

# Master Services Agreement

Prepared by:

Zaviya Solutions Group  
17027 Lands Wake  
San Antonio, TX 78247  
Tel: +1 210 446 9222

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**Statement of Non-Disclosure:** *It is formally requested that the information in this agreement not be disclosed outside of your organization except as provided by counsel and any applicable laws.*



## Master Services Agreement

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THIS CUSTOMER MASTER SERVICES AGREEMENT (“**MSA**”) is entered into by (“**Customer**”) which shall include Customer’s corporate subsidiaries, as well as corporate parents, affiliates, and other related entities (collectively, “**Affiliates**”) approved by Zaviya to receive Services under this MSA. For purposes of this MSA the term “Zaviya” shall mean Zaviya Inc. d/b/a Zaviya Solutions Group, San Antonio, Texas or, when applicable, the Zaviya entity identified on Customer’s invoice. Zaviya and Customer agree to the following terms and conditions:

### 1. Services

All services provided by Zaviya under this MSA (the “**Services**”) will be described in one or more Service Agreements. “**Service Agreements**” are order forms or service contracts that incorporate the terms of this MSA, including “Service Descriptions” available from Zaviya, “Technical Specification Forms”, “Statements of Work”, and any other such mutually agreed upon document. The MSA and each Service Agreement will be interpreted as a single agreement, independent of each other Service Agreement, so that all of the provisions are given as full effect as possible. In no event will the description of Services under any Service Agreement be deemed by implication or otherwise to exclude any Services described in this MSA or another Service Agreement.

In the event of a conflict between the terms of the MSA and a Service Agreement, the terms of these documents will be interpreted according to the following order of precedence: (1) Service Agreements and (2) the MSA.

### 2. Terms of Purchase

**2.1. Requests for Service; Quotes and Orders.** All orders for Services must specify Zaviya's quotation (if any), and reference the Service(s) requested and invoice address. All orders are subject to acceptance by Zaviya. If Customer orders on-line, Zaviya may issue to Customer user names and passwords (the “**Purchase Codes**”). By accepting and using the Purchase Codes, Customer acknowledges the validity of an electronic order, which shall be deemed to be a writing for all purposes hereunder, and agrees to be responsible for full payment of any Services ordered using Customer’s Purchase Codes. Customer is responsible for keeping the Purchase Codes confidential and controlling their use.

**2.2. Prices.** The prices charged for Services purchased under this MSA will be Zaviya's “then-current” charges for such services in each geographic region or as quoted by Zaviya. Zaviya reserves the right to revise pricing if prices for Services are based upon written assumptions and those assumptions are determined inaccurate. If Customer and Zaviya are not able to reach agreement on the revised pricing, Customer or Zaviya may terminate the applicable Service Agreement. All prices are exclusive of all applicable country, provincial, state and local sales, use, value added, excise, privilege, franchise and similar taxes. If the Services are being performed on a time and materials basis, any estimates provided by Zaviya are for planning purposes only. Any required deposits are non-refundable.

**2.3. Additional Fees; Taxes.** Customer shall be responsible for all applicable taxes and fees assessed or imposed upon the Services provided or the amounts charged under this MSA, including any sales, use, excise, value-added, or comparable taxes, but excluding taxes related to Zaviya's net assets or net income.

**2.4. Invoicing and Payment.** Customer's payment terms will be up to thirty (30) days net from the date of invoice, subject to continuing credit approval by Zaviya. Customer will pay Zaviya in US dollars or in the currency of the country in which the Zaviya affiliate that supplied the Services is domiciled, as invoiced by Zaviya or an affiliate of Zaviya. Additional charges may apply if Customer requests services that are performed outside contracted hours or are beyond the normal coverage for the particular service.

**2.5. Nonpayment.** For invoices not paid within thirty (30) days of the invoice date, Zaviya reserves the right to charge Customer a late penalty charge of two percent (2%) per month applied against undisputed overdue amounts, or the maximum rate permitted by law, whichever is less. In addition, Zaviya, without waiving any other rights or remedies to which it may be entitled, shall have the right to suspend or terminate the Services until such payment is received and may decide not to accept additional orders from Customer and/or seek collection of all amounts due, including reasonable legal fees and costs of collections. Zaviya shall have no liability to Customer for any such suspension or termination of Services, or non-acceptance of orders.

**2.6. Purchases by Affiliates.** Unless otherwise agreed in writing, any Affiliate who submits an order to Zaviya for Services shall agree to abide by the terms of this MSA. Zaviya, in its sole discretion, may discontinue selling Services to any Affiliate or may require additional payment and/or credit conditions for such Affiliate.

### 3. Term & Renewal

This MSA has a three year term, beginning on the earlier of the date on Customer’s invoice with Zaviya, the date on which Service delivery begins or the date on which your use of the Service begins (“**Effective Date**”). The MSA will automatically renew on the anniversary of the Effective Date for subsequent one year terms (“**Term**”) unless terminated in accordance with Section 4 below. Each Service Agreement will continue for the term stated therein, unless otherwise terminated pursuant to this MSA. In addition, Zaviya may, at its option, propose to renew the Service by sending Customer an invoice or continuing to make the Service available to Customer. Customer may (where permitted by law) agree to such renewal of the Service by paying such invoice by its due date or by continuing to use the Service. If Customer renews a Service Agreement by continued use of the Service, Customer will be invoiced in a manner substantially similar to their initial term of Service.

### 4. Termination

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Either party may terminate this MSA for convenience by providing at least thirty (30) days prior written notice to the other. Termination of this MSA for convenience will not terminate any outstanding Service Agreement that provides for a specific term over which the Services are to be provided. In such case, this MSA, as incorporated into the Service Agreement, and the Service Agreement that provides for a specific term will remain in effect for the remainder of such term. Upon termination of this MSA, all rights and obligations of the parties under this MSA will automatically terminate except for rights of action accruing prior to termination, payment obligations and any obligations that expressly or by implication are intended to survive termination.

Either party may terminate an individual Service Agreement if the other party commits a material breach of such agreement and the breach is not cured within thirty (30) days of receipt of written notice from the injured party. Termination of one or more Service Agreements will not terminate this MSA.

## 5. Third-Party Products & Warranties

"Third Party Products" means any third-party hardware, services or software. Some manufacturers' warranties or service contract terms and conditions for Third Party Products may become void if Zaviya or anyone else, other than the manufacturer or its authorized representative, provides services for or works on the hardware or software (such as providing maintenance and repair services). ZAVIYA DOES NOT TAKE RESPONSIBILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE ZAVIYA SERVICES MAY HAVE ON THOSE WARRANTIES. Except as agreed to in writing between Customer and Zaviya, Third Party Products shall be exclusively subject to terms and conditions between the third party and Customer. Zaviya shall have no liability for Third Party Products and Customer shall look exclusively to the third party provider for any damages or liability with respect to the provision of such Third Party Products.

Except as otherwise specifically agreed to in a Service Agreement, Customer authorizes Zaviya (or otherwise obtains the rights for Zaviya) to copy, install and modify, when necessary and as required by the Service Agreement, all Third Party Products, including software, to be used in the Services or to be copied or stored for subsequent re-installation of a backup system or data. Customer warrants to Zaviya that it has obtained any licenses, consents, regulatory certifications or approvals required to give Zaviya and its subcontractors or employees such rights or licenses to access, copy, distribute, use and/or modify (including creating derivative works) or install any Third Party Products to be used in the Services, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products.

## 6. Proprietary Rights

**6.1. Deliverables.** Except as otherwise specifically agreed to in a Service Agreement, Zaviya will retain exclusive ownership in all Deliverables created by Zaviya hereunder and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed by Zaviya under this MSA. Subject to payment in full for the applicable Services, Zaviya grants Customer a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the country in which Customer does business and solely for Customer's internal use. "Deliverables" means the tangible and intangible materials, including reports, studies, base cases, drawings, findings, manuals, procedures and recommendations that are prepared by Zaviya or its subcontractors in the course of performing the Services.

**6.2. Tools & Software.** Zaviya will retain all intellectual property rights with respect to the processes, tools and software related to the Services. Any use by Customer, including the execution, reverse engineering, decompilation, reproduction, modification, distribution, transmission, republication, display, transfer or performance, except as specifically permitted by Zaviya during the term of Services is prohibited.

## 7. Software License Provided by Zaviya

Customer use of Software in connection with the Services is pursuant to the terms accompanying the Software. "Software" includes software locally installed on Customer's systems and software remotely accessed by Customer through the Internet or other means (including, but not limited to websites, Internet portals and "cloud-based" software services). In the absence of such terms, Customer use of Software is pursuant to the Acceptable Use Policy ("AUP") of the software developer/manufacturer. By accessing, downloading, installing, activating or otherwise using such Software, Customer agrees to be bound by the terms of the AUP.

## 8. Customer Responsibilities

It is the Customer's responsibility to backup data on Customer's system(s). Customer acknowledges that Zaviya's performance and delivery of the Services are contingent upon: (A) Customer providing safe and hazard-free access to its personnel, facilities, equipment, hardware, software, network and information for Services to be performed at Customer's location, and (B) Customer's timely decision-making, notification of relevant issues or information and granting of approvals or permissions. Customer will promptly obtain and provide to Zaviya any required licenses, approvals or consents necessary for Zaviya's performance of the Services.

## 9. Confidentiality

In the performance of the Services, Customer and Zaviya may have access to or be exposed to information of the other party not generally known to the public, including, but not limited to software, product plans, marketing and sales information, customer lists, "know-how," or trade secrets which may be designated as being confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "Confidential Information"). Confidential Information may not be shared with third parties unless such disclosure is to personnel of Zaviya or Customer, including employees, agents and subcontractors, on a "need-to-know" basis in connection with its performance of this MSA, so long as such personnel have agreed to treat such Confidential Information under terms at least as restrictive as those herein. Each party agrees to take the necessary precautions to maintain the confidentiality of Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a like-kind nature, but in no case less than a commercially reasonable standard

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of care to maintain confidentiality, and shall only make such information available to its employees on a "need-to-know" basis. The foregoing shall not include information, which, (A) was known by one party prior to its receipt from the other or is or becomes public knowledge without the fault of the recipient, (B) is received by the recipient from a source other than a party to this MSA, or (C) a party is required to disclose in response to an order by a court or governmental agency, provided that advance notice of the disclosure is provided to other party. The obligations with respect to Confidential Information shall continue for three (3) years from the date of disclosure.

## 10. Support Services

Preventive maintenance is not included. Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than Zaviya (or its representatives) are not included. Unless otherwise expressly provided in a Service Agreement, Services do not include repair of any system or system component which has been damaged as a result of: (A) accident, misuse, or abuse of the system or component (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Zaviya (or its representatives), (B) an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, and hurricanes, or (C) the moving of the system from one geographic location or entity to another.

## 11. LIMITED WARRANTY & LIMITATION OF LIABILITY; HIGH-RISK DISCLAIMER

**11.1. Limited Warranty.** ZAVIYA WARRANTS THAT SERVICES WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCE, ZAVIYA (INCLUDING ITS AFFILIATES, SUBCONTRACTORS AND AGENTS) AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS AND OFFICERS (COLLECTIVELY, THE "ZAVIYA PARTY(IES)") MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO ANY OF THE SERVICES OR DELIVERABLES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY OR NON-INFRINGEMENT; ANY WARRANTY RELATING TO THIRD-PARTY PRODUCTS OR THIRD-PARTY SERVICES; ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN CONDUCTING SERVICES; OR ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES OR THE RESULTS OF ANY RECOMMENDATION THE ZAVIYA PARTIES MAY MAKE.

**11.2. Limitation of Liability.** NEITHER THE ZAVIYA PARTIES NOR CUSTOMER WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED BY ZAVIYA. WHETHER DIRECT OR INDIRECT, NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING, (A) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS, (B) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEM(S) OR NETWORK, OR THE RECOVERY OF SUCH, (C) LOSS OF BUSINESS OPPORTUNITY, (D) BUSINESS INTERRUPTION OR DOWNTIME, OR (E) SERVICES, ZAVIYA PRODUCTS OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE BY CUSTOMER. THE ZAVIYA PARTIES' AGGREGATE LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR ALL CLAIMS OF LIABILITY ARISING OUT OF, OR IN CONNECTION WITH ANY SERVICE PROVIDED PURSUANT TO THIS MSA SHALL NOT EXCEED THE ACTUAL AMOUNTS PAID BY CUSTOMER FOR THE SPECIFIC SERVICE(S) GIVING RISE TO SUCH CLAIM DURING THE PRIOR TWO (2) MONTH PERIOD.

EACH PARTY ACKNOWLEDGES THAT THESE LIMITATIONS APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE AND THAT, WITHOUT THESE LIMITATIONS, THE FEE FOR THE SERVICES PROVIDED HEREUNDER WOULD BE HIGHER.

**11.3. High-Risk Application Disclaimer.** The Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail -safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines, or any other application in which the failure of the Services could lead directly to death, personal injury, or severe physical or property damage (collectively, "**High-Risk Activities**"). Zaviya expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

## 12. Indemnification

Zaviya shall have no obligation under this Section for any claim resulting or arising from (A) Customer's modifications of the Services or Deliverables that were not performed by or on behalf of Zaviya; (B) the combination, operation or use of the Service or Deliverable in connection with a third- party product or service (the combination of which causes the infringement); or (C) Zaviya's compliance with Customer's written specifications or directions, including the incorporation of any software or other materials or process provided by or requested by Customer.

Customer shall defend, indemnify and hold Zaviya harmless from, any third-party claim or action arising out of (A) the failure of Customer to obtain the appropriate license, intellectual property rights, or any other permissions, regulatory certifications or approvals associated with Customer-provided technology, software or other components related to the Service, as well as software directed or requested by Customer to be installed or integrated as part of Services, or (B) any inaccurate representations regarding the existence of an export license or any allegation made against Zaviya due to Customer's violation or alleged violation of applicable export laws, regulations, and orders.

Each party agrees to indemnify and hold harmless the other party from any third-party claim or action for personal bodily injuries, including death, resulting from the indemnifying party's gross negligence or willful misconduct resulting from the Services (excluding Third-Party Products) provided hereunder. This section states each party's exclusive remedies for any third-party claim or action, and nothing in this MSA or elsewhere will obligate either party to provide any greater indemnity to the other.

## 13. Export; Regulatory Requirements

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**13.1. Export.** Customer and Zaviya acknowledges that the Services sold under this MSA, which may include technology and software, are subject to the customs and export control laws and regulations of the United States ("U.S."), may be rendered and/or performed in countries outside the U.S. and may also be subject to the customs and export laws and regulations of the country in which the Services are rendered and/or received. Customer and Zaviya agrees to abide by those laws and regulations. Customer further represents that any software provided by Customer and used as part of the Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license. If Customer cannot make the preceding representation, Customer agrees to provide Zaviya with all of the information needed for Zaviya to obtain export licenses from the U.S. Government and to provide Zaviya with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, Customer is solely responsible for obtaining any specific licenses relating to the export of software if a license is needed. Zaviya may also require export certifications from Customer for Customer-provided software. Zaviya's acceptance of any order for Services is contingent upon the issuance of any applicable export license required by the U.S. Government; Zaviya is not liable for delays or failure to deliver Services or a product resulting from Customer's failure to obtain such license or to provide such certification.

**13.2. Regulatory Requirements.** Zaviya is not responsible for determining if Third Party Products to be used in performance of the Services satisfy the local regulatory requirements of the country to which the products are to be shipped, nor shall Zaviya be obligated to perform any Services where the resulting products or software do not satisfy the local regulatory requirements.

#### **14. Important Additional Terms**

**14.1. Independent Contractor Relationship; MSA Assignment; Subcontracting.** The parties are independent contractors. Neither party will have any rights, power or authority to act or create an obligation, express or implied, on behalf of another party except as specified in this MSA. Zaviya has the right to assign, subcontract or delegate in whole or in part this MSA, or any rights, duties, obligations or liabilities under this MSA, by operation of law or otherwise, provided that Zaviya shall remain responsible for the performance of Services under this MSA. Otherwise, neither party may assign this MSA without the permission of the other.

**14.2. Entire Agreement; Severability; Section Headings.** This MSA and Service Agreements is the entire agreement between Zaviya and Customer with respect to its subject matter and supersedes all prior oral and written understandings, communications or agreements. No amendment to or modification of this MSA, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any provision of this MSA is void or unenforceable, the remainder of this MSA will remain in full force and effect. Section headings are for reference only and shall not affect the meaning or interpretation of this MSA.

**14.3. Force Majeure.** Neither party shall be liable to the other party for any failure to perform any of its obligations (except payment obligations) under this MSA during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, fire, flood, war, embargo, strike, riot or the intervention of any governmental authority (a "**Force Majeure**"). In such event, however, the delayed party must promptly provide the other party with written notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the Force Majeure events lasts longer than thirty (30) days, the other party may immediately terminate the applicable Service Agreement by giving written notice to the delayed party.

**14.4. Notices.** Notice to Zaviya under this MSA must be in writing and sent by postage prepaid first-class mail or receipted courier service to the address below or to such other address (incl. facsimile or electronic) as specified in writing and will be effective upon receipt.

Zaviya Inc., Attn: Response Center  
17027 Lands Wake, San Antonio, Texas 78247

**14.5. Governing Law, Forum and Language.** THE PARTIES AGREE THAT THE MSA, ANY SALES THERE UNDER, OR ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PREEXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, COMMON LAW, AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND ZAVIYA arising from or relating to the MSA, its interpretation, or the breach, termination or validity thereof, the relationships which result from this agreement or any related purchase SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICTS OF LAW.

The parties agree that any and all claims, causes of action or disputes (regardless of theory) arising out of or relating to the MSA shall be brought exclusively in the courts located in Bexar County, Texas. Customer and Zaviya agree to submit to the personal jurisdiction of the courts located within Bexar County, Texas, and agree to waive any and all objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts.

This MSA will be interpreted and construed in accordance with the English language.

**14.6. Dispute Resolution.** Customer and the Zaviya Parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) arising out of or relating to this MSA, Zaviya's advertising, or any related purchase (a "Dispute") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the Dispute within 30 days of notice of the Dispute to the other party, the parties shall be free to pursue all remedies available at law or equity.

**14.7. Limitation Period.** Neither party may institute any action in any form arising out of this MSA more than one (1) year after the cause of action has arisen, or in the case of nonpayment, more than one (1) year from the date of last payment.

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**14.8. Updates.** Zaviya reserves the right to update its MSA at any time, effective upon posting an updated version at [www.Zaviya.net/legal/CMSA](http://www.Zaviya.net/legal/CMSA); however, Customer's rights and obligations shall be as provided in the version of the MSA executed by Customer or available to Customer at the time of Customer's purchase of Services or, when applicable, Customer's renewal of Services.

**14.9. Counterparts.** If a signature block is appended hereto, this MSA may be executed in counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

## Acceptance

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