writing (whether or not described as "written notice" in the Customer Agreement) and must be delivered personally, sent by recorded signed-for post, or sent by email for the attention of the relevant person (provided you receive a reply confirming delivery).

19.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

(a) where the notice is delivered personally, at the time of delivery;

(b) where the notice is sent by recorded signed-for post, 48 hours after posting; and

(c) where the notice is sent by fax or email, at the time of the transmission (provided you receive a reply confirming delivery).

20. Force Majeure Event

20.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Customer Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

20.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Customer Agreement, will:

(a) forthwith notify the other; and

(b) will inform the other of the period for which it is estimated that such failure or delay will continue.

20.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

21. General

21.1 No breach of any provision of the Customer Agreement will be waived except with the express written consent of the party not in breach.

21.2 If a Clause of the Customer Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Customer Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

21.3 Nothing in the Customer Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

21.4 The Customer Agreement may not be varied except by a written document signed by or

on behalf of each of the parties.

21.5   Each party hereby agrees that the other party may freely assign all of its contractual rights and obligations under the Customer Agreement to any successor to all or a substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in the Customer Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Customer Agreement or any contractual rights or obligations under the Customer Agreement.

21.6   Neither party will, without the other party's prior written consent, either during the term of the Customer Agreement or within 6 months after the date of effective termination of the Customer Agreement, engage, employ or otherwise solicit for employment any employee, agent or contractor of the other party who has been involved in the performance of the Customer Agreement.

21.7   Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Customer Agreement.

21.8   The Customer Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Customer Agreement are not subject to the consent of any third party.

21.9   Subject to Clause 14.1:

(a)   the order confirmation, acceptable use policy and terms and conditions referred to in herein constitute the entire Customer Agreement between the parties in relation to the subject matter of the Customer Agreement, and supersede all previous Customer Agreements, arrangements and understandings between the parties in respect of that subject matter.

21.10 The Customer Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Customer Agreement.

Schedule 1: Acceptable Use Policy

1. The Customer must not use, or allow use of, the Zettasphere system:

    1.1 to in any way cause damage to any Zettasphere or impairment of the availability or accessibility of any Zettasphere system;

    1.2 in any way which is unlawful, illegal, fraudulent or harmful, or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity;

    1.3 to copy, store, host, transmit, send, use, publish or distribute any material which consists of (or is linked to) any spyware, computer virus, Trojan horse, worm, keystroke logger, rootkit or other malicious computer software;

    1.4 to conduct any systematic or automated data collection activities (including without limitation scraping, data mining, data extraction and data harvesting) without our express written consent;

    1.5 to send or publish spam.