# Master Service Agreement

THIS MASTER SERVICE AGREEMENT ("AGREEMENT") GOVERNS CUSTOMER'S ACQUISITION AND USE OF THE SERVICES. BY ACCEPTING THIS AGREEMENT, BY (I) CLICKING A BOX INDICATING ACCEPTANCE, OR (II) USING THE SERVICES, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS.

**SECTION 1.**     **Definitions.** Terms defined in this <u>Section 1</u> and parenthetically defined elsewhere shall have the same meaning throughout the Agreement.

a)   "Benchmark Data" means statistical, system, usage, configuration and other data regarding the Customer's compliance with the Agreement and Customer's usage of the Services that: (i) does not specifically identify Customer, Users, or Customer's customers; and (ii) does not consist of any of Customer Data, provided, however, that Customer shall not consider statistical, anonymized, aggregated data part of Customer Data.

b)   "Beta Services" means functionality that may be made available to Customer at no additional charge, and which is clearly identifiable as beta, non-production, early access, pilot or a similar designation.

c)   "Confidential Information" means any nonpublic information (written, oral or electronic) disclosed by one Party to the other Party that is designated as confidential or should be reasonably understood to be confidential based on the circumstances of disclosure and the type of information being disclosed. Confidential Information shall be deemed to include the following information of the respective Parties as applicable and without limitation: (i) the terms and conditions of the Agreement; (ii) customer lists, the names of customer contacts, business plans, technical data, product ideas, personnel, contracts and financial information; (iii) patents, trade secrets, techniques, processes, know-how, business methodologies, schematics, employee suggestions, development tools and processes, computer printouts, computer programs, design drawings and manuals, and improvements; (iv) information about either Party's costs, profits, markets and sales; (v) plans for future development and new product concepts; (vi) all documents, books, papers, drawings, models sketches, and other data of any kind and description, including electronic data recorded or retrieved by any means, that have been or will be disclosed, as well as written or oral instructions or comments; or (vii) any data or information stored in the Services.

d)   "Customer" means the individual accepting this Agreement on his or her own behalf, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity then such company or other legal entity.

e)   "Customer Data" means any reports, information, files, documents, data or other content that Customer or its Users shares with and allows Zylo to access through the Services. "Customer Data" does not include data derived from Customer Data and held in a statistical, anonymized, or aggregated form ("Aggregated Data"). For purposes of clarity, Aggregated Data will not contain data attributable to a particular Customer or User.

f)   "Documentation" means the Security Standards located at trust.zylo.com and the applicable usage guides and policies located in the Knowledge Base forum accessible upon log-in to the Service, as updated from time to time.

g)   "Non-Zylo Application" means any mobile, web-based, offline, or other software functionality provided by Customer or a third party and that interoperates with the Services.

h)   "Order Form" means the ordering document or electronic transaction setting forth the applicable Services and/or Professional Services being purchased by Customer that is agreed to by both parties and that is governed by this Master Service Agreement.

i)   "Professional Services" means the professional services provided by Zylo to Customer under an Order Form and/or SOW that describes the professional services to be provided by Zylo, which may include, but is not limited to, any implementation, data conversion, set-up, consulting, training, interface, and advisory services.

*j)* "Services" means the online software services as set forth on the Order Form and described in the Documentation, and made available by Zylo, running on one or more computer servers maintained by Zylo or a third party on behalf of Zylo. "Services" exclude Non-Zylo Applications and Beta Services.

*k)* "Statement of Work" or "SOW" means the set of terms set forth in an Order Form applicable to the Professional Services purchased thereunder or a separate document executed by an authorized representative of each party that sets forth the applicable Professional Services purchased by Customer.

*l)* "Support Services" means the support and maintenance services requested by Customer via email to support@zylo.com and provided by Zylo to its customers generally for the Services purchased by Customer under an Order Form, which may include troubleshooting and help-desk services.

*m)* "User" means an individual who is authorized by Customer to use a Service purchased under an Order Form for the benefit of Customer and to whom Customer (or Zylo at Customer's request) has supplied a user identification and password for Services requiring log-in credentials.

*n)* "Work Product" means all patentable subject matter, patent rights, copyrightable subject matter, copyrights, trademarks, trade secrets, know-how, ideas, suggestions, discoveries, designs, processes, computer products, software (both object code and source code), works of authorship, algorithms, formulas, methods, programming, techniques, flowcharts, reports, and all other inventions or developments created during the performance of the Agreement during the performance of Professional Services.

*o)* "Zylo" means Zylo, Inc.

**SECTION 2.      Services.**

*a)* *Performance.* Zylo will: (i) make the Services available to Customer pursuant to this Agreement, the applicable Order Form and Documentation, (ii) use commercially reasonable efforts to make the Services available 24x7, excluding interruptions for scheduled maintenance and any unavailability caused by circumstances beyond Zylo's reasonable control, and (iii) provide Support Services to Customer for the Services purchased under an Order Form.

*b)* *Compliance with Law; Security*. The terms of the Data Processing Addendum located at trust.zylo.com ("DPA") are hereby incorporated by reference.  Zylo will maintain the technical and organizational controls and security measures for the protection of Customer Data as set forth in the Security Standards.

**SECTION 3.      Customer's Obligations.**

*a)* *Customer Responsibilities*. Customer will: (i) be responsible for obtaining and purchasing all equipment, Internet access services, modifying its network, and doing all other things necessary in order to use the Services, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and shall promptly notify Zylo in the event of any unauthorized access or use of the Services and any loss or theft or unauthorized use of the Services, and (iii) be responsible for the use of the Services by its Users in compliance with the terms of this Agreement, the Order Form and applicable laws and regulations. Customer agrees that Zylo may suspend Customer's use of the Services if Zylo reasonably concludes that such use is causing immediate, material, or ongoing harm to Zylo or others.

*b)* *Customer Restrictions*. Customer will not: (i) make the Services available to anyone other than Customer or Users, (ii) use the Services for the benefit of anyone other than Customer, (iii) sell, resell, license, sublicense, distribute, rent or lease any Service or include any Service in an outsourcing model, (iv) use a Service to store or transmit malicious code, (v) use the Services directly or indirectly to circumvent a contractual usage limit, and (vi) access the Services to build a competitive product or service, and (vii) directly or indirectly alter, modify, adapt, translate, copy, distribute, reverse engineer, decompile, disassemble, or create any derivative works of the Services.

c) *Customer Interoperation*. If Customer chooses to utilize a Non-Zylo Application with the Services, Customer grants Zylo permission to interoperate the Services with the Non-Zylo Application to transmit and process Customer Data pursuant to the terms of this Agreement.

**SECTION 4.      Professional Services.**

a) *Performance; Cooperation*. Professional Services may, upon mutual agreement of the Parties, be performed at: (i) Customer's offices, Zylo's offices or elsewhere; and (ii) during normal business hours.  Customer will provide reasonable and good faith cooperation with Zylo in its performance of the Professional Services, including but not limited to providing Zylo with copies of all materials that Zylo may reasonably request to assist Zylo in the rendering of the Professional Services.

b) *Delays; Expenses.* Zylo will have no obligation to provide Professional Services other than those specified in an Order Form and/or SOW, and it shall not be responsible for any delays in the performance of the Professional Services caused by Customer.  Customer will reimburse Zylo reasonable travel, lodging and meal expenses, and any other reasonable expenses incurred by Zylo in connection with rendering the Professional Services.

**SECTION 5.      Payment Terms.**

a) *Fees*. Customer will pay the fees set forth on the Order Form and/or SOW ("Fees").  Unless otherwise specified in the applicable Order Form, Zylo will submit invoices to the Customer for Fees for Services and Professional Services on an annual basis, in advance and payment is due within thirty (30) days of the invoice date. Customer agrees to pay invoiced Fees in U.S. dollars. Except as otherwise provided for in the applicable Order Form, Fees may include any applicable pro-rated amounts for partial month(s) of a subscription term. Customer shall pay all taxes (including without limitation sales, use, property, excise, value added, and gross receipts) levied on this Agreement and the applicable Order Form and/or SOW, except taxes based on Zylo's income.

b) *Invoice disputes; Suspension*.  Customer must provide written notice to Zylo of an invoice dispute prior to the applicable payment due date and such dispute must be reasonable and in good faith. Zylo reserves the right to suspend Customer's access to and/or use of the Services, or provision of Professional Services, for any accounts where payment of Fees is overdue; provided, however, that Zylo provided Customer with notice of such nonpayment at least 30 days prior to such suspension.  Customer shall also pay to Zylo all reasonable expenses incurred by Zylo in connection with exercising any of its rights under the Agreement or applicable law with respect to the collection of any payments due Zylo (excluding with respect to amounts reasonably disputed by Customer in good faith), including reasonable attorneys'' fees, court costs, and collection agency fees.

**SECTION 6.      Intellectual Property Rights.**

a) *Proprietary Rights*. Customer acknowledges and agrees that Zylo retains sole and exclusive ownership of all right, title, and interest in and to: (i) Work Product; and (ii) the Services. Provided that Customer complies with all terms of the Agreement, Customer shall have a nonexclusive, nontransferable license to use the Work Product solely in connection with its use of the Services.

b) *Customer Data.* Customer acknowledges that its use of the Services may require the processing and transmission of Customer Data to and by Zylo.  When Customer or Users upload, submit, or store Customer Data on or through the Services, Customer grants Zylo a worldwide, nonrevocable license to use, host, store, reproduce, and modify Customer Data to provide, support, and improve the Services. Without limiting Customer's rights and remedies under the Agreement, Customer acknowledges that Customer Data and information regarding Customer's account will be processed by Zylo and stored and processed using online hosting services selected by Zylo. Customer represents and warrants that it has all necessary rights in, and obtained all necessary consents to, the Customer Data to grant Zylo the rights granted under this Section 6(b).  Notwithstanding anything to the contrary in the Agreement, Customer authorizes and agrees that Zylo may collect and create Benchmark Data and/or Aggregated Data and such Benchmark Data and/or Aggregated Data shall be the property of Zylo. Zylo shall have the right to retain, use, distribute, sell, and otherwise

exploit such Benchmark Data and/or Aggregated Data.

c)  *Feedback*. Zylo encourages Customer and its Users to provide suggestions, proposals, ideas, recommendations or other feedback regarding improvements to the Services and related resources. Zylo shall own all rights, title and interest, including all intellectual property rights, in and to any improvements, upgrades, modifications or enhancements to the Services developed by Zylo. The foregoing shall include when such improvements, upgrades, modifications or enhancements result from Customer or User feedback ("Customer Feedback Improvements"). To the extent, if any, that ownership in Customer Feedback Improvements does not automatically vest in Zylo by virtue of the Agreement or otherwise, Customer grants to Zylo a royalty-free, fully paid, sub-licensable, transferable, non-exclusive, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import and otherwise exploit Customer Feedback Improvements.

**SECTION 7.      Warranties; Disclaimers.**

a)  *Zylo Warranties*. Zylo warrants that, during the applicable subscription term: (i) it will not materially decrease the overall security of the Services, and (ii) it will not materially decrease the overall functionality of the Services.  For any breach of such warranties, Customer's exclusive remedies are those described in the "Termination for Cause" and "Rights Upon Termination" sections below.

b)  *Disclaimers.* EXCEPT AS SPECIFICALLY SET FORTH IN THE AGREEMENT, ZYLO DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE PARTIES AGREE THAT ZYLO DISCLAIMS ALL WARRANTY FOR AND SHALL HAVE NO LIABILITY WITH REGARD TO, AND DOES NOT SUPPORT OR GUARANTEE THE INTEROPERABILITY OF, NON-ZYLO APPLICATIONS AND BETA SERVICES.

**SECTION 8.      Indemnification.**

a)  *Customer Indemnification*. Customer will defend Zylo, at Customer's own expense, against any suit or proceeding brought against Zylo by a third party (i) arising from or related to Customer use of Customer Data and/or the Services in  violation of law or regulation, or (ii) alleging that Customer Data infringes or misappropriates such third party's intellectual property rights (each a "Claim Against Zylo"), and will indemnify Zylo from any damages finally awarded against Zylo, or for settlement amounts approved by Customer in writing and paid by Zylo, as a result of a Claim Against Zylo; provided, however, Customer shall have no defense and indemnification obligation under this Section for a Claim Against Zylo arising from Zylo's breach of this Agreement or the applicable Order Form(s).

b)  *Zylo Indemnification*. Zylo will defend Customer, at Zylo's own expense, against any suit or proceeding brought against Customer by a third party alleging that the Services infringe or misappropriate such third party's intellectual property rights ("Claim Against Customer"), and will indemnify Customer from any damages finally awarded against Customer, or for settlement amounts approved by Zylo in writing and paid by Customer, as a result of a Claim Against Customer; provided, however, Zylo shall have no defense and indemnification obligations under this Section for a Claim Against Customer arising from: (1) any combination or use of the Services with hardware or software not provided by Zylo, or (2) a Non-Zylo Application or Customer's breach of this Agreement or the applicable Order Form(s).

c)  *Procedures*. To qualify for such defense and indemnification obligations, the party subject to the applicable third party suit or proceeding must (a) give the other party  prompt written notice of the Claim Against Zylo or Claim Against Customer, as applicable;  (b) allow such other party to have sole control of the defense and all related settlement negotiations for the Claim Against Zylo or Claim Against Customer, as applicable; and (c) fully cooperate with such other party, at such other party's expense,  in its defense and settlement negotiations. Customer (with regard to a Claim Against Zylo) and Zylo (with regard to a Claim Against Customer) may not settle any third-party suit or proceeding under this Section unless it unconditionally releases the other party of all liability.

d)  *Exclusive Remedy*. This "Indemnification" section states the indemnifying party's sole liability to, and the indemnified

party's exclusive remedy against, the other party for any third-party claim described in this Section.

**SECTION 9.      Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR: (I) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR (II) LOSS OF USE, DATA, BUSINESS, REVENUES OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE. EACH PARTY'S MAXIMUM AGGREGATE LIABILITY RELATED TO OR IN CONNECTION WITH THE AGREEMENT, WHETHER UNDER ANY THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE AGGREGATE AMOUNT OF FEES PAID BY CUSTOMER UNDER THE AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE FIRST INCIDENT GIVING RISE TO THE LIABILITY.

**SECTION 10.      Confidentiality.**

a)  *Non-Disclosure*. Each Party will protect the Confidential Information of the other party in its possession using the same degree of care that the receiving party uses to protect its own Confidential Information of like kind (but not less than reasonable care) to (i) prohibit use of the other party's Confidential Information for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the other party in writing, limit access to the other party's Confidential Information in its possession to those of its and its' employees  and contractors who need to know the other party's Confidential Information for purposes consistent with this Agreement and who have signed confidentiality agreements with the receiving party containing confidentiality protections no less protective than those stated herein.

b)  *Exclusions*. Confidential Information shall not include information which: (a) is publicly available through no action of the receiving party; (b) was rightfully in the receiving party's possession on a non-confidential basis independent of its relationship with the disclosing party prior to the first disclosure by the disclosing Party to the receiving Party as evidenced by the receiving party's then-existing written records; (c) has been or is developed by or become known to the receiving party without access to any of the disclosing party's Confidential Information and outside the scope of any agreement with disclosing party with the receiving party having the burden of proof to demonstrate independent creation; (d) has been obtained rightfully from third parties not bound by an obligation of confidentiality to the disclosing party.

**SECTION 11.      Term and Termination.**

a)  *Agreement Term*. The term of this Agreement shall commence on the Effective Date and shall continue so long as there are active purchases of or subscriptions to the Services and/or Professional Services governed by this Agreement.

b)  *Order Form Term.* The term of each purchase and/or subscription shall be as stated in the applicable Order Form or SOW.

c)  *Termination for Cause*. In the event that Customer or Zylo breach any material provision of the Agreement and fails to cure such breach within thirty (30) days after written notice thereof (which notice reasonably details the alleged breach), the non-breaching Party may terminate this Agreement and all active subscriptions hereunder immediately by written notice to the other Party. A Party may terminate this Agreement and all active subscriptions immediately upon written notice in the event the other Party: (i) becomes insolvent; (ii) files a petition in bankruptcy for Chapter 7 relief, or has such a petition filed against it (and fails to lift any stay imposed thereby within sixty (60) days after such stay becomes effective); (iii) has a receiver appointed with respect to all or substantially all of its assets; (iv) makes an assignment for the benefit of creditors or (v) ceases to do business in the ordinary course.

d)  *Rights upon Termination*. Zylo acknowledges that in the event of a termination by Customer pursuant to the "Termination for Cause" section, Zylo will refund Customer any prepaid feeds covering the remainder of the term of all Order Forms after the effective date of termination. Customer acknowledges that in the event of a termination by Zylo pursuant to the "Termination for Cause" section: (i) the rights granted by Zylo to Customer will cease immediately; (ii) Customer shall pay Zylo any unpaid Fees for all Services and Professional Services, including payment of Fees due for the remainder of the subscription term(s) following the effective date of termination, and (iii) Customer shall not be entitled to any refund of prepaid Fees.

e) *Survival*. The Sections titled "Payment Terms", "Intellectual Property Rights", "Confidentiality", "Limitation of Liability", "Indemnification", Rights upon Termination" and "General" shall survive any termination or expiration of this Agreement.

**SECTION 12.     General.**

a) *Law, Jurisdiction, and Venue*. The Agreement shall be governed and construed according to the laws of the State of Indiana. The Parties agree that the exclusive jurisdiction or any lawsuit related to or arising under the Agreement shall be in the Marion County, Indiana.

b) *Assignment*. Except as otherwise provided in this Section 12(b), neither Party may assign the Agreement and applicable Order Forms and/or Statements of Work without the prior written consent of the other Party, which consent will not be unreasonably withheld; any unauthorized assignment or delegation will be null and void. A Party may, without notice to or consent from the other Party, assign the Agreement in connection with any merger, consolidation, reorganization, sale of all or substantially all of its assets or any similar transaction, provided that the assignee is not a direct competitor of the other Party and confirms in writing that it has assumed all obligations of the assignor under the Agreement. The Agreement will be binding upon and inure to the benefit of the Parties' permitted successors and assigns.

c) *Notices*. Any notice either Party desires to give the other Party hereunder shall be in writing. All notices shall be given by delivery to the Parties at their physical or email addresses set forth on the Order Form unless such addresses are changed by written notice.  Notice relating to termination and/or indemnification shall be clearly identifiable as a legal notice and addressed to the attention of Legal Department.

d) *Independent Parties*. The Agreement is by and between independent parties. Nothing in the Agreement shall be construed or interpreted to give rise to an agency, partnership, franchise, employment, or joint venture.

e) *Promotion*.  Customer agrees to allow Zylo use of its name and logo on the Zylo website as a general customer reference. Any other use of Customer's trademarks, trade name, logos, or public referrals to its relationship with Customer may not be made without Customer's prior written consent.

f) *Export Compliance*. Zylo and Customer each represents that it is not on any U.S. government denied-party list. Customer will not permit any User to access or use any Service in a U.S.-embargoed country or region (currently the Crimea, Luhansk or Donetsk regions, Cuba, Iran, North Korea, or Syria) or in violation of any U.S. export law or regulation.

g) *General*. The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements with respect to such subject matter, whether express or implied, written or oral. The parties agree that any term or condition in a Customer purchase order or in any other order documentation provided by Customer (excluding Order Forms) is void. The Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. In the event of any conflict among the following documents, the order of precedence shall be: (i) the applicable Order Form or SOW, (ii) an exhibit and/or addendum to this Agreement (iii) the body of this Agreement, and (iv) the Documentation.  There are no third-party beneficiaries under this Agreement.  The Agreement shall not be construed against any Party by reason of its preparation. If one or more of the provisions contained in the Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected. No term or provision of the Agreement shall be deemed waived, and no breach or default shall be deemed excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No consent by any Party to, or waiver of, a breach or default by the other, whether express or implied, shall constitute a consent to, waiver of, or excuse for any different or subsequent breach or default.