

**zSPACE SERVICE SOLUTION (ZaaS)  
MASTER AGREEMENT TERMS AND CONDITIONS**

**Background**

A. The zSpace “Service Solution” or “ZaaS” is a term based program that provides educational institutions with a lab set-up of zSpace hardware units with the zSpace “STEAM” package (science, technology, engineering, arts and math) software, installation, professional development training, updates and support included (the “Basic Package”). The Basic Package as identified by zSpace from time to time includes access to curriculum resources and activities that are updated year round. Software beyond that included in the Basic Package (“Additional Software”) is also available for additional fees.

B. Customer is an educational institution desiring to implement the Service Solution on the terms and conditions of this Master Agreement.

**Agreement**

**1. ORDERS**

Customer will place a purchase order for the number of hardware units and the configuration of the Basic Package software and any Additional Software for the term identified on the attached “Order Schedule” promptly upon execution. The specific combination to be provided to Customer under this Agreement is referred to as the “Service Package.” Additional hardware units and software may be ordered and added to the Service Package at any time during the term of this Agreement. Professional services (“Professional Services”) beyond what is included in the Basic Package may be ordered and provided in accordance with zSpace standard terms or under a separate statement of work to be entered into between the parties and setting forth the specific terms and conditions of the engagement. Orders shall be subject to written acceptance by zSpace and delivery schedules will be established in accordance with product and service availability. Accepted orders are non-cancellable.

**2. DELIVERY, INSTALLATION AND TRAINING**

**2.1. Delivery and Installation.** zSpace will, deliver the units, install the software, provide access to zSpace online services (subject to Customer’s connection capabilities) and generally ensure that the systems are operational. Customer will provide zSpace with access to necessary facilities to enable the installation.

**2.2. Professional Development Training.** As part of the Basic Package, zSpace will provide one full day of professional development training at the intervals indicated on the Order Schedule for the number of employees indicated. Further training may be available as Professional Services for additional fees.

**2.3. Security.** zSpace employees or contractors who are sent onto school campuses to perform professional development and related services where students may be present (“PD Specialists”) at the time of hire and on an annual basis are subject to the following background checks:

- a) criminal records check
- b) FBI fingerprint clearance
- c) Check of all state and local sex offender (and related) registries that are linked to the national search maintained by the United States Department of Justice Sex Offender Public Website located at <http://www.nsopw.gov>.

For the sake of clarity, the nature of the services offered by zSpace are such that zSpace's PD Specialists are always in the presence of and under the supervision of school district personnel. zSpace agrees to provide, upon request, copies of records documenting the above referenced background checks for such PD Specialists that shall be performing services on school premises.

**3. PRICES AND PAYMENT**

Current prices for the services are set forth on the Order Schedule. Prices will be the zSpace prices in effect at the time an order is placed. Unless otherwise stated, fees are annual and payment is due in advance within thirty (30) days from receipt of zSpace’s invoice. All taxes and fees incurred in connection with the services are the responsibility of Customer.

Payments not made when due will be subject to late fees. All payments are nonrefundable. zSpace may suspend or terminate the services upon written notice for failure to make payments when due.

#### **4. OWNERSHIP AND TERMS OF USE**

**4.1. Limited Use Rights.** Except as otherwise specifically identified on the Order Schedule, all hardware units, software, documentation and related materials are provided to Customer as a service and for limited use to provide educational services during the applicable term. Certain software, as specifically identified on the Order Schedule, may be provided under a license to Customer pursuant to an end user license agreement, in which case use of such software is subject to the terms of such agreement. Customer acknowledges that such software may be open source software or may be owned by a third party provider and Customer agrees that the third party will have rights under the applicable end user agreement.

#### **4.2. Hardware.**

a) **Ownership and Customer Obligations.** The hardware provided as part of the Service Solution program remains the property of zSpace at all times during the applicable term of the Service Package. Customer shall use the hardware in a careful and proper manner, keep and maintain the hardware clean and in good working order and condition during the service term and keep it free and clear of any liens or other encumbrances. Customer shall be responsible for all taxes and governmental charges relating to its possession and use of the hardware. Customer shall be responsible to maintain insurance on the hardware with losses payable to zSpace against fire, theft, collision, and other such risks as are appropriate and requested by zSpace. In the event the hardware is lost or damaged beyond repair, Customer shall pay the replacement cost.

b) **Purchase Option.** Customer may have the option to purchase the hardware provided in the Service Package upon expiration of the initial term of the Service Package on zSpace's standard terms and conditions of sale at a price indicated in the Order Schedule.

c) **Return of Hardware.** Upon expiration of the applicable term, unless Customer has elected to purchase the hardware, Customer shall return the hardware to zSpace at zSpace's expense in original packaging and good condition and working order, except for ordinary wear and tear.

**4.3. Intellectual Property Rights.** All intellectual property rights in the software and hardware are owned by zSpace or its suppliers and are protected by copyright and other intellectual property laws, international treaty provisions and applicable national laws. Customer is not a licensee and may not modify, adapt, decompile, disassemble, or reverse engineer the software or hardware; (b) create derivative works; or (c) allow any third party to use or have access to the software or documentation (unless authorized by zSpace). Customer may not remove or alter any copyright, trademark and other proprietary rights notices.

#### **5. SUPPORT AND MAINTENANCE**

**5.1. Software as a Service.** zSpace provides the software as a service and subject to continued payment of subscription fees. zSpace will provide all software updates and upgrades to the Basic Package and Additional Software provided as part of the Service Package during the applicable term. Support is provided in accordance with zSpace's standard support policies as updated from time to time.

**5.2. Hardware Maintenance.** zSpace will maintain the installed hardware units in accordance with its standard maintenance terms. In the event of a hardware failure for which zSpace hardware support is not able to provide a workaround, Customer may return the unit for a replacement in accordance with zSpace standard terms for hardware support. Replacement units may be new or reconditioned equivalent to new. Units returned to zSpace must have the RMA number marked on the outside of the package, and must be sent prepaid and packaged appropriately for safe shipment. Customer is responsible for loss or damage until the returned item is received by zSpace. The product must be in the same condition in which it was received, except for reasonable wear and tear. Any damage to the product while in Customer's possession or in transit back to zSpace shall be repaired at Customer's expense. New versions of hardware products may be supplied at zSpace's sole discretion.

#### **6. CONFIDENTIALITY.**

All non-public technical and business information disclosed by zSpace to Customer is zSpace's confidential information and Customer will not use such information except as expressly authorized in connection with use of the Service Solution and will not disclose such information to any third parties.

## 7. WARRANTY DISCLAIMER

**7.1. General Disclaimer.** Customer acknowledges that this Agreement provides for ongoing services and not the delivery of products. zSpace warrants that the services will be provided in a professional manner consistent with standards in the industry. Without limiting zSpace's obligations under the maintenance and support provisions of this Agreement, and except as expressly warranted in the previous sentence, all hardware, software and services are provided on an "AS IS" and "AS AVAILABLE" basis without warranty of any kind **TO THE FULL EXTENT ALLOWED BY LAW, ZSPACE AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.**

**7.2. Restricted Uses at Sole Risk.** zSpace's products are not designed and not warranted to be suitable for use in military applications and/or military environments, life support applications or other critical applications which may involve potential risk of death, personal injury or severe property or environmental damage. Use for such applications is fully at the risk of Customer.

**7.3. Disclaimer of Platform based Liability.** The zSpace hardware platform incorporates a stereo display apparatus. Customer acknowledges that: (i) use of a stereo display apparatus subjects the user to a non-normal exercising of the eyes by extending the normal accommodation, convergence and focus of the eyes in concert with each other; and (ii) some users may experience dizziness, nausea, headaches and/or other sensations of physical discomfort or illness. Customer will notify its employees, consultants, contractors and any other person that Customer permits or authorizes to use the zSpace platform of the risks associated with use as described here. zSpace disclaims any and all liability to Customer or to any user for such events.

## 8. TERM AND TERMINATION

**8.1. Term.** The term of this Master Agreement begins on the Effective Date and continues until termination. The term for each Service Package ordered under this Master Agreement will automatically renew for additional one-year terms unless one party notifies the other in writing of its intent not to renew at least sixty (60) days prior to the renewal date. The term of this Master Agreement will automatically be extended so long as a Service Package ordered under this Agreement continues to be in force.

### **8.2. Termination.**

a) **Service Packages.** The term of a Service Package may not be terminated except in the event of a material breach that remains uncured for thirty (30) days or more from notice of the breach.

b) **This Agreement.** Either party may terminate this Agreement on thirty (30) days written notice. Except in the case of termination by zSpace for material breach by Customer, termination of this Agreement does not affect the term of any Service Package and the terms in this Agreement will continue to apply until expiration of the last remaining Service Package but during the wind down period no new orders will be accepted.

c) **Survival.** The provisions of Sections 4.2(c), 6, 7, 8, 9 and 10, and all payment obligations will survive termination or expiration of this Agreement.

## 9. LIMITATION OF LIABILITY

**TO THE FULL EXTENT ALLOWED BY LAW zSPACE EXCLUDES ANY LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A LIMITED REMEDY WOULD FAIL OF ITS ESSENTIAL PURPOSE. ZSPACE'S MAXIMUM LIABILITY TO CUSTOMER FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE AMOUNTS PAID UNDER THIS AGREEMENT.**

## **10. GENERAL PROVISIONS**

**10.1. Subcontracting.** Services may be provided by zSpace directly or may be subcontracted to a third party provider.

**10.2. Force Majeure.** zSpace shall not be liable to Customer for any alleged loss or damages resulting from delays in performance (including loss or damages resulting from delivery of the products being delayed) caused by acts of Customer, acts of civil or military authority, governmental priorities, earthquake, fire, flood, epidemic, quarantine, energy crisis, strike, labor trouble, war, riot, accident, shortage, delays in transportation, or any other causes beyond zSpace's reasonable control.

**10.3. Partial Invalidity.** If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect so long as neither party is denied material economic benefit hereunder and will be interpreted to reflect the original intent of the parties.

**10.4. Waiver.** A waiver of any default hereunder or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed.

**10.5. Assignment.** Customer shall not assign this Agreement or any of its rights under this Agreement without the prior written consent of zSpace. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of, and is enforceable by the Parties hereto and their respective successors and assigns.

**10.6. Arbitration.** All disputes, claims, and controversies between the parties arising out of or related to this Agreement or the breach thereof (except for non-payment or late payment, breach of any obligation of confidentiality; infringement, misappropriation, or misuse of any intellectual property right; or any other claim where interim relief from the court is sought to prevent serious and irreparable injury to one of the parties or to others) shall be settled by arbitration. The arbitration shall be conducted by one arbitrator, under the auspices of the American Arbitration Association and under its then-current Commercial Arbitration Rules. The power of the arbitrator shall not exceed that possessed by a Superior Court Judge in California. The arbitrator shall issue a written opinion in support of his or her decision, stating the legal and factual basis for the decision and the reasoning leading to such decision. The arbitrator is prohibited from awarding damages or remedies in excess of those allowed by the provisions of this Agreement. The decision and award of the arbitrator shall be final and binding and judgment on the award so rendered may be entered in any court having jurisdiction thereof. The arbitration shall be held in Santa Clara County, California, or a mutually convenient location, and the award shall be deemed to be made in California. Both parties will share the costs of the arbitration equally, except that each party shall bear its own costs and expenses, including attorney's fees, witness fees, travel expenses, and preparation costs.

**10.7. Governing Law And Venue.** This Agreement shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of California, without regard to its conflict of law rules. The United Nations Convention on Contracts for the International Sale of Goods (1980) is hereby excluded in its entirety from application to this Agreement. Subject to the Arbitration provision above, the Superior Court of Santa Clara County and/or the United States District Court for the Northern District of California shall have exclusive jurisdiction and venue over all controversies in connection herewith.

**10.8. Attorney's Fees.** With the exception of the Arbitration provision above, in any legal action to enforce, or arising out of, this Agreement, the prevailing party shall be entitled to be awarded all court costs and reasonable legal fees incurred.

**10.9. Choice Of Language.** The original of this Agreement is in English and Customer waives any right to have it written in any other language.