

## **ZIP MASTER SUBSCRIPTION AGREEMENT**

This Master Subscription Agreement (“**Agreement**”) is effective as of the date Zip accepts the Order Form (the “**Effective Date**”) and is between ZipHQ, Inc., a Delaware corporation, with a place of business at One Sansome St, Ste 3000, San Francisco CA 94104 (“**Zip**”), and the customer stated in the Order Form (“**Customer**”). This Agreement supersedes any other agreement (including any click-through or electronic agreements within the Solution) between Zip and Customer with respect to the Solution.

### **1. ACCESS AND USE**

1.1 Subject to the terms and conditions of this Agreement, Zip grants to Customer during the Subscription Term (as specified in an applicable Order Form), solely for Customer’s internal business purposes, the right to access and use Zip’s software products stated in the order form, order, or statement of work (“**Order Form**”) including all additions and modifications made by Zip from time to time (“**Solution**”) in accordance with the technical materials provided by Zip to Customer in electronic form describing the use and operation of the Solution (the “**Documentation**”). As authorized under the Order Form, Customer may permit Customer’s full-time employees and independent contractors (“**Employees**” or “**Authorized Users**”) to access and use the features and functions of the Solution pursuant to Customer’s rights under this Agreement.

### **2. RESTRICTIONS AND RESPONSIBILITIES**

2.1 Customer will not, and will not permit any Authorized User or other party to, directly or indirectly: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Solution; (b) modify, translate, or create derivative works based on the Solution (except to the extent expressly permitted by Zip); (c) use the Solution for timesharing or service bureau purposes or otherwise for the benefit of a third party or remove any proprietary notices or labels; (d) access or use the Solution for any competitive purposes or to build a similar or competitive product or service; (e) otherwise use the Solution in a manner inconsistent with applicable law, the Documentation, or this Agreement.

2.2 Each party will comply with applicable export control laws and regulations.

2.3 During the Subscription Term, Zip will provide Customer with technical support services available <https://assets.ziphq.com/legal/zip-support.pdf>. The terms of the technical support services shall not materially or adversely be changed during the Term without mutual written agreement by the parties.

2.4 During the Subscription Term, Zip shall comply with Zip’s Service Level Agreement available <https://assets.ziphq.com/legal/zip-availability.pdf>. The terms of Zip’s Service Level Agreement shall not materially or adversely

be changed during the Term without mutual written agreement by the parties.

2.5 If Customer subscribes to Zip’s payment Solution the Zip Pay Supplemental terms available at <https://assets.ziphq.com/legal/zip-pay-supplemental.pdf> shall apply. These terms shall not be changed during the Term without mutual written agreement by the parties.

### **3. PROFESSIONAL SERVICES**

3.1 Zip shall provide training, implementation, enablement and/or other professional services (“**Professional Services**”) as described in an Order Form. Where Zip provides any other services at Customer’s request in connection with an Order Form, such services shall be deemed to be Professional Services and chargeable at the rate given in the Order Form.

3.2 Professional Services will be performed Monday through Friday, excluding national holidays, during working hours, in the location where the Professional Services are to be performed by Zip.

3.3 Zip grants to Customer, during the Subscription Term, a non-exclusive, non-transferable, non-sublicensable license to use any training and other informational materials provided during or created in the performance of the Professional Services to the extent necessary to enable Customer’s use of the Solution in accordance with the terms of this Agreement. If not used, pre-purchased Professional Services and expenses expire twelve (12) months after the date purchased.

3.4 Customer shall provide reasonable access, cooperation and information as necessary to permit Zip to perform the Professional Services.

3.5 While on Customer premises, Zip personnel shall comply with any rules or policies of Customer that are made available to them in writing.

### **4. EVALUATION USE**

4.1 Customer may receive access to the Solution (or Solution features) as a no-fee, trial, alpha, beta or early access offering (“**Evaluation Software**”). Unless otherwise agreed in an Order Form, use of the Evaluation Software is only for Customer’s internal evaluation for sixty (60) days from the date Customer is first granted access to the Evaluation Software.

4.2 Zip shall be entitled to cancel Customer’s access to the Evaluation Software or modify the Evaluation Software at any time. No warranty, availability, or support obligations of Zip will apply to Evaluation Software.

4.3 Customer may choose to provide feedback related to the Evaluation Software as reasonably requested by Zip. Customer grants to Zip, without charge, the fully paid-up, perpetual right to exploit such feedback for development of its business, products and services so long as such exploitation does not identify Customer as the source of the feedback. The Evaluation Software

is subject to the terms of Section 2 (Restrictions and Responsibilities) to the same extent as the Solution.

## 5. CONFIDENTIALITY

5.1 “**Confidential Information**” means all information of a party (“**Discloser**”) disclosed to the other party (“**Recipient**”) that is identified as confidential at the time of disclosure or should be reasonably known by the Recipient to be confidential due to the nature of the information and the circumstances surrounding the disclosure. Electronic data or information, including transactional data and history or Personal Data (as defined in Zip’s Information Security Policy), submitted by Customer or Authorized Users into the Solution and displayed to them by the Solution (“**Customer Data**”) shall be considered Customer Confidential Information.

5.2 The Recipient shall: (a) not use the Discloser’s Confidential Information for any purpose outside of the Agreement; (b) not disclose the Confidential Information to any person or entity other than on a need-to-know basis; (c) ensure that anyone to whom Confidential Information is disclosed to is bound by written obligations of confidentiality in place with the Recipient; and (d) use reasonable measures to protect the confidentiality of such Confidential Information

5.3 If the Recipient is required by applicable law, court order or the rules of a stock exchange on which it is listed to make any disclosure of such Confidential Information, it will first, if legally permitted, give written notice to the Discloser. To the extent within its control, the Recipient shall permit the Discloser to intervene in any relevant proceedings to protect its interests in its Confidential Information.

5.4 Confidential Information will not include information that the Recipient can show: (a) was rightfully in its possession or known to it prior to receipt without any restriction on its disclosure; (b) is or becomes publicly known through no breach of this Agreement; (c) is independently developed without the use of the other party’s Confidential Information; or (d) is rightfully obtained from a third party without breach of any confidentiality obligation.

5.5 The Recipient acknowledges that unauthorized disclosure of the Discloser’s Confidential Information could cause substantial harm to the Discloser for which damages would not be an adequate remedy.

## 6. CUSTOMER DATA

6.1 The parties shall comply with Zip’s Information Security Policy available at <https://assets.ziphq.com/legal/zip-information-security.pdf>, as well as Zip’s Data Processing Policy available at <https://assets.ziphq.com/legal/zip-data-processing-policy.pdf>.

6.2 Customer shall comply with all laws and regulations applicable to its use of the Solution.

6.3 Zip shall only process Customer Data as necessary to perform its obligations under this Agreement.

6.4 Customer represents and warrants that it has the necessary rights and permissions to provide Customer Data to Zip.

## 7. PROPRIETARY RIGHTS

7.1 Zip shall own and retain all right, title and interest in and to (a) the Solution, all improvements, enhancements, or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with implementation services or support, and (c) all intellectual property rights related to any of the foregoing.

7.2 Customer shall own and retain all right, title, and interest in and to the Customer Data.

7.3 Notwithstanding anything to the contrary, Zip shall have the right to collect and analyze data relating to the provision, use, and performance of various aspects of the Solution, and Zip will be free to use such information and data to improve and enhance the Solution and for other development, diagnostic and corrective purposes in connection with the Solution. No rights or licenses are granted except as expressly set forth herein.

7.4 Customer hereby grants to Zip a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Solution any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Authorized Users, relating to the Solution. Zip will not identify Customer as the source of any such feedback.

## 8. PAYMENT OF FEES

8.1 Customer will be invoiced by Zip for the Solution, Professional Services, and any other amounts as set forth in the Order Form in accordance with the terms therein (the “**Fees**”). Unless otherwise set forth in the Order Form, Customer shall pay invoices within thirty (30) days of the invoice date. All payment obligations are non-cancelable and all amounts paid are non-refundable, except as otherwise set forth in this Agreement. If Customer believes that Zip has billed Customer incorrectly, Customer must contact Zip no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared to receive an adjustment or credit. Inquiries should be directed to Zip’s customer support department (at [support@ziphq.com](mailto:support@ziphq.com)). Following notice, Zip shall be entitled to suspend Customer’s access to the Solution if payments are not received within thirty (30) days of the invoice due date.

8.2 The Fees exclude, and Customer will make all payments of the Fees to Zip free and clear of, all applicable sales, use, and other taxes and all applicable export and import fees, customs duties and similar charges. Customer will be responsible for, and will indemnify and hold harmless Zip from, payment of all such taxes (other than taxes based on Zip’s net income), fees, duties, and charges, and any related penalties and interest, arising from the payment of the Fees or its use of the Solution. All amounts due under this Agreement shall be paid by Customer in full without any set-off, counterclaim, deduction or withholding (other than as required by law).

## 9. TERM AND TERMINATION

9.1 Subject to earlier termination as provided below, the term of this Agreement begins on the Effective Date and will remain in effect until all Subscription Terms expire or until this Agreement is otherwise terminated in accordance with the terms hereof, whichever occurs first (the “**Term**”).

9.2 In addition to any other remedies it may have, either party shall be entitled to also terminate this Agreement upon thirty (30) days’ written notice to the other party (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach. If Customer terminates an applicable Order Form for an uncured material breach, Zip shall promptly provide a pro-rata refund of the Fees that have been paid in advance for the remainder of the Subscription Term (beginning on the date of termination). All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, indemnification obligations warranty disclaimers, and limitations of liability.

9.3 Customer and any Authorized User shall promptly notify Zip if Customer or Authorized User suspects or has knowledge that it, any Authorized User, or any other third party is causing or would cause Customer to be in breach of this Agreement and provide reasonable cooperation with Customer and its third-party service providers in connection with such breach.

## 10. WARRANTY AND DISCLAIMER

10.1 Zip warrants that:

- (a) during Subscription Term set forth in the applicable Order Form, the Solution will, in all material respects, conform to the functionality described in the then-current Documentation for the applicable Solution;
- (b) it shall comply with all laws applicable to the operation of its business; and
- (c) the Professional Services will be provided in accordance with good industry standards by appropriately qualified personnel using reasonable skill and care.

10.2 In the event of a breach of Section 10.1(a), Customer’s sole and exclusive remedy is that Zip shall use commercially reasonable efforts to correct any reproducible nonconformity. If such efforts are unsuccessful within thirty (30) calendar days of written notice from Customer, Customer may terminate the affected Solution. Zip shall then promptly provide a pro-rata refund of the Solution Fees that have been paid in advance for the remainder of the Subscription Term for the applicable Solution, calculated from the date of termination.

10.3 The warranty in Section 10.1(a) will not apply to the extent any non-conformance is caused by:

- (a) Customer using the Solution with an application or in an environment other than as described in the Documentation; or

- (b) modifications made to the Solution that were not made by Zip, Zip’s authorized representatives, or with the express written authorization of Zip.

10.4 Zip only gives the express warranties in this Agreement. All other conditions, warranties or other terms which might have effect or be implied or incorporated into this Agreement whether by statute, common law or otherwise are excluded to the fullest extent permitted by law.

## 11. INDEMNITY

11.1 Subject to Section 11.3, Zip agrees to defend, at its cost, Customer against (or, at Zip’s option, settle), any third party claim to the extent such claim asserts that the Solution infringes or misappropriates any patent, copyright, trademark or trade secret of that third party and Zip shall pay all costs and damages finally awarded against Customer by a court of competent jurisdiction as a result of any such claim.

11.2 If the use of the Solution is, or in Zip’s sole opinion is likely to become, subject to such a claim, Zip shall be entitled to:

- (a) replace the applicable Solution with functionally equivalent non-infringing technology;
- (b) obtain a license for Customer’s continued use of the applicable Solution; or
- (c) terminate this Agreement or the Subscription Term to the infringing Solution and provide a pro-rata refund of the Fees that have been paid in advance for the remainder of the Subscription Term for the applicable Solution, calculated from the date of termination.

11.3 The indemnity in Section 11.1 will not apply:

- (a) if the Solution is modified by anyone other than Zip;
- (b) if the infringement is caused by Customer combining the Solution with non-Zip applications, code, or products not contemplated by the Documentation;
- (c) in the event of continued use of an infringing version of the Solution after Zip has provided a non-infringing version; or
- (d) to the extent breach of this Agreement caused the infringement claim.

11.4 The foregoing will be Customer’s sole remedy for any claim of infringement of third party intellectual property rights.

11.5 An indemnifying party’s obligations under this Section 11 only apply if:

- (a) the other party notifies the indemnifying party of the indemnification claim in writing as soon as possible once it becomes aware of the claim;

- (b) the indemnified party makes no admission of liability or fault;
- (c) the indemnifying party is given sole control over the defense of the claim and settlement of it; and
- (d) the indemnified party provides all reasonable assistance to the indemnifying party.

## 12. LIMITATION OF LIABILITY

12.1 In no event will either party be liable for any: (a) loss of revenues or profits; (b) loss of or damage to business reputation; (c) loss of use or business interruption; (d) loss of wasted management time or staff time; or (e) indirect, incidental, special, punitive or consequential damages, whether in an action in contract or tort (including negligence), even if the other party has been advised of the possibility of such damages.

12.2 Each party's liability to the other party (whether for breach of contract, misrepresentations, negligence, strict liability, other torts or otherwise) under or in connection with this Agreement and all Order Forms shall be limited as follows. Each party's liability to the other party in any complete calendar year following execution of this Agreement will not exceed 100% of the total Fees paid (plus Fees payable) to Zip during the immediately preceding calendar year. This limitation of liability is aggregate and not per incident. In respect of any liability becoming payable in respect of the first such calendar year, the sum shall be the total amount of Fees payable in the first year of the Subscription Term.

12.3 Nothing in this Agreement will limit or exclude either party's liability for:

- (a) death or personal injury caused by its negligence;
- (b) gross negligence or wilful misconduct;
- (c) its obligations under Section 11 (Indemnity);
- (d) in the case of Customer, for (i) breach of Section 2.1(a) (Reverse Engineering) or (ii) payment of Fees; or
- (e) any matter which by law may not be excluded or limited.

## 13. PUBLICITY

Customer hereby grants Zip the right to use its name and logo on its website and other marketing materials and agrees to reasonably cooperate with Zip to serve as a reference account upon request.

## 14. ENTIRE AGREEMENT

14.1 This Agreement and any documents referred to in it are the complete and exclusive statement of the parties' agreement and supersede all proposals or prior arrangements, understandings or agreements between the parties relating to the subject matter of this Agreement.

14.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and will have no right or remedy in respect of, any statement, representation, assurance, understanding or warranty (whether in writing or not) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

## 15. NOTICES

15.1 All notices required to be given under this Agreement shall be in writing and delivered by hand, email, first class prepaid mail or recorded delivery mail.

15.2 Notices for Zip shall be sent to legal@ziphq.com or ZipHQ, Inc., One Sansome St, Ste 3000, San Francisco CA 94104, Attn: Legal.

15.3 Notices for Customer shall be sent to the bill to address on the Order Form or address at the top of this Agreement.

15.4 Notice will be deemed given:

- (a) when received, if delivered by hand or email; or
- (b) the next business day after it is sent, if sent by first class prepaid mail or recorded delivery; or
- (c) five (5) business days following postage if sent internationally.

## 16. GENERAL

16.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights for a third party to enforce any term of this Agreement.

16.2 If this Agreement conflicts with any of the terms of any Order Form, then the terms of the Order Form will control solely with respect to the Solution and Professional Services covered by the Order Form. Any purchase orders issued by Customer shall be deemed to be for Customer's convenience only and, notwithstanding acceptance of purchase orders by Zip, shall in no way change, override, or supplement this Agreement.

16.3 Any waiver or modification of the provisions of this Agreement will only be effective if in writing and signed by both parties.

16.4 If the whole or any part of a provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will be unaffected. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

16.5 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.

16.6 Zip is an independent contractor and not an employee of Customer. At no time shall either party make any commitments or incur any charges or expenses for or in the name of the other party, or be considered the agent, partner, joint venture, employer or employee of the other party.

16.7 Neither party may assign this Agreement without the prior written approval of the other, which approval will not be unreasonably withheld or delayed, provided that either party shall be entitled to assign any of its rights and/or obligations herein to any of its Affiliates; or to any entity that acquires all or substantially all of its assets, provided always that the assignee is in a position to discharge the obligations of the assignor.

16.8 Neither the Uniform Commercial Code (UCC), the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act (UCITA) will apply to this Agreement.

16.9 Neither party will be responsible for any failure to perform its obligations under this agreement due to causes beyond its reasonable control including acts of any government or government agency such as blocking internet traffic or any webpage (each a “**Force Majeure Event**”). The time for performance will be extended for a period equal to the duration of the Force Majeure Event. If a Force Majeure Event continues for more than thirty (30) days, then either party shall be entitled to terminate the relevant Order Form by giving written notice to the other party.

16.10 Zip shall maintain, throughout the Subscription Term of the Agreement and with a reputable insurance provider, insurance coverage that is commercially reasonable relative to its obligations under the Agreement. Upon written request, Zip shall provide to Customer evidence of such insurance.

16.11 Each party represents that its signatory whose signature appears below is duly authorized by all necessary corporate or other appropriate action to execute this Agreement.

16.12 Except as may be stated in relation to any SCCs (as defined in Zip’s Data Processing Policy) agreed by the parties in respect of the international transfer of Personal Data under Zip’s Data Processing Policy, this Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in California, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

