

## Zensai International ApS

### Software as a Service Agreement

These terms and conditions govern your access to the Zensai Services (“Zensai Services”) such as Learn365, Perform365, Engage365, Integrate365 & Flow365 and is an agreement between Zensai International ApS (“Zensai”) and you as the customer (“you” or “Customer”). The agreement (“SAAS Agreement”) consists of the following documents:

- This Software as a Service Agreement between Zensai and the Customer
- Service Level Agreement (“SLA”) [Schedule 1](#)
- Zensai Data Processing Agreement (“DPA”) [Schedule 2](#)

To subscribe for our Zensai Services, you must contact Zensai for a quote (“Quote”) based on your user license needs. You may order on-line for certain Zensai Services. The SAAS Agreement is an integrated part of the Quote, and when accepting the Quote, you will also accept the SAAS Agreement and its terms and conditions. Your standard terms and conditions, or other deviations from the SAAS Agreement, shall not apply, even if attached to the Quote upon your acceptance.

If you register for a Freemium product (Free Trial License) the SAAS Agreement will also govern the use of Freemium. You may choose to convert to a paid Subscription, when this has been confirmed in the Quote and, for certain Zensai Services, you may automatically convert to a paid Subscription when you submit your payment details to Zensai, always conditioned upon Zensai’s acceptance.

The SAAS Agreement takes effect when you have accepted a Quote from Zensai or upon your acceptance when start using the service, whichever occurs first. You may not use the service unless the SAAS Agreement has been accepted.

Your explicit signature to Schedule 2 the DPA is required. You will find the current DPA at <https://zensai.com/dpa/> which forms an integrated part of the SaaS Agreement. The Zensai Services are generic products and the DPA sets forth the obligations for data processing activities performed by Zensai when providing the Zensai Services. Zensai makes the commitments stated in the DPA to all customers with licenses to our Zensai Services, and you agree that the DPA in force at the time of your purchase or renewal of Subscriptions governs the processing and security of all personal data which is stored and processed through the Zensai Services you subscribe to. If you as data controller require any further action to protect personal data, you must contact Zensai to agree on additional actions. All such actions must be agreed upon in writing as a supplement to the DPA before Zensai can submit and adhere to such actions.

Please read through the SAAS Agreement and add your signature to the DPA. You represent to us that you are lawfully able to enter into this SAAS Agreement, and if you are entering into this SAAS Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to the SAAS Agreement, and the terms “you” shall refer to such entity. If you do not have such authority, or if you do not agree with the terms and conditions, you must not accept this SAAS Agreement and you may not use the Zensai Services.

When you renew or purchase a new Subscription for licenses to a Service, the then-current SAAS Agreement apply.

This SAAS Agreement with its Schedule 1 and Schedule 2 replaces all previous terms and conditions for license to the Zensai Services and Support Services and shall apply to all purchases or renewals of Subscriptions as of 15 August 2024.

This SAAS Agreement was last updated on 12 July 2024.

You will find previous versions and amendments at <https://zensai.com/saas-terms/>

Zensai also processes personal data for Zensai's own purpose related to customer handling, administration, visitors on website and for other lawful processing as a data controller. You will find Zensai's Privacy Policy on the front page of our website <https://www.zensai.com/>

---

## Terms and Conditions

The SAAS Agreement is a legally binding agreement between, Zensai International ApS, a corporation duly organised and existing under the laws of Denmark, having its registered offices at Mariane Thomsens Gade 4B, 5<sup>th</sup> floor, 8000 Aarhus C, Denmark and registered under CVR-no. 32139728 ("**Zensai**") and you as the customer ("**Customer**") for the Zensai Cloud software for Human Success as Learn365, Perform365, Engage365, Integrate365 & Flow365.

The Service is provided business to business.

The SaaS Agreement is accepted by the Customer and replaces all previous agreements between Zensai and the Customer regarding the Service and Support Services.

### 1. DEFINITIONS

"Affiliated Company" is any corporation, company, or other entity, which: (i) is controlled by a Party; or (ii) controls a Party ("Parent Company"); or is controlled by such Parent Company or (iii) is under common control with a Party, and for purpose of this definition, "control" shall mean (a) the direct or indirect ownership of more than fifty percent (50%) of the equity ownership or other participating interest or (b) the possession of the power to cause the election and/or direction of the management and policies of such legal entity.

"Confidential Information" has the meaning defined in Section 6.6.1.

"Customer Data" has the meaning defined in Section 6.1.

"Customer Terms" means the standard terms of a Third-Party Provider that apply to the access and use of a Third-Party Solution made available by such Third-Party Provider. For the avoidance of doubt, Zensai is not a party to Customer Terms.

"DPA" means the Zensai Data Processing Agreement, Schedule 2.

"Engage365 & Perform365" means the Zensai Cloud software offered as Engage365 & Perform365 (previously known as Weekly10) which allows the Customer to set up its own Engage & Perform portal (tenant).

"Freemium" means an access right free of charge which, further to the restriction for a License, is limited in scope and time to access an Zensai Service on trial basis.

"License" means a right to access and use the Service and to invite Users. Customer is free to use the License for all Affiliated Companies and their employees.

"Learn365" means the Zensai Cloud Learning Management software offered as Learn365 (previously known as LMS365) which allows the Customer to set up its own learning portal (tenant) with a customized content for learning.

"Party" means Zensai or the Customer individually, and collectively the "Parties".

"Quote" means the offer from Zensai International ApS, or one of Zensai International ApS' Affiliated Companies, to the Customer for defined Services and Support Services and includes access for a particular number of Users, the Subscription Fee, and Subscription Period; a Quote may include offerings of Third-Party Solutions. If the Quote is issued by one of Zensai International ApS' Affiliated Companies, this SAAS Agreement is still full in force between Zensai and the Customer,

"Subscription" means the access rights provided with a License for the Customer to use the Service(s) for a Subscription Period against payment of a Subscription Fee; a Subscription may include one or several Licenses and several User Licenses.

"SAAS Agreement" means this agreement with its Schedules.

"Service(s)" means the Zensai Service(s) subscribed to by the Customer, which is offered as cloud computing service (Software as a Service).

"SLA" means the Service Level Agreement, Schedule 1.

"Subscription Fee" means the Customer's payment for using the Services and other offerings under the SAAS Agreement.

"Subscription Period" means the binding period for the Customer's purchase of Services under the SAAS Agreement.

"Support Services" means the services offered by Zensai Helpdesk for support as defined in Schedule 1, Service Level Agreement.

"Third-Party Provider" means a third party who brings one or more Third-Party Solutions to the market.

"Third-Party Solutions" means third party software and/or cloud services which do not form an integrated part of an Zensai Service; Third-Party Solutions include, but are not limited to, software solutions promoted by Zensai, such as payment services, and third party content, applications, and platform services which the Customer may apply with the Service, or which the Service may link to, and certain of these may be offered by Zensai as a reseller.

"User" means a person accessing and using the Service.

"User Guide" means Zensai's applicable user guide to the Service as published by Zensai on its website.

"User License" means a rights to access the Service subscribed to by the Customer and which the Customer must purchase for each User.

"Zensai Reseller Terms" means terms expressly agreed in writing between Zensai and Customer that govern Customer's access and use of a Third-Party Solutions.

"Zensai Services" means the services published by Zensai on its website as Zensai-produced services; the Zensai Services expressly exclude Third-Party Solutions.

## **2. THE SERVICE AND LICENCES**

### **2.1 The Service**

- 2.1.1 Zensai makes the Service available to the Customer pursuant to this SAAS Agreement and the Quote for each Subscription Period. The Service is purchased on a Subscription basis and may be accessed only by Users equal to the number of User Licenses purchased under the Quote. Zensai is entitled to refuse any order placed by the Customer.
- 2.1.2 With the Service, the Customer may purchase user rights to Third-Party Solutions which interoperate with Zensai Services. However, except as may be set forth in Zensai Reseller Terms, the Customer's access and use of such Third-Party Solutions is solely subject to the Customer Terms between the applicable Third-Party Provider and Customer, and the terms and conditions set forth herein with respect to the access and use of Zensai Services (including all associated support obligations, representations, warranties, and indemnities) do not apply with respect to such Third-Party Solutions.
- 2.1.3 The Service is offered as a standard generic software, and the Service will perform materially in accordance with the applicable User Guides under normal use and circumstances but, otherwise, the Service is provided "as is" without any specific or implied warranties of any kind, and the Subscription is not contingent on the delivery of any future functionality or feature. Zensai does not take any responsibility for the Customer's customizing of the Service. Zensai shall ensure that the Service uptime is in accordance with good industry practice for hosting a professional internet-based software as a service.
- 2.1.4 Zensai will provide updates and upgrades at its discretion, and the downtime shall be minimum considering the contents of the version update. The Customer must subscribe for an SLA which defines the Support Services offered with the Service.

## 2.2 **Customer's Licenses with Right of Use**

- 2.2.1 Subject to the Customer's fulfilment of the Customer's obligations under the SAAS Agreement, including, without limitation, payment of any and all applicable Subscription Fees, Zensai hereby grants to the Customer, subject to the restrictions in Section 3 below, a non-exclusive, non-transferable License, limited in scope and duration, with a right of use to the Service according to the terms of this SAAS Agreement and the Quote.
- 2.2.2 Customer's License and right to use the Service will take effect on the date of the acceptance of the Quote and the SAAS Agreement by the Customer and runs until terminated in accordance with the terms of the SAAS Agreement.
- 2.2.3 The Subscription is based on the number of Users. The Customer may only grant access to the Service to the number of Users agreed between Customer and Zensai. The Customer may from time to time reassign User Licenses to new Users, however, the Customer may not allow individual Users to share a single User License. The Customer is responsible for the administration of Users registered under the Customer and for the Users' use of the Service. If the number of Users exceeds the number of Users comprised by the Service to the Customer, Zensai is entitled to require that the Customer pay for such number of Users for the remainder of the Subscription Period.
- 2.2.4 The Customer is responsible for all activities that occur in connection with its use of the Service. The Customer shall (a) ensure that the Service is used only in accordance with the User Guide and this SAAS Agreement, (b) prevent unauthorized access or use, and (c) prevent that the Company and/or its Users use the Service in a manner which could in any way harm Zensai's name, reputation, or goodwill, or which violates applicable laws or regulations.
- 2.2.5 The Customer is responsible for maintaining sufficient security measures covering, without limitation, confidentiality, authenticity, and integrity to ensure that the access to and use of the Services granted under the SAAS Agreement is restricted as defined herein.

### Freemium

- 2.2.5.1 Freemium (Free Trial License) may be applied for a period ending at the earlier of (a) the end of the free trial period offered with Freemium, or (b) the start date for any paid Subscription for a License. Freemium is accessible only for the maximum number of User for which free User Licenses are offered. If Freemium is converted to a paid Subscription for the Service, Zensai will charge the Customer the Subscription Fees as of initiation of the Subscription Period.
- 2.2.5.2 Freemium is offered “as-is” without any qualifications, warranties, or support services. Acceptance of additional terms and conditions in addition to this SAAS Agreement may be required to obtain Freemium. Freemium shall exclude all Customer rights of remedies, including the remedies stated in Section 10. The liability of Zensai shall be limited as stated in Section 12. Notwithstanding Section 12.3, for Freemium, the aggregated liability of Zensai shall be maximized to DKK 10,000.
- 2.2.5.3 If the Customer does not purchase a Subscription before the end of the free trial period (if such is agreed), any data entered into an Zensai Service by the Customer will be permanently lost after the trial period has expired.

## **3. RESTRICTIONS**

### **3.1 No Assignment, Selling, Sub-licensing, Rental, Lending or Leasing**

- 3.1.1 The License to the Service is non-transferable, whereas the Customer may not assign, sell, sub-license, rent, lease or lend the License. This prohibition on transfer of Licenses does not limit the Customer’s rights to invite Users or change Users according to the subscribed number of User License, cf. Sections 2.1 and 2.2.
- 3.1.2 The Customer and Zensai are both entitled to transfer this SAAS Agreement if the reason is a change of the ownership structure or transfer of all assets by way of a merger, takeover or similar event. Otherwise, the Customer may not without the written acceptance of Zensai, make any transfer of the SAAS Agreement.

### **3.2 No Copying**

- 3.2.1 The Customer is not allowed to make any copies of the Service or its features and functions, except to the extent expressly permitted by applicable law. Similarly, the Customer may not publish, distribute, or otherwise make the Service available for others to copy.

### **3.3 Limitations on Reverse Engineering, De-compilation, and Disassembly**

- 3.3.1 The Customer may adjust the Service as provided with the functionalities in the Service as offered with the User Guide to comply with Customer’s needs and for integration into or interoperation with Customer’s IT environment. Apart from such adjustments and integrations, the Customer may not i) amend, improve, modify or further develop the Service or any part hereof, ii) implement the Service or any part thereof into other software, platforms or solutions, iii) create derivative works based on the Service or any features or functions therein, iv) make or perform any form of reverse engineering, decompiling or disassembly of the Service, v) or take other steps to obtain the purposes as comprised by i) – iv), including by allowing third parties to perform steps as comprised by i) – iv).

### **3.4 Support, Upgrade, Maintenance, etc.**

- 3.4.1 Zensai delivers Support Services in accordance with the SLA, Schedule 1. The Support Services are provided as second and third level support to the Service, its functionality, maintenance, updates, and upgrades.

- 3.4.2 Zensai Support Services do not include technical support, assistance, maintenance and similar support which is caused by or relating to the Customer's own IT environment (first level support). The Customer shall at its own costs and risk provide for first level support from its own IT resources or third-party supporters and may purchase such service from Zensai or Zensai's authorized partner.

#### **4. PRICE AND TERMS OF PAYMENT**

- 4.1 The Subscription Fee for the License to the Service is according to Zensai's current price list and based on the number of User Licenses subscribed for by the Customer. The Subscription Fee for the Support Services are based on the level of Helpdesk Service which the Customer sign on to, under the current price list.
- 4.2 The Subscription Fees are pre-paid and shall be invoiced as stated in the Quote and, thereafter, unless otherwise defined in the Quote, for annual payments of Subscription Fees on each subsequent anniversary of the initial invoicing for the coming 12 months period. Paid Subscription Fees are non-refundable. Subscription Fee may be invoiced from one of Zensai International ApS' Affiliated Companies, and if so, the Customer can pay in full to such Affiliated Company.
- 4.3 Payment terms are 30 days after invoice date, unless otherwise stated in the Quote. Overdue amounts will be charged at an interest rate of 1% per month or the maximum rate permitted by law when lower, from the date such payment was due until the date paid.
- 4.4 The Parties may agree on other fees and payment terms if stated in the Quote, a Quote to renew a Subscription, or in an appendix to the Quote.

#### **5. EXPIRY AND TERMINATION**

##### **5.1 Subscription Period**

- 5.1.1 The Subscription Period is binding upon both Zensai and the Customer, meaning the Customer cannot terminate the Service, the Support Services and this SAAS Agreement during a Subscription Period. Notwithstanding the above, the Customer can terminate the Subscription due to a material default in the Services, cf. Section 10.3, or if a material change to the terms and conditions of the SAAS Agreement comes into force, cf. Section 16.1, and if the Customer is not in breach of the SAAS Agreement, Zensai will refund a pro rata portion of the Subscription Fee for the remaining unused period of the Service and Support Services.
- 5.1.2 The Subscription Fee for the Subscription Period is defined in the Quote. The Customer may add Users or upgrade the Service during the Subscription Period but may not downgrade the number of Users during the Subscription Period. For Support Services, the Customer may upgrade its level of Helpdesk Services during a Subscription Period, but the Customer may not downgrade to a lower service level.
- 5.1.3 The initial Subscription Period shall be defined in the Quote as accepted by the Customer and shall cover a minimum of 12 months. At the end of the initial term, the Subscription is subject to automatic renewal with a Subscription Period running for terms of 12 months, or longer periods if agreed in a new Quote. The Subscription Fee will be invoiced upon renewal for pre-payment. The Subscription may be changed or terminated by the Customer with a notice of no less than 60 days before renewal.
- 5.1.4 Zensai may terminate the SAAS Agreement by giving a notice of twelve (12) months before the end of a Subscription Period.

## 5.2 **Customer's Breach**

- 5.2.1 In the event that the Customer is in breach of any term, condition or provision of the SAAS Agreement or in case of the Customer's insolvency or bankruptcy, Zensai may, at its discretion, terminate this SAAS Agreement or suspend or downgrade the Service and Support Services without any notice.
- 5.2.2 Zensai may suspend access to the Services, or portion thereof, at any time if, in Zensai's sole reasonable discretion, the integrity or security of the Services is in danger of being compromised by acts of the Customer or its Users.

## 5.3 **Consequences of Termination**

- 5.3.1 Upon termination of the SAAS Agreement, for whatever reason, the Customer shall discontinue any and all use of the Service immediately.

## **6. THE CUSTOMER DATA AND CONFIDENTIALITY**

- 6.1 Between Zensai and the Customer, the Customer shall own all data and content uploaded by or otherwise imported into the Service by the Customer and its Users, including reports, statistics, and other data to the extent generated solely from Customer's data, and such other information, text, and content uploaded or posted by the Customer and its Users, or stored by or on behalf of Customer in connection with or relating to Customer's usage of the Service ("Customer Data"). Zensai shall perform its duties as data processor in accordance with the DPA, Schedule 2.
- 6.2 The Customer shall be responsible for the accuracy, quality, and legality of the Customer Data and the means by which the Customer Data is acquired, and that it has all rights necessary to permit Zensai to use the Customer Data for providing the Service and Support Services. All data uploaded shall comply with Section 8.5.
- 6.3 Subject to the DPA, Schedule 2, Zensai reserves the right to maintain and, thereafter, delete Customer Data 90 days after termination of the SAAS Agreement, regardless of the reason for termination, and Zensai is under no obligation to store Customer Data after this time.
- 6.4 . The Customer grants to Zensai rights to use, copy, display, modify, process, store, aggregate or compile Customer Data for purposes of delivering the Service and the Support Services. Customer grants to Zensai worldwide, perpetual, irrevocable, non-exclusive, royalty-free, sublicensable and transferable licenses in i) the aggregated, anonymized Customer Data and ii) the suggestions, recommendations, or other feedback provided by the Customer to Zensai, which licenses provides for Zensai to use, copy, modify and create works, including to generate reports, statistics or analyses for purposes of improving the functionalities, performance, and services offered with the Zensai Services. For the avoidance of doubt, this does not include any license regarding the content of trainings and learning materials.
- 6.5 Zensai shall be entitled to access Customer's learning portal on the Service when required to provide basic support services and Support Services to the Customer. Zensai shall treat the Customer's content as the Customer's confidential information and for personal data comply with Schedule 2, the DPA. Zensai shall have the right to access and to disclose the data stored in the Customer's learning portal to the extent such disclosure is required under statutory requirements or orders from the courts or public authorities. Zensai shall give notice to the Customer before disclosing the information unless prohibited under applicable regulation or the court order.

## 6.6 **MUTUAL PROVISIONS ON CONFIDENTIALITY**

- 6.6.1 Each Party acknowledges that pursuant to this SAAS Agreement and the Service, a Party may have access to certain information that the other Party considers to be confidential information ("Confidential Information") and which shall include information specifically designated as confidential or that would be understood to be confidential or proprietary by a reasonable person. As to Customer, Confidential Information includes login credentials for accessing the Services, and Customer Data. As to Zensai, Confidential Information includes the features and functions of the Service that are not available to the general public via the public internet, including screen shots of the same, future product plans, any software documentation or specifications provided to Customer, the commercial terms, including pricing, of this SaaS Agreement and any Quote (but not the mere existence of these agreements) audit, performance and security test results whether conducted by Zensai or Customer, and any other proprietary, financial or business information supplied to Customer by Zensai.
- 6.6.2 A Party (the receiving Party) shall treat confidential all Confidential Information received by the other Party (the disclosing Party) and the receiving Party shall not (a) disclose, disseminate, or transfer such Confidential Information to any third parties except to such employees and/or agents and/or contractors, who are bound by confidentiality, and who need to know for purpose of the SAAS Agreement, however, subject to the restrictions which follow by the SAAS Agreement, including the DPA; or (b) use such Confidential Information for any purpose other than in connection with the SAAS Agreement. The receiving Party shall protect and treat the Confidential Information with the same degree of care as it protects its own Confidential Information, but in no event use measures reflecting less than a reasonable degree of care.
- 6.6.3 The Confidential Information shall not include any information which (a) is in or enters the public domain other than by a breach of this SAAS Agreement; (b) was in the lawful possession of the Party prior to the disclosure; and (c) is legally transmitted or disclosed by a third party without restrictions on disclosure. The Party shall have the right to disclose the other Party's Confidential Information to the extent such disclosure is required under statutory requirements or orders from the courts or public authorities, provided the Party notifies the other Party before disclosing the Confidential Information, unless prohibited under applicable regulation or the court order, however, subject to the DPA.
- 6.6.4 Subject to Zensai's reservation of rights stated in Section 6.3, either Party shall upon termination of the SAAS Agreement immediately return or destroy all Confidential Information belonging to the other Party. A Party shall not retain documents or materials in any form of the other Party's Confidential Information, except that a Party shall be entitled to keep, for its records, one electronic record for archival purposes reasonably needed to document and defend its performance under the SAAS Agreement. The duty to return or destroy Confidential Information shall not apply to copies of electronically exchanged Confidential Information made as a matter of routine information technology backup, provided that such Confidential Information or copies thereof, shall be subject to an indefinite confidentiality obligation according to the terms and conditions set forth herein and shall be deleted in accordance with the routine deletion of technology backup.

## **7. CHANGES**

- 7.1 Zensai is entitled to continuously make updates and improvements to the Service. Zensai is also entitled to change the composition and structure of the Service and the Support Services provided. Such updates, improvements, and changes may occur with or without notice and may affect the Service, including information and data uploaded to or submitted by the Service.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 Zensai reserves all title and intellectual property rights and interests, including full copyright in and to the Service, the



User Guide, and other documentation provided by Zensai, to remain with Zensai and/or its licensors and subcontractors. The Customer is not allowed to remove any proprietary marks or copyright notices from the Service. Customized created software also belongs to Zensai, unless otherwise agreed in writing.

- 8.2 Except for the License expressly granted under this SAAS Agreement, the Customer is not granted any other rights in the Service and the User Guide. The Customer shall notify Zensai of any current or potential violation of Zensai's intellectualproperty rights or unauthorized use of the Service of which the Customer becomes aware.
- 8.3 The Customer grants Zensai and its suppliers an authorization and global license to the material and all data uploaded by the Customer sufficient for Zensai to properly manage and operate the Service, fulfill its obligations, and promote relevant products to the Customer, cf. section 6.4. This includes the non-exclusive, non-transferable, revocable license for Zensai to include in the Services, the Customer's name, logo, and trademarks, as designated and/or amended by the Customer from time to time.
- 8.4 The Customer grants Zensai a non-exclusive, non-transferable, limited, and revocable license to use the Customer's name and trademark (logo only), as amended by the Customer from time to time, to list the Customer as a customer of Zensai on Zensai's website and in other marketing materials and information.
- 8.5 The Customer guarantees that the material and data being uploaded does not infringe on any third-party rights and does not contain material that may be offensive or violates applicable laws or regulations.

## **9. SUB-SUPPLIERS**

- 9.1 Zensai has the right to use or assign its obligations under this SAAS Agreement to a sub-supplier, including for the completion and operation of the Service, and for storing Customer Data. For adding new sub-suppliers which may process personal data, the DPA Schedule 2 shall apply including Appendix III, listing the authorized sub-processors.

## **10. REMEDIES**

- 10.1 Zensai's performance to maintain operating stability is set out in the SLA, Schedule 1. Zensai does not warrant the Service against breakdowns or malfunction.
- 10.2 Zensai shall remedy errors and defaults in the Service, and such remedy shall be performed in accordance with the SLA. If the error is immaterial, the error may be remedied with the next version update. A default or error in the Service shall be deemed material only if it has effect on the functionality of the Service as a whole or if it prevents the operation of the Service.
- 10.3 Customers sole and exclusive remedy and Zensai's entire liability for an error or default shall be as follows (i) for defaults in uptime availability, Zensai shall repair and the Customer shall obtain services credits in accordance with the SLA, Schedule 1, or the Customer may terminate the SAAS Agreement in case of failure to achieve the availability percentage for six (6) consecutive calendar months after providing notice in accordance with the SLA, Schedule 1, (ii) for a material default in the Service, Zensai shall correct the default to the features and functionality in the Service so that it materially performs in accordance with the applicable User Guide and, if Zensai is unable to provide such Service within a commercially reasonable time following receipt of written notice of breach, the Customer shall be entitled to terminate the SAAS Agreement and receive a refund of any prepaid, unused fees applicable to the remaining portion of the Subscription Period following the effective date of termination, and (iii) for a breach in Support Services, Zensai shall re-perform the Support Services.

## **11. THIRD-PARTY INFRINGEMENT CLAIMS**

- 11.1 Except for licenses to third party components which have been integrated into the Service to become an Zensai Service, and except as is expressly set forth in any Zensai Reseller Terms, Zensai does not provide the Customer with any licenses or right of use to third party software, copyrights, patents or other intellectual property rights held by a third party. The Customer must, at the Customer's own expense, license and maintain any such licenses from third parties which are required by the Customer for usage of the Service including, but not limited to, licenses to Microsoft services.
- 11.2 Provided the Customer complies with the procedures in this Section 11.2, Zensai shall defend the Customer against claims made against the Customer by a third party alleging that the use of the Service infringes a patent, copyright, or trademark of the third party or misappropriates such third party's trade secrets (in this paragraph a "Claim"), provided that such infringement is caused solely by the Service as offered by Zensai and/or by its use in accordance with the applicable User Guide. Zensai shall have no obligations for any Claims where the alleged infringement is arising from the combination of the Services with Third-Party Solutions or Customer Data or any Customer provided item, including any interoperations, alterations, or integration of software and hardware which is made to the Services and performed by others than Zensai. Promptly upon receiving notice of a Claim, the Customer shall give Zensai a written notice of the Claim and give Zensai sole control of the defense and settlement of the Claim, and the Customer shall provide all reasonable assistance in the defense or settlement of such Claim. Zensai shall pay damages, and all reasonable costs, finally awarded against Customer by a court of competent jurisdiction or an arbitrator or agreed to in a written settlement agreement signed by Zensai in connection with such Claims (provided that Zensai cannot, without the Customer's prior written approval, make any admissions of fact that expose the Customer to an imposition of damages or other claims). Zensai may, at its own expense and option, offer to either i) secure rights of use for the benefit of the Customer, or ii) replace or modify the Service with a non-infringing substitute, or iii) terminate the right to use the Service and refund any prepaid, unused fees to the remaining part of the Subscription Period following the effective date of termination. This Section 11.2 states Zensai's entire liability and Customer's exclusive remedy for any Claim of intellectual property infringement.
- 11.3 Provided that Zensai complies with the procedures in this Section 11.3, the Customer shall defend Zensai against any claims made or brought against Zensai by a third party (a) in connection with Customer's breach of any Customer Terms to which Customer is bound or (b) alleging infringement of third party's intellectual property rights, or violation of privacy or other rights and this is caused by the Customer Data or Customer's use of the Service in violation of the SAAS Agreement or arising from Customer's combination, alterations, or integration of the Service with third party products (in this paragraph a "Claim"). Promptly upon receiving notice of a Claim, Zensai shall give the Customer a written notice of the Claim and give the Customer sole control of the defense and settlement of the Claim, and Zensai shall provide all reasonable assistance in the defense or settlement of such Claim. The Company shall be entitled to take reasonable measures to prevent the alleged infringement from continuing. The Customer shall pay damages, and all reasonable costs, finally awarded against Zensai by a court of competent jurisdiction or an arbitrator or agreed to in a written settlement agreement signed by the Customer in connection with such Claims, (provided that the Customer cannot, without Zensai's prior written approval, make any admissions of fact that expose Zensai to an imposition of damages or other claims). This Section 11.3 states the Customer's entire liability and Zensai's exclusive remedy for any Claim of intellectual property infringement.

## **12. LIABILITY, EXCLUSIONS AND LIMITATIONS OF LIABILITY**

- 12.1 The provisions in this paragraph are in effect to the maximum extent permitted by applicable law.
- 12.2 Except for Customer's infringement of Zensai's intellectual property rights, or Customer's breach of Section 3 (restrictions), in no event shall a Party be liable to the other Party, and its Users, for any indirect, special, incidental,

consequential, or punitive damages or loss, including but not limited to loss of profits, savings, time, data or damage to records of data, or loss as a consequence of any other kind of business interruption, arising out of or relating to the use of the Service or Support Services or any inadequate or faulty performance hereof, under any theory of recovery, including liability arising by way of indemnity, in contract or in tort, product liability or otherwise, and whether or not the Party has been advised of the possibility of such loss or damage.

- 12.3 Except for the Customer's infringement of Zensai's intellectual property rights, or Customer's breach of Section 3 (restrictions), or breach of the Customer's payment of Subscription Fees, Section 4, and the Parties' mutual indemnities, Section 11, the maximum aggregate liability of a Party towards the other Party, upon claims whatsoever, arising out of the Service or Support Services under this SAAS Agreement shall not exceed but in any event be limited to the annual Subscription Fees for the current Subscription Period at the event giving rise to the claim in respect to the Service and Support Services.
- 12.4 Zensai assumes product liability only to the extent that the product liability may not be contractually waived but disclaims product liability on any other basis. The exclusions and limitations stated in Section 12.2 and 12.3 shall also apply to any product liability.
- 12.5 The limitations and exclusions of liability stated in this Section 12 shall not apply to any act of gross negligence or willful misconduct.
- 12.6 Except as expressly set forth in any Zensai Reseller Terms, Zensai is not responsible for any Third-Party Solutions even if made available with the Service. Zensai cannot be held liable for the accuracy, completeness, quality, or reliability of the information nor the results obtained through Third-Party Solutions. Similarly, Zensai cannot be held liable for the availability, security, or functionality of any Third-Party Solutions, including possible damages and/or loss caused by Third-Party Solutions. The burden is upon the Customer to prove that a loss suffered by the Customer cannot be attributed to Third-Party Solutions.
- 12.7 **FORCE MAJEURE:** Neither Party shall be liable to the other Party for delay or non-performance of its obligation or loss or damages if caused by an event which is unforeseeable, beyond the reasonable control of the non-performing Party, and cannot be remedied by the exercise of commercially reasonable efforts ("Force Majeure"). Force Majeure shall include, without limitations acts of God, perils of the sea or air, fire, flood, drought, explosion, terror, sabotage, cybersecurity attacks, events of computer, telecommunications, internet service provider or hosting facility failures or delays involving hardware, software or power systems not within the Party's possession or reasonable control. The Party affected shall be relieved from its obligations (or part thereof) as long as performance is hindered due to Force Majeure, being understood that Force Majeure shall not excuse any obligation of payment of Subscription Fees. The Party affected shall promptly notify the other Party. Either Party may terminate the SAAS Agreement if the event of Force Majeure continues for more than forty-five (45) days.

### **13. ZENSAI AS PROMOTER AND RESELLER OF THIRD-PARTY SOLUTIONS**

- 13.1 Zensai promotes certain Third-Party Solutions such as applications, content, and platform services as being interoperative with the Services. All such Third-Party Solutions accessible through the Services, including their content or information, are promoted "as-is" by Zensai. They are made available under the Customer Terms of the Third-Party Solution as offered by the applicable Third-Party Provider as the contracting party to the Customer.
- 13.2 Zensai may as an independent reseller offer subscriptions or licenses to certain Third-Party Solutions. Unless Zensai and the Customer expressly agree in writing to terms between the Parties that govern Customer's use of a Third-Party Solution ("Zensai Reseller Terms"), the subscriptions or licenses are set forth in, and subject to the Customer Terms of

the Third-Party Provider which must be accepted by the Customer and shall form a contract between the Customer and the Third-Party Provider. All Subscription Fees and other fees with respect to Third-Party Solutions that are set forth in the Quote shall be paid by Customer to Zensai in accordance with the terms and conditions of the Quote and the associated payment provisions set forth in this SAAS Agreement, subject to any Zensai Reseller Terms when agreed. Except as expressly said forth in any Reseller Terms, Zensai resells the Third-Party Solutions “as is” and does not make any warranties, whether specific or implied, nor assume any liability in relation to the Third-Party Solutions, including their content, uptime, or functionality. Zensai assumes a reseller liability only when mandatory under applicable laws, in which case the limitations on liability stated in this SAAS Agreement shall apply to the maximum extent permitted under law, subject to the Zensai Reseller Terms, and always subject to the disclaimers of warranties and more extensively limitations or exclusions of liability of the Third-Party Provider defined in the Customer Terms which shall equally apply to any reseller liability.

#### **14. NO WAIVER**

14.1 Failure or neglect by Zensai to enforce any of the provisions of the SAAS Agreement at any time shall not be construed nor shall be deemed to be a waiver of Zensai’s rights under the SAAS Agreement nor in any way affect the validity of the whole or any part of the SAAS Agreement nor prejudice Zensai’s rights to take subsequent action.

#### **15. SEVERABILITY**

15.1 In the event that any of the provisions of this SAAS Agreement shall be determined by any court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable to any extent, such provision shall be enforced to the fullest extent permissible and otherwise, modified and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the SAAS Agreement shall continue to be valid between the Parties fully permitted by law.

#### **16. CHANGE OF TERMS**

16.1 Zensai may modify the terms and conditions pursuant to this SAAS Agreement with one (1) months’ notice starting as of the date such changes have been posted on the Zensai website. The Customer has the right to terminate in writing the SAAS Agreement if the terms are materially changed. Use of the Service after a change of these terms has come into force constitutes acceptance of such changed terms. It is the Customer’s obligation to keep up to date on changes to the terms. However, if the terms are materially changed to the detriment of the Customer, Zensai must provide a written notice of 30 days sent by email to the Customer’s contact person when registered with Zensai.

#### **17. APPLICABLE LAW AND VENUE**

##### **17.1 Applicable Law:**

17.1.1 This SAAS Agreement and its Schedules are governed by Danish Law and shall be construed and enforced in accordance with these laws, excluding its choice of law rules.

##### **17.2 Disputes and Venue:**

17.2.1 Any dispute arising out of or relating to this SAAS Agreement shall be settled by the Copenhagen City Court, not to prevent any right of referral of the matter to the Danish High Court or to the Danish Maritime and Commercial Court in accordance with applicable law.

- 17.2.2 Notwithstanding the specified agreement on jurisdiction, the Parties shall, if any dispute arises, attempt to settle it by mediation in accordance with the Association of Danish IT Attorneys' ("DITA") Mediation Procedure ([www.danske-it-advokater.dk](http://www.danske-it-advokater.dk)). To initiate the mediation a party shall give notice in writing to the other Party to the dispute requesting mediation. A copy of the request shall be sent to the DITA. The mediator shall be nominated by DITA no later than eight (8) working days after DITA's receipt of the notice. No Party may commence any court proceedings in relation to any dispute until the Parties have attempted to settle the dispute by mediation. As a minimum, a Party shall be obliged to attend the first meeting convened by the mediator. A Party shall be entitled to commence court proceedings if any delay of such proceedings may result in the forfeiture of any right, e.g. due to time barring.
- 17.3 **Right to injunctive relief:** Notwithstanding Section 17.2 above, Zensai may seek injunctive or equitable relief in any jurisdiction to enforce its intellectual property rights.

## **18. GENERAL PROVISIONS**

### **18.1 Export Control and Sanctions:**

- 18.1.1 The Service, and the technology made available, may be subject to export laws and regulations of the European Communities, the United States and/or other jurisdictions. The Customer represents that neither the Customer nor its Users are named on any denied-persons list under any jurisdiction, and the Customer may not permit Users to access or use, or otherwise make available, whether directly or indirectly, the Service into an embargoed, sanctioned, or otherwise restricted country without first complying with all applicable export control laws and regulation.

### **18.2 Anti-Corruption:**

- 18.2.1 Each Party shall comply with applicable anti-corruption laws. Neither Party may at any time, directly or indirectly through employees or third parties, pay, offer, give, or promise to pay or give, or authorize the payment of, any monies or any other thing of value to influence the improper performance of the other Party or any individual government officials and employees of state-owned enterprises.

## **Zensai International ApS**

Our VAT number is 32139728

## Schedule 1 - SERVICE LEVEL AGREEMENT

Helpdesk Services; Service & Requests Requirements; Uptime Availability

### 1. Helpdesk standard process description

Technical support is available 24/7 via our Help Center. Here, customers can find complete product documentation and guides plus answers to frequently asked questions.

From the Zensai Help Center, designated Service administrators of your organization can submit a request through our webform at anytime to get assistance from the Zensai Support Team <https://helpcenter.zensai.com/hc/en-us/requests/new>.

The Help Center can be reached via web <https://helpcenter.zensai.com/> or from the Service Admin Center. The below terminology is used when describing our processing of support requests.

<b>Table 1: Helpdesk and Support terminology</b>	
<b>Business Hours</b>	Defined as the operating hours for the Zensai Support team. Currently Monday to Friday between 9:30AM – 9PM CET & 8AM-6PM Eastern Time.
<b>Incident</b>	A support request is referred to as an "incident".
<b>Production Instance</b>	An instance which is tied to an active user Subscription is defined as a Production instance.
<b>Taking Charge</b>	The incident is registered, and the ticket is assigned a number.
<b>First Response</b>	The first interaction with the customer (via ticket) aimed at the diagnosis of the problem. The number of business hours until the first reply is calculated by the business hours of the agent assigned to the specific ticket/support request.
<b>ETA (Estimated Time of Arrival)</b>	The estimated time for resolution of the problem. The customer will be updated if ETA materially changes.
<b>Fixed</b>	The issue has been resolved in Zensai's reasonable discretion and the customer has been informed about the resolution of the problem.

Support requests are categorized in accordance with the below levels of severity:

<b>Table 2: Severity Descriptions</b>	
<b>Urgent</b>	Critical production issue including system unavailability affecting all users. No workaround is available.
<b>High</b>	Issue is persistent, affects many users and/or impacts core functionality or results in significant performance degradation. No reasonable workaround available.
<b>Normal</b>	Errors in functionality within the application often accompanied by workarounds or affecting some but not all users.
<b>Low</b>	General inquiries on the use of the application or cosmetic errors or incidents which otherwise do not require immediate attention, rare errors that appear during unusual conditions or are otherwise unlikely in normal use, or errors which have a sustainable workaround.

## 2. Helpdesk Service Levels

Zensai offers three levels of Helpdesk Services. These are categorized as Basic, Plus, and Premium. The three Helpdesk Services plans are committed to the following service level targets:

<b>Table 3 – Basic Plan Service Level Targets*</b>		
<i>Ticket Severity</i>	<i>First Reply</i>	<i>Resolution/Mitigation ETA</i>
Urgent	8 business hours	24 business hours or as soon as feasible or practical
High	12 business hours	As soon as feasible or practical
Normal	16 business hours	As soon as feasible or practical
Low	24 business hours	None

<b>Table 4 – Plus Plan Service Level Targets*</b>		
<i>Ticket Severity</i>	<i>First Reply</i>	<i>Resolution/Mitigation ETA</i>
Urgent	4 business hours	4 business hours or as soon as feasible or practical
High	6 business hours	8 business hours or as soon as feasible or practical
Normal	10 business hours	As soon as feasible or practical
Low	16 business hours	None

<b>Table 5 – Premium Plan Service Level Targets*</b>		
<i>Ticket Severity</i>	<i>First Reply</i>	<i>Resolution/Mitigation ETA</i>
Urgent	1,5 business hours	4 business hours or as soon as feasible or practical
High	3 business hours	8 business hours or as soon as feasible or practical
Normal	6 business hours	As soon as feasible or practical
Low	8 business hours	None

\*Notes:

- *Urgent* applies only to issues that are submitted via the Zensai Help Center webform, <https://helpcenter.zensai.com/hc/en-us/requests/new>, and are confirmed as *Urgent* by Zensai.
- This table applies only to production instances and only to requests submitted from the Zensai Help Center. For the avoidance of doubt, the Zensai Live Chat, and tickets generated from this chat, do not apply to these service level targets.

### 2.1 Service Requirements

Zensai services as Learn365, Engage365 Perform365, Integrate365 & Flow365 software, developed by Zensai International ApS, requires a modern web browser that supports cookies and JavaScript.

Learn365, Engage365, Perform365, Integrate365 & Flow365 currently supports the browsers & clients listed in this guide: [Client requirements incl. approved browsers](#) These are subject to change without notice in Zensai's sole discretion.

In the event, that the customer cannot meet the technical requirements listed with regard to employed browsers, Zensai will be under no obligation to provide the support services described in Schedule A.

## 2.2 Requests Requirements

To receive support services and for Zensai to maintain the Service Level agreed, the customer shall cooperate with Zensai to resolve support incidents.

The customer shall have adequate technical expertise and knowledge of their configuration of Zensai's software and provide relevant information to enable Zensai to reproduce, troubleshoot, and resolve the incident or issue identified by the customer.

As a minimum, the following information shall be provided by the customer, whenever possible, to ensure Zensai's ability to address support requests:

- Detailed description of the issue with as much detail as can be provided.
- The URL of the platform where the issue is occurring.
- The error message provided and exact steps to reproduce the error.
- The user(s) that are affected by the issue.
- Applicable screenshot or video capture.

Requests lacking this information will not be considered as part of the Service Level agreement.

### General Responsibilities of the customer

The customer will be responsible for:

- Reporting errors promptly.
- Providing sufficient information for Zensai to duplicate the error, assess the situation, and undertake any needed or appropriate corrective action.
- Alternatively, following instructions or suggestions from Zensai regarding use, maintenance, upgrades, repairs, workarounds, or other related matters.
- Designating a member of its staff to serve as the customer's system administrator to contact Zensai with support issues.

Zensai's successful response and provision of Helpdesk Services is subject to the customer's assistance and compliance, including:

- At Zensai's reasonable request, the customer will provide Zensai with reasonable access to the customer's personnel and equipment during normal business hours to discuss and assess any problems or requests for assistance.
- The customer will document and promptly report all errors or malfunctions of the Software Services to Zensai.

It is the customer's responsibility to carry out procedures necessary at the customer's facilities for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from Zensai.

### Reproducing Errors

Zensai must be able to reproduce errors in order to resolve them. The customer agrees to cooperate and work closely with Zensai to reproduce errors, including conducting diagnostic or troubleshooting activities as reasonably requested and appropriate. Also, subject to customer's approval on a case-by-case basis, users may be asked to provide remote access to their Zensai account and/or desktop for troubleshooting purposes.

### Exclusions

Issues that arise in the following categories are outside of the scope of support offered above, and will have no Service Level Agreement attached:

- Custom Cascading Stylesheets (CSS).
- Support to third party authoring tools.
- Support to third party system or platform integration, where the integration is not developed or managed by Zensai.
- Supporting in troubleshooting of E-Learning Content packages built with third party authoring tools.
- Custom built authentication methods between Zensai and the customer where such method is built from the customer and not maintained by Zensai.

### Additional Charges

If a reported problem is outside the scope of our Helpdesk Services, Zensai will notify the customer to that effect and reserves the right, upon the customer's confirmation, to move forward and to charge the customer at Zensai's then current standard hourly rates for all associated work.



The customer agrees to pay Zensai promptly for this work upon receiving an invoice; provided, however, that Zensai shall inform the customer in advance of the possible incurrence of such fees and the customer shall have pre-approved the same.

### 2.3 Uptime Availability

If Zensai fails to achieve the availability percentage for two (2) consecutive calendar months, then, as the customer's sole remedy for such failure, the customer will be granted Service Credits.

Service Credits are calculated as a percentage of the total charges paid by the customer to Zensai in the region affected by unavailability in accordance with the schedule below.

In the event that the customer elects to terminate this agreement for failure to achieve the Availability Percentage for six (6) consecutive calendar months within the notice period given below, then no refunds shall be issued with respect to such affected months.

<b>Monthly Uptime Percentage</b>	<b>Service Credit Percentage</b>
Less than 99.7% but equal to or greater than 99.0%	10%
Less than 99.0%	30%

Zensai will apply Service Credits only against future payments due from the Company. Service Credits will not entitle the customer to a refund or other payment from Zensai. Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Zensai Agreement, the customer's sole remedy for any unavailability, non-performance, or other failure by Zensai to provide Uptime is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA.

To receive a Service Credit, the customer must submit a claim by within 30 days after the reported issue via a support claim ticket and email to designated Customer Success team reporting ticket number. If the Monthly Uptime Percentage of such request is confirmed by Zensai and is less than the Service Commitment, then Zensai will issue the Service Credit to the customer within one billing cycle following the month in which your request is confirmed by Zensai. The customer's failure to provide the request and other information as required above will disqualify the customer from receiving a Service Credit.