

Zerto Professional Services
End User Terms and Conditions

1. Definitions

- 1.1. “**EULA**” means the Zerto End User License Agreement accepted by You that governs Your access to and/or use of the Software.
- 1.2. “**End User-Provided Materials**” means the materials, data, information, and technology owned or otherwise controlled by an End User that is provided or made available to Zerto in order for Zerto to perform the Professional Services.
- 1.3. “**Intellectual Property Rights**” means any and all now known and hereafter existing (a) copyrights, and copyrightable works of authorship, exploitation rights, moral rights and mask work rights, (b) trademark, trade name and service mark rights, (c) trade secret rights, including, without limitation, all rights in Confidential Information and proprietary rights whether arising by law or contract, (d) patent rights, rights in inventions and processes (whether patentable or not), designs, algorithms and other industrial property rights, and (e) other intellectual and industrial property rights and proprietary rights of every kind and nature throughout the world, whether arising by operation of law, by contract, by license or otherwise.
- 1.4. “**Software**” shall have the meaning ascribed to it in the EULA and shall include any modifications, customizations, enhancements or extensions to the Software (if any) that Zerto provides to an End User pursuant to the performance of Professional Services under this Agreement.
- 1.5. “**Specifications**” means the specifications for the Deliverables and Professional Services as set forth in the Professional Services documentation provided to you with Zerto’s quote / purchase order, together with any additional specifications or modifications to the specifications that may be agreed to in writing by the parties.
- 1.6. “**Third Party Materials**” means proprietary information, data, technology, methods and methodologies, software, hardware, documentation, tools, application interfaces, trade secrets, works of authorship, trademarks and other proprietary materials of a party other than Zerto or End User (for example: Microsoft Office, VMware, cloud provider’s interface, etc.).

2. Services

- 2.1. Subject to proper payment to Zerto and Your compliance with the terms and conditions of this Agreement and the EULA, Zerto shall provide You with certain professional services as may be purchased by You through your Zerto authorized reseller from time to time (“**Professional Services**”).
- 2.2. The Professional Services may include advanced training, installation, health-checks, scripting, integration and migration, and/or any other customized services with respect to the Software, as may be offered by Zerto. The deliverables of the Professional Services shall be set forth in a quote / purchase order accepted by you or Your authorized Zerto reseller (“**Deliverables**”).
- 2.3. Zerto shall not be liable for the performance of its obligations if it becomes commercially impracticable to perform due to any Force Majeure. “**Force Majeure**” shall mean any cause not reasonably within Zerto’s control, including, without limitation, acts of God and the public enemy, sabotage, boycotts, disruptions of transportation facilities, inability to obtain supplies or materials, acts of government or judicial action, labor disputes or power disruptions, and problems with the Internet.

3. Consideration

- 3.1. The consideration for the Professional Services shall be as set forth in Zerto quote / purchase order accepted by You or by Your Zerto authorized reseller. Unless explicitly provided otherwise in such quote / purchase order, such consideration is non-refundable.

4. End User Undertakings

4.1. For the provision of Professional Services, You hereby undertake to:

4.1.1. provide Zerto, directly or through Zerto authorized reseller with: (i) End User-Provided Materials required by Zerto to perform the Professional Services; (ii) adequate access to Your facility or systems as reasonably required by Zerto to perform the Professional Services; (iii) all necessary safety training regarding Your facility; (iv) reasonable on-site facilities including secure storage space, working space, and access to communication facilities or other equipment and office support, and such other items as may be reasonably requested by Zerto from time to time; (v) qualified personnel who are capable of performing the duties and tasks required for Zerto's performance of Professional Services; and (vi) cooperation in the performance of the Professional Services;

4.1.2. perform duties and tasks as may be reasonably required to permit Zerto to perform the Professional Services.

4.1.3. grant to Zerto, a royalty-free, non-exclusive, worldwide license to use, copy, modify, make derivatives based upon, practice and otherwise exploit as necessary, the End User-Provided Materials solely to perform the Professional Services. Zerto may engage subcontractors and consultants to use the End User-Provided Materials solely to perform (and to assist Zerto to perform) Professional Services. The licenses granted to Zerto pursuant to this Section 4.1.3 shall terminate upon termination of the performance of the applicable Professional Services order; and

4.2. You will be solely responsible for procuring, at Your sole expense, any Third Party Materials including, without limitation, any applicable third party licenses that are necessary for Zerto to perform the Professional Services.

4.3. You further represent and warrant that: (i) to the extent You provide to Zerto any End User-Provided Materials or Third Party Materials, You will have obtained all necessary permissions, licenses, and consents and will have the authority to provide such End User-Provided Materials and Third Party Materials to Zerto, and (ii) neither the End User-Provided Materials nor the Third Party Materials and/or the use thereof as contemplated herein will infringe any Intellectual Property Rights of any third party.

5. Confidentiality

The Confidentiality provisions set forth in the EULA shall apply to the provisions of Professional Services hereunder.

6. Intellectual Property

6.1. Retained Ownership Rights. Except as explicitly set forth herein, neither this Agreement, nor the provision of Professional Services hereunder, will give either Zerto or You any ownership interest or rights in the Intellectual Property Rights of the other party. As between You and Zerto, You shall continue to own all right, title and interest in and to the End User-Provided Materials, and Zerto continues to own all rights (including any Intellectual Property Rights), title and interest in and the Professional Services and Software.

6.2. Ownership of Project IP. Subject only to the respective rights in the End User-Provided Materials, Zerto will exclusively own all rights, title and interest in and to any and all Deliverables, Software, and other work-product including, but not limited to, software, programs, source code and object code, comments to the source or object code, Specifications, documents, abstracts and summaries thereof developed by Zerto in connection with the provision of the Professional Services, whether such work-product is identified in an order form as a Deliverable or not (collectively "**Project IP**") and all associated Intellectual Property Rights.

6.3. Zerto's Development Tools. Notwithstanding any provision of this Agreement to the contrary, any routines, methodologies, processes, libraries, tools or technologies created, adapted or used by Zerto in its business or in providing the Professional Services, including without limitation, all improvements and modifications thereto and derivative works thereof (collectively, the “**Development Tools**”) and all associated Intellectual Property Rights, are and shall remain the sole and exclusive property of Zerto.

6.4. Limited License. Zerto hereby grants to You a nonexclusive, non-assignable, non-transferable, limited license to use the Project IP and Development Tools solely for the purpose of Your internal exploit and benefit of the Professional Services under the terms of the quote / purchase order placed on Your behalf and accepted by Zerto. Your use of any Software modifications shall be governed by the EULA.

6.5. Freedom of Action. Nothing in this Agreement will be deemed to restrict or limit Zerto’s rights to: (i) use any Deliverables created under this Agreement or the Development Tools as it deems fit; (ii) create derivatives and improvements based upon the Deliverables and Development Tools and use and exploit such derivatives and improvements; and (iii) perform services similar to the Professional Services for any other party or assign any Zerto employees or contractors engaged by Zerto to perform services similar to the Professional Services for any other party.

7. Warranty

7.1. Zerto warrants that (i) the Professional Services provided hereunder will be performed in a professional and workmanlike manner and (ii) for a period of thirty (30) days from the performance of the Professional Services the Deliverables will conform in all material respects to the Specifications. If the Professional Services or Deliverables fail to conform to the foregoing warranty, End User or its respective Zerto authorized reseller will notify Zerto within seven (7) days following the earlier of: (1) completion of the non-conforming Professional Services; or (2) the date on which such failure becomes known to the notifying party. As Your sole and exclusive remedy for breach of the foregoing warranty, Zerto shall correct the non-conformity or re-perform the non-conforming Professional Services at no additional cost to You. Zerto shall not be liable for failures caused by the inclusion or use of any hardware, software, or other material, not provided by Zerto (including Your own systems and End User-Provided Materials) and/or Your negligence or willful misconduct or that of any third party.

7.2. EXCEPT AS SPECIFIED IN SECTION 7.1, THE PROFESSIONAL SERVICES AND DELIVERABLES ARE PROVIDED “AS IS” AND NEITHER ZERTO NOR ZERTO'S LICENSORS, AFFILIATES, EMPLOYEES OR CONSULTANTS MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE PROFESSIONAL SERVICES OR DELIVERABLES. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ZERTO AND ITS LICENSORS, AFFILIATES, EMPLOYEES AND CONSULTANTS DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

8. Limitation of Liability

The limitation of liability set forth in the SSA attached as an appendix to the EULA accepted by You shall apply to the provisions of Professional Services hereunder.

9. Un-Supported / Extended Support Software

9.1. You accept and agree that Professional Services provided for or in connection to any un-supported or extended support version of Zerto’s Software involve certain inherent risks, including the risk that the Professional Services may fail as a whole and/or cause errors in, corruption of or loss of Your data. You further acknowledge and agree that Zerto will provide the Professional Services for or in connection with any un-supported or extended support version of Software on a reasonable commercial effort basis, where the extent of such effort shall rest in the sole and unrestricted discretion of Zerto.

9.2. You hereby, on behalf of Yourself, Your affiliates and Your and their respective employees, officers, directors representatives, agents, insurers, shareholders and/or any of Your or their respective successors in interest, hereby forever and unconditionally release, discharge, and waive any and all claims, damages, expenses or losses of any type, whether known or unknown, relating in any way to the purchase and receipt of Professional Services and any and all results thereof for or in connection to any un-supported or extended support version of Software. This release and waiver shall be construed in the broadest manner possible and shall apply to any warranty or limitation of liability provision herein or in the EULA or in any other applicable agreement between you and Zerto, provided, however that it does not discharge You of Your respective obligations towards Zerto herein or in the EULA or in any other applicable agreement between you and Zerto.