

# Zenhub, Inc.

## Enterprise Software License Agreement

1. **Definitions.** Here are some definitions we use in this Agreement:

“Documentation” means any manuals, documentation and other supporting materials related to the Software that we generally provide to our customers. Documentation is considered part of the Software.

“Fees” means the fees you’re required to pay us to use the Software during the applicable License Term, as such fees are reflected on each applicable Order Form.

“License Key” means a data file utilized by the Software’s access control mechanism that allows you to use the Software during the applicable License Term.

“License Term” means one (1) year from the Order Effective Date.

The "Order Form" is a written or electronic form that you'll use to order Software (or that we'll use to order Software on your behalf, once we've gotten your authorization). Upon execution by the parties (or, in the case of electronic orders, confirmation and placement of the order), each Order Form will be subject to the terms and conditions of this Agreement.

The "Order Effective Date" is the effective date of each Order Form.

“Seats” mean the number of User accounts for the Software that you’re authorized to create. The number of Seats is specified in the applicable Order Form. Only one User can use a Seat at a time. Multiple Users aren’t allowed to use the same Seat.

“Software” means the object-code version of our proprietary enterprise software application. Software includes any applicable Documentation, as well as any Updates to the Software that we provide you or that you can access under this Agreement.

An “Update” is a Software release that we make generally available to our customers, along with any corresponding changes to Documentation. An Update may be an error correction or bug fix, generally indicated by a change in the digit to the right of the second decimal point (e.g., a change from version x.x.x to x.x.y); or it may be an enhancement, new feature, or new functionality, generally indicated by a change in the digit to the right of the first decimal point (e.g., x.x.x to x.y.x) or to the left of the first decimal point (e.g., x.x.x to y.x.x).

A “User” is a single person or machine account that initiates the execution of the Software and/or interacts with or directs the Software in the performance of its functions.

2. **License Grant.** Subject to your compliance with the terms of this Agreement (including, among other things, paying the Fees you owe us), we hereby grant you a non-exclusive, non-transferable, worldwide, royalty-free, limited-term license to install, execute, and use a single production instance of the Software for your internal business purposes during the applicable License Term, in accordance with the Documentation, and only for the number of Seats specified in the applicable Order Form. You can make copies of the Software for non-production purposes only, provided that you reproduce all copyright and other proprietary notices that are on the original copy of the Software. Your agents and contractors can use the Software, too, so long as they are using it on your behalf, and provided that you agree to be fully

responsible for their behavior under this Agreement.

3. **Restrictions.** We license the Software to you – we don't sell it. As between us, we own all right, title and interest in and to the Software, and any intellectual property rights associated with it and with our company. We reserve all rights in and to the Software that we don't expressly grant you in this Agreement. You agree not to, nor permit nor authorize any third party to: (i) sublicense, sell, rent, lease, transfer, assign, or distribute the Software to third parties; (ii) host the Software for the benefit of third parties; (iii) disclose or permit any third party to access the Software, except as expressly permitted in Section 2, above; (iv) hack or modify the License Key, or try to avoid or change any license registration process we may implement; (v) modify, translate or create derivative works of the Software, or merge the Software with other software except as required for the intended operation of the Software; (vi) disassemble, decompile, or otherwise reverse engineer the Software or attempt to derive any of its source code, in whole or in part, except to the extent such activities are expressly permitted by law notwithstanding this prohibition; (vii) modify, obscure, or delete any proprietary rights notices included in or on the Software or Documentation; (viii) otherwise use or copy the Software in a manner not expressly permitted by this Agreement; or (ix) use any Software that we license to you beyond its applicable License Term.

4. **Seats.** Only one User can use a Seat at any given time. Multiple Users aren't allowed to use the same Seat, and only one individual can be associated with a particular User account. If you want to swap out, delete, or suspend a User, you can do that, and then assign a new User to the open Seat. If you find that you need more Seats, you can order them on our website or with the help of our sales team (a new Order Form will be generated). If and when you add additional Seats to your license, you will pay Fees for those seats at the then-current price, prorated for the balance of the applicable License Term. When the time comes to renew your Seats for another License Term, we will invoice you for all of your Seats at once, at the then-current price. We reserve the right to change our prices at any time, but the new prices will not affect you until it is time to renew your license for another License Term. You agree that any orders that you make (or that you authorize us to make on your behalf) for additional Seats during the term of this Agreement will be governed by this Agreement.

5. **Verification.** To help us verify the number of Seats you are actually using, you agree to promptly reproduce for us any usage files and reports that your instance of the Software generates, if we ask for them. You also agree to have one or your officers certify the number of Seats that you are actually using, if we ask for such a certification. If we determine that you are using more Seats than you have licensed from us, in addition to any other remedies we might have at law or in equity, you agree to pay us the then-current Fees for the additional Seats that you are using, starting from the date you began using each Seat.

6. **Government Users.** We do not develop any technical data or computer software pursuant to this Agreement. The Software and Documentation have been developed solely with private funds, are considered "Commercial Computer Software" and "Commercial Computer Software Documentation" as described in FAR 12.212, FAR 27.405-3, and DFARS 227.7202-3, and are licensed to U.S. Government end users as restricted computer software and limited rights data. Any use, disclosure, modification, distribution, or reproduction of the Software or Documentation by the U.S. Government, its end users or contractors is subject to the restrictions set forth in this Agreement.

7. **Delivery, Installation, and Training.** As soon as possible after the applicable Order Effective Date, we'll make the Software available for you to download on a secure, password-protected website, and send you an email containing your License Key for the initial License Term. You are responsible for (i) maintaining the confidentiality of the usernames and passwords that are being used to access the Software, including the ones you use to download the Software; and (ii) any activity that takes place using your usernames and passwords. Installation of the Software and any Updates are your responsibility, but we're happy to help you out if you need support; we can also provide you with training on how to get the most out of the Software. If you want installation assistance or training, let us know, and we will execute a

separate agreement with you for that purpose.

## **8. Term and Termination.**

81 *Term.* This Agreement starts on the Agreement Effective Date and, unless terminated in accordance with this Section 8, will continue in effect throughout the initial License Term (the “Initial Term”), at which time it will automatically renew for additional one (1) year terms (each, a “Renewal Term”) until terminated by a party in accordance with this Section 8.

82 *Termination for Convenience; Automatic Expiration.* Either party can terminate this Agreement for its convenience at the end of the Initial Term or any Renewal Term by providing written notice to the other at least thirty (30) days before the end of the Initial Term or any Renewal Term. This Agreement will automatically expire without the requirement of notice if, at the end of the Initial Term or any Renewal Term, you decide not to pay the Fees required to renew your Seats for an additional License Term.

83 *Termination for Breach.* We can terminate this Agreement immediately upon notice to you if you breach any part of it, and you fail to cure the breach within twenty (20) days of us notifying you of it. We reserve the right to terminate this Agreement immediately upon written notice to you, and without giving you a cure period, if you breach any of the terms of this Agreement relating to our intellectual property (including your compliance with the license grant and any license restrictions) or our Confidential Information (defined below).

84 *Effect of Termination.* When this Agreement terminates or expires: (i) the License Term for any Software in your possession will immediately end; (ii) you’ll no longer have the right to use the Software, and any licenses we grant you in this Agreement will automatically cease to exist as of the date of termination/expiration; (iii) if you owed us any Fees prior to termination/expiration, you’ll need to pay those Fees to us immediately; (iv) you’ll destroy all copies of the Software in your possession or control, and certify in writing to us that you’ve done so; and (v) each of us will promptly return to the other (or, if the other party requests it, destroy) all Confidential Information belonging to the other. We encourage you to keep copies of your data outside of the Software itself, because if your license expires or is terminated, you won’t have access to the data you’ve stored there (and we won’t be liable to you if that happens). Sections 1, 3, 8.4, 10, 11.3, and 12-16 will survive the termination or expiration of this Agreement for any reason.

## **9. Support.**

91 *Support Times.* Provided that you’ve paid us the Fees you owe us, we’ll provide you with technical support for the Software from 10am to 6pm Pacific Time, Monday through Friday, excluding national Canadian holidays. We currently only offer support via email (write to us at [enterprise@zenhub.io](mailto:enterprise@zenhub.io)). You can contact our stalwart support team to answer your questions on installing and using the Software, identifying and verifying the causes of suspected errors in the Software, and helping you find workarounds for any issues you may be experiencing.

92 *Updates.* We’ll make Updates available to you for download as we make them generally available to our other customers, on the same secure website where you downloaded the Software. Each version of the Software is built to support specific versions of GitHub Enterprise®. While we do not promise that an Update will be available for each new version of GitHub Enterprise, we will use reasonable efforts to do so. In order to ensure the Software works properly in conjunction with GitHub Enterprise, you agree to update your instance of the Software every time you perform an update for GitHub Enterprise.

93 *Exclusions.* We might not be able to correct every problem we find, but we’ll use our reasonable efforts to correct any material, reproducible errors in the Software that you make us aware of. We might ask for your help in reproducing the error for us. Please - don’t do things with our Software that would make it harder for us to help you. We won’t be responsible for supporting you in those circumstances, which

include, among other things: (i) someone (other than us) modifying the Software; (ii) changing your operating system or environment in a way that adversely affects the Software or its performance; (iii) using the Software in a manner for which it was not designed, or other than as authorized under this Agreement; or (iv) accident, negligence, or misuse of the Software. We're only required to support a given version of the Software for a year from the date of its commercial release, or six months from the commercial release of the next Update, whichever is longer. If you want support for earlier versions of the Software, we'll try to help you if we can, but you'll need to pay us for that help at our then-current rates.

**10. Payment.** You agree to pay the Fees to us in full, without deduction or setoff of any kind, in U.S. Dollars (unless the Order Form says otherwise), within thirty (30) days of the date of the invoice we send you related to the applicable Order Form. Amounts payable under this Agreement are nonrefundable, except as provided in Section 11.1. If you don't pay us on time, we reserve the right, in addition to taking any other action that we see fit, to charge you interest on past due amounts at 1.0% per month or the highest interest rate allowed by law, whichever is less, and to additionally charge all expenses of recovery. You are solely responsible for all taxes, fees, duties and governmental assessments (except for taxes based on ZenHub's net income) that are imposed or become due in connection with the subject matter of this Agreement.

## **11. Limited Warranties.**

11.1 *Limited Warranties.* We offer you (and only you) the following limited warranties: (i) that the unmodified Software, at the time we make it available to you for download, will not contain or transmit any malware, viruses, or worms (otherwise known as computer code or other technology specifically designed to disrupt, disable, or harm your software, hardware, computer system, or network); (ii) that any services we perform for you under this Agreement will be performed in a good and workmanlike manner, by appropriately qualified personnel (you just need to let us know about a problem within thirty (30) days of the date the Services were performed); and (iii) that, for ninety (90) days from the date the Software is made available for download, the unmodified Software will substantially conform to its Documentation. We don't warrant that your use of the Software will be uninterrupted, or that the operation of the Software will be error-free. Our only obligation, and your only remedy, for any breach of these limited warranties will be, at our option and expense, to either (i) repair the Software; (ii) replace the Software; or (iii) terminate this Agreement with respect to the defective Software, and refund the Fees you've paid for the defective Software during the then-current License Term once you've returned it to us (or destroyed it). These limited warranties won't apply if you modify the Software, or if you use the Software in any way that isn't expressly permitted by this Agreement and the Documentation.

11.2 *Disclaimer.* THE LIMITED WARRANTIES DESCRIBED ABOVE ARE THE ONLY WARRANTIES WE MAKE WITH RESPECT TO THE SOFTWARE AND OUR TECHNICAL SUPPORT. WE DON'T MAKE ANY OTHER WARRANTIES, AND WE HEREBY SPECIFICALLY DISCLAIM ANY OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, THAT YOU GET FROM US OR ANYWHERE ELSE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT.

## **12. LIMITATION OF LIABILITY.**

12.1 *Waiver of Consequential Damages.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF PROFITS, REVENUE, OR DATA) OR FOR THE COST OF OBTAINING

SUBSTITUTE PRODUCTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

122 Limitation of Total Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR TOTAL CUMULATIVE LIABILITY TO YOU OR ANY THIRD PARTY UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE FEES YOU HAVE ACTUALLY PAID US DURING THE 12 MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH LIABILITY. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION.

123 Basis of Bargain. You understand and agree that we've set our prices and entered into this Agreement with you in reliance upon the limitations of liability set forth in this Agreement, which allocate risk between us and form the basis of a bargain between the parties.

### **13. Indemnification.**

13.1 Our Indemnification Obligation. We'll defend or settle, at our option and expense, any third-party claim brought against you to the extent that it's based on an allegation that your use or possession of the Software as permitted under this Agreement infringes a copyright or misappropriates a trade secret of any third party (each, a "Claim"), and, subject to Section 12, we'll pay all damages and costs (including reasonable legal fees) finally awarded by a court of final appeal attributable to such a Claim, provided that you notify us in writing of any such Claim as soon as reasonably practicable and allow us to control, and reasonably cooperate with us in the defense of, any such Claim and related settlement negotiations.

13.2 Exclusions. You understand that we'll have no obligation to indemnify you for any Claim that's based on (i) the modification of the Software, unless we were the ones who made the modifications; (ii) your use of the Software other than as authorized by this Agreement and the Documentation; (iii) your failure to use updated or modified Software that we make available to you that would have helped avoid or mitigate the Claim; (iv) your failure to stop using the Software after receiving written notice to do so from us in order to avoid further infringement or misappropriation; or (v) the combination, operation or use of the Software with equipment, devices, software, systems, or data that we didn't supply (subparts (i)-(v) may be referred to collectively as "Indemnity Exclusions").

13.3 Right to Ameliorate Damages. If your use of the Software is, or in our reasonable opinion is likely to be, subject to a Claim under Section 13.1, we may, at our sole option and at no charge to you (and in addition to our indemnity obligation to you in Section 13.1): (i) procure for you the right to continue using the Software; (ii) replace or modify the Software so that it is non-infringing and substantially equivalent in function to the original Software; or (iii) if options (i) and (ii) above are not commercially practicable in our reasonable estimation, we can terminate this Agreement and all licenses granted hereunder (in which event, you will immediately stop using the Software) and refund the Fees that you paid us for the then-current License Term.

13.4 Sole Remedy. THIS SECTION 13 SETS FORTH OUR SOLE AND EXCLUSIVE OBLIGATIONS, AND YOUR SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

13.5 Your Indemnification Obligation. Except to the extent that we're obliged to indemnify you in Section 13.1 above, you will defend, indemnify, and hold us harmless from and against any claims that may arise out of or that are based upon your use of the Software (including, without limitation, any Indemnity Exclusion).

#### **14. Confidentiality.**

14.1 Definition of Confidential Information. For the purposes of this Agreement, “Confidential Information” means any business or technical information that either one of us discloses to the other, in writing, orally, or by any other means, and including things like computer programs, code, algorithms, data, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial, and product development plans, names and expertise of employees and consultants, and customer lists. For the purposes of this Agreement, the Software and Documentation, and any copies of them, will be deemed to be ZenHub’s Confidential Information, regardless of whether they are marked as such.

14.2 Restrictions on Use and Disclosure. Neither of us will use the other party’s Confidential Information, except as permitted under this Agreement. Each of us agrees to maintain in confidence and protect the other party’s Confidential Information using at least the same degree of care as we use for its own information of a similar nature, but in all events at least a reasonable degree of care. Each of us agrees to take all reasonable precautions to prevent any unauthorized disclosure of the other’s Confidential Information, including, without limitation, disclosing Confidential Information only to its employees, independent contractors, consultants, and legal and financial advisors (collectively, “Representatives”) (i) with a need to know such information, (ii) who are parties to appropriate agreements sufficient to comply with this Section 14, and (iii) who are informed of the nondisclosure obligations imposed by this Section

14. Each of us will be responsible for all acts and omissions of our Representatives. The foregoing obligations won’t restrict either of us from disclosing Confidential Information of the other party pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable them to contest such order or requirement. The restrictions set forth in this Section 14 shall remain in effect during the term of this Agreement, and for five (5) years thereafter. Notwithstanding the foregoing, to the extent that any Confidential Information is trade secret information, such Confidential Information will be protected in perpetuity for as long as it remains a trade secret.

14.3 Exclusions. The restrictions set forth in Section 14.2 will not apply with respect to any Confidential Information that: (i) was or becomes publicly known through no fault of the receiving party; (ii) was rightfully known or becomes rightfully known to the receiving party without confidential or proprietary restriction from a source other than the disclosing party who has a right to disclose it; (iii) is approved by the disclosing party for disclosure without restriction in a written document which is signed by a duly authorized officer of such disclosing party; or (iv) the receiving party independently develops without access to or use of the other party’s Confidential Information.

15. **Governing Law and Jurisdiction.** This Agreement will be governed by and interpreted in accordance with the laws of the Province of British Columbia, without giving effect to any principles of conflict of laws. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply to this Agreement. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or provincial courts located in Vancouver, British Columbia and the parties irrevocably consent to the personal jurisdiction and venue there.

#### **16. Miscellaneous.**

16.1 Assignment. You aren’t allowed to assign or transfer any of your rights or obligations in this Agreement, in whole or in part, by operation of law or otherwise, without our prior written consent, and any attempt by you to do so without our consent will be null and void. We may assign this agreement in its entirety, upon notice to you but without the requirement to obtain consent, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our business or assets.

16.2 Severability. In the event that any provision of this Agreement is deemed by a court of competent

jurisdiction to be illegal, invalid, or unenforceable, the court will modify or reform this Agreement to give as much effect as possible to that provision. Any provision that can't be modified or reformed in this way will be deemed deleted, and the remaining provisions of this Agreement will continue in full force and effect.

16.3 Notices. Any notice, request, demand or other communication required or permitted under this Agreement should be in writing, should reference this Agreement, and will be deemed to be properly given: (i) upon receipt, if delivered personally; (ii) upon confirmation of receipt by the intended recipient, if by e-mail; (iii) five (5) business days after it is sent by registered or certified mail, with written confirmation of receipt; or (iv) three (3) business days after deposit with an internationally recognized express courier, with written confirmation of receipt. Notices should be sent to the address(es) set forth on the Invoice, unless we notify each other that those addresses have changed.

16.4 Waiver. A party's obligations under this Agreement can only be waived in a writing signed by an authorized representative of the other party, which waiver will be effective only with respect to the specific obligation described. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

16.5 Force Majeure. ZenHub will be excused from performing under this Agreement to the extent that we're unable to perform due extraordinary causes beyond our reasonable control. That might include things like acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failure, and power failures.

16.6 Independent Contractors. Both parties are independent contractors with respect to the subject matter of this Agreement. Nothing contained in this Agreement will be deemed or construed in any manner whatsoever to create a partnership, joint venture, employment, agency, fiduciary, or other similar relationship between us, and neither party can bind the other contractually.

16.7 Export. You acknowledge that the Software may be subject to export and import controls under the regulations of Canada, the United States and other countries. You will comply with all applicable export and import regulations. You are responsible for obtaining all required permissions for any export, import or use of the Software.

16.8 Amendments; Entire Agreement. No modification, change, or amendment of this Agreement will be binding upon the parties, unless we both agree to the change in a writing signed by each of our authorized representatives. This Agreement, including each Order Form, constitutes the entire agreement and understanding of the parties with respect to its subject matter, and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties with respect to its subject matter.

16.9 No Other Terms. This Agreement is the only agreement between us, and the terms of any purchase order, written terms or conditions, or other document that you submit to us that contain terms that are different from, in conflict with, or in addition to the terms of this Agreement or any Order Form are hereby rejected by ZenHub, and will be void and of no effect. To the extent of any conflict between the terms of this Agreement and any Order Form, the provisions of this Agreement shall prevail to the extent of such conflict (unless the Order Form terms explicitly provide otherwise).

16.10 Publicity. We may identify you as a customer to current and prospective clients. We will not use your name or logo in any advertising or marketing materials without your permission, though; and if we ask for your permission, you always have the right to say no.