

# Reseller Subscription Services Agreement

We have updated the Terms of Service applicable to the customers of Zendesk resellers and BPOs which we now refer to as the “Subscription Services Agreement.” If you are a new Subscriber, then this Subscription Services Agreement will be effective as of November 1, 2016. If you are an existing Subscriber, we are providing you with prior notice of these changes which will be effective as of December 1, 2016. For a prior version of our Reseller Customer Terms of Service, click [here](#).

## SUBSCRIPTION SERVICES AGREEMENT

### APPLICABLE TO CUSTOMERS OF ZENDESK RESELLERS

You (“Subscriber,” “You,” “Your” or related terms) are acquiring a subscription to a Service, (as defined below) operated by Zendesk from an unrelated third party authorized to sell such subscriptions (“Reseller”) under a separate agreement with Zendesk (“Reseller Agreement”). In addition to any terms and conditions related to Your use of the Service pursuant to any agreement by and between You and the Reseller, this Agreement contains the terms and conditions that govern Your access to and use of the Service. Zendesk is an express beneficiary of this Agreement, and in acquiring a subscription to the Service, You expressly acknowledge and agree that Zendesk shall

have the right to enforce this Agreement against You and that this Agreement constitutes the entire agreement and supersedes any and all prior agreements between You and Zendesk with regard to Your subscription to the Service or Your access to or use thereof under this Agreement and Your agreement between You and the Reseller. By accepting this Agreement, either by accessing or using a Service, or authorizing or permitting any Agent or End-User to access or use a Service, You agree to be bound by this Agreement. If You are entering into this Agreement on behalf of a company, organization or another legal entity (an "Entity"), You are agreeing to this Agreement for that Entity and representing to Zendesk that You have the authority to bind such Entity and its Affiliates to this Agreement, in which case the terms "Subscriber," "You," "Your" or a related capitalized term herein shall refer to such Entity and its Affiliates. If You do not have such authority, or if You do not agree with this Agreement, You must not accept this Agreement and may not use any of the Services.

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## 1. DEFINITIONS

When used in this Agreement with the initial letters capitalized, in addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

**Account:** means any accounts or instances created by or on behalf of Subscriber or its Agents within the Services.

**Affiliate:** means, with respect to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with such Party, whereby “control” (including, with correlative meaning, the terms “controlled by” and “under common control”) means the possession, directly or indirectly, of the power to direct, or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise.

**Agent:** means an individual authorized to use a Service through Your Account as an agent and/or administrator as identified through a unique login.

**Agreement:** means this Subscription Services Agreement together with any and all Supplements, Additional Terms and Order Forms.

**API:** means the application programming interfaces developed and enabled by Zendesk that permits Subscribers to access certain functionality provided by the Services, including without limitation, the REST API that enables the interaction with the Services automatically through HTTP requests and the application development API that enables the integration of the Services with other web applications.

**Associated Services:** means products, services, features and functionality designed to be used in conjunction with the Services but not included in the Service Plan to which

You subscribe, including without limitation, integrations and applications created or developed by Zendesk or its Affiliates and made available in the Zendesk marketplace (available at <https://www.zendesk.com/apps>) which are expressly stated to be governed by this Agreement. For avoidance of doubt, none of the Services or any other product, service, feature or functionality that is expressly stated to be governed by any alternative license, agreement or terms shall be deemed an Associated Service.

**Beta Services:** means a product, service or functionality provided by Zendesk that may be made available to You to try at Your option at no additional charge which is clearly designated as beta, pilot, limited release, non-production, early access, evaluation or by a similar description.

**Confidential Information:** means all information disclosed by You to Zendesk or by Zendesk to You which is in tangible form and labeled “confidential” (or with a similar legend) or which a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure, including, but not limited to information relating to Zendesk’s security policies and procedures. For purposes of this Agreement, this Agreement as well as Service Data shall be deemed Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information that (a) was already known to the receiving party at the time of disclosure by the disclosing party; (b) was or is obtained by the receiving party by a third party not known by the receiving party to be under an obligation of confidentiality with respect to such information; (c) is or becomes generally available to the public other than by violation of this Agreement or another valid agreement between the Parties; or (d) was or is independently developed by the receiving party without use of the disclosing party’s Confidential Information.

**Consulting Services:** means consulting professional services (including any Training, Success or Implementation Services) provided by Zendesk or its authorized subcontractors as indicated on a Order Form or other written document such as a statement of work.

Directive: means Directive 95/46/EC on the protection of individuals with regard to the processing of Personal Data and on the free movement of such data.

Documentation: means any written or electronic documentation, images, video, text or sounds specifying the functionalities of the Services, as applicable, provided or made available by Zendesk to You in the applicable Zendesk help center(s); provided, however, that Documentation shall specifically exclude any “community moderated” forums as provided or accessible through such knowledge base(s).

End-User: means any person or entity other than Subscriber or Agents with whom Subscriber or its Agents interact using a Service.

Master Subscription Agreement: means the agreement governing direct customer’s use of the Services as found [here](#).

Order Form: means any of Our generated service order forms executed or approved by the Reseller managing Your subscription to the Service with respect to Your subscription to a Service, which form may detail, among other things, the number of Agents authorized to use a Service under Your subscription to a Service and the Service Plan applicable to Your subscription to a Service.

Other Services: means third party products, applications, services, software, products, networks, systems, directories, websites, databases and information which a Service



links to, or which You may connect to or enable in conjunction with a Service, including, without limitation, Other Services which may be integrated directly into Your Account.

**Personal Data:** means any information relating to an identified or identifiable natural person where an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity.

**Personnel:** means employees and/or non-employee service providers and contractors of the Zendesk Group.

**Processing/To Process/Processed:** means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

**Service(s):** means the products and services that are ordered by the Reseller on Your behalf online through a link or via an Order Form referencing this Agreement, whether on a trial or paid basis, and made available online by Us, via the applicable subscriber login link and other web pages designated by Us, including, individually and collectively, the applicable Software, Updates, API, Documentation, and all applicable Associated Services that You have purchased or deployed or to which You have subscribed ("Deployed Associated Services"). "Services" exclude Other Services as that term is defined in this Agreement. From time to time the names and descriptions of the Services or any individual Service may be changed. To the extent Subscriber is given access to such Service as so described by virtue of a prior Order Form or other prior acceptance of this Agreement, this Agreement shall be deemed to apply to such Service as newly named or described.

**Service Data:** means electronic data, text, messages, communications or other materials submitted to and stored within the Service by You, Agents and End-Users in connection with Your use of such Service, which may include, without limitation, Personal Data.

**Service Plan(s):** means the packaged service plan(s) and the functionality and services associated therewith (as detailed on the Site applicable to the Service) for the Services to which You subscribe.

**Site:** means a website operated by the Zendesk Group, including [www.zendesk.com](http://www.zendesk.com), as well as all other websites that the Zendesk Group operates.

**Software:** means software provided by Zendesk (either by download or access through the internet) that allows an Agent or End-Users to use any functionality in connection with the applicable Service.

**Subscription Terms:** means the period during which You have agreed to subscribe to a Service with respect to any individual Agent.

**Supplemental Terms:** means the additional terms and conditions that are (a) contained in this Agreement under the Section entitled, "Supplemental Terms and Conditions" which apply and are incorporated into this Agreement with certain Services, features, or functionality; (b) included or incorporated on an Order Form (e.g. when a Deployed

Associated Service is purchased); and (c) applicable to Consulting Services when purchased by You.

Usage Data: means encoded or anonymized information or aggregated data that the Zendesk Group may collect about a group or category of services, features or users while You, Your Agents or End-Users use a Service for certain purposes, including analytics, which does not contain Personal Data.

“We,” “Us” or “Our”: means Zendesk as defined below.

Zendesk: means Zendesk, Inc., a Delaware corporation, its Payment Agent or any of its successors or assignees.

Zendesk Group: means Zendesk, Inc., a Delaware Corporation together with all its Affiliates.

## 2. GENERAL CONDITIONS; ACCESS TO AND USE OF THE SERVICES

2.1 During the Subscription Term and subject to compliance by You, Agents and End-Users with this Agreement and Zendesk’s receipt of payment related to Your subscription, You have the limited right to access and use a Service consistent with the Service Plan(s) that You subscribe to, together with all applicable Deployed Associated Services, for Your internal business purposes. We will (a) make the Services and Service Data available to You pursuant to this Agreement and the applicable Order

Forms; (b) provide applicable standard customer support for the Services to You at no additional charge as detailed on the applicable Site and Documentation and/or upgraded support if purchased, unless otherwise agreed with the Reseller; (c) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except (i) during planned downtime for upgrades and maintenance to the Services (of which We will use commercially reasonable efforts to notify You in advance both through Our Site and a notice to Your Account owner and Agents) ("Planned Downtime"); and (ii) for any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Other Services, or acts undertaken by third parties, including without limitation, denial of service attack.

2.2 You may not use the Services to provide customer service, support or other outsourced business process services to more than one third party (other than Affiliates) through a single Account. Without limiting the foregoing, Your right to access and use the API is also subject to the restrictions and policies implemented by Zendesk from time to time with respect to the API as set forth in the Documentation or otherwise communicated to You in writing.

2.3 A high speed Internet connection is required for proper transmission of the Services. You are responsible for procuring and maintaining the network connections that connect Your network to the Services, including, but not limited to, "browser" software that supports protocols used by Zendesk, including the Transport Layer Security (TLS) protocol or other protocols accepted by Zendesk, and to follow procedures for accessing services that support such protocols. We are not responsible for notifying You, Agents or End-Users of any upgrades, fixes or enhancements to any such software or for any compromise of data, including Service Data, transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned, operated or controlled by Zendesk. We assume no responsibility for the reliability or performance of any connections as described in this section.

2.4 In addition to complying with the other terms, conditions and restrictions set forth below in this Agreement, You agree not to (a) license, sublicense, sell, resell, rent,

lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Services available to any third party, other than authorized Agents and End-Users in furtherance of Your internal business purposes as expressly permitted by this Agreement; (b) use the Services to Process data on behalf of any third party other than Agents or End-Users; (c) modify, adapt, or hack the Services or otherwise attempt to gain unauthorized access to the Service or related systems or networks; (d) falsely imply any sponsorship or association with Zendesk or the Zendesk Group, (e) use the Services in any unlawful manner, including, but not limited to, violation of any person's privacy rights; (f) use the Services to send unsolicited or unauthorized bulk mail, junk mail, spam, pyramid schemes or other forms of duplicative or unsolicited messages; (g) use the Services to store or transmit files, materials, data, text, audio, video, images or other content that infringes on any person's intellectual property rights; (h) use the Services in any manner that interferes with or disrupts the integrity or performance of the Services and its components; (i) attempt to decipher, decompile, reverse engineer or otherwise discover the source code of any Software making up the Services; (j) use the Service to knowingly post, transmit, upload, link to, send or store any content that is unlawful, racist, hateful, abusive, libelous, obscene, or discriminatory; (k) use the Services to store or transmit any "protected health information" as that term is defined in 45 C.F.R. 160.103, unless expressly agreed to otherwise in writing by Zendesk; (l) use the Services to knowingly post transmit, upload, link to, send or store any viruses, malware, Trojan horses, time bombs, or any other similar harmful software ("Malicious Software"); (m) use or launch any automated system that accesses a Service (i.e., bot) in a manner that sends more request messages to a Service server in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser; or (n) attempt to use, or use the Services in violation of this Agreement.

2.5 You are responsible for compliance with the provisions of this Agreement by Agents and End-Users and for any and all activities that occur under Your Account, as well as for all Service Data. Without limiting the foregoing, You are solely responsible for ensuring that use of the Services to store and transmit Service Data is compliant with all applicable laws and regulations as well as any and all privacy policies, agreements or other obligations You may maintain or enter into with Agents or End-Users. You also maintain all responsibility for determining whether the Services or the information generated thereby is accurate or sufficient for Your purposes. Subject to any limitation on the number of individual Agents available under the applicable Service Plan(s) to which You subscribed or applicable Deployed Associated Service, access to and use of the Services is restricted to the specified number of individual Agents permitted under Your subscription to the applicable Service. You agree and acknowledge that each Agent will be identified by a unique username and password ("Login") and that an Agent Login may only be used by one (1) individual. You will not share an Agent Login among

multiple individuals. You and Your Agents are responsible for maintaining the confidentiality of all Login information for Your Account.

2.6 In addition to Our rights as set forth in Sections 2 and 7.3, We reserve the right, in Our reasonable discretion, to temporarily suspend Your access to and use of a Service if We suspect or detect any Malicious Software connected to Your Account or use of a Service by You, Agents or End-Users.

2.7 You acknowledge that Zendesk may modify the features and functionality of the Services during the Subscription Term.

2.8 You may not access the Services if You are a direct competitor of the Zendesk Group, except with Zendesk's prior written consent. You may not access the Services for the purposes of monitoring performance, availability, functionality, or for any benchmarking or competitive purposes.

2.9 If You register for a free trial for any of the Services, We will make such Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which You registered to use the applicable Service(s); (b) the start date of any subscription to such Service purchased by You for such Service(s); or (c) termination of the trial by Us in our sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. Please review the applicable Documentation during the trial period so that You become familiar with the features and functions of the Services under applicable Service Plans before You make Your purchase.

ANY SERVICE DATA YOU ENTER INTO A SERVICE, AND ANY CONFIGURATIONS OR CUSTOMIZATIONS MADE TO A SERVICE BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICE AS COVERED BY THE TRIAL, PURCHASE THE APPLICABLE SERVICE, OR EXPORT SUCH SERVICE DATA, BEFORE THE END OF THE TRIAL PERIOD.

2.10 From time to time, We may make Beta Services available to You at no charge. You may choose to try such Beta Services in Your sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms that will be presented to You. Beta Services are not considered “Services” under this Agreement; however, all restrictions, Our reservation of rights and Your obligations concerning the Service, and use of any Other Services shall apply equally to Your use of Beta Services. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

### 3. CONFIDENTIALITY; SECURITY AND PRIVACY

3.1 Subject to the express permissions of this Agreement, each Party will protect each other’s Confidential Information from unauthorized use, access or disclosure in the same manner as each protects its own Confidential Information, but with no less than reasonable care. Except as otherwise expressly permitted pursuant to this Agreement, each of us may use each other’s Confidential Information solely to exercise our respective rights and perform our respective obligations under this Agreement and shall disclose such Confidential Information (a) solely to the Personnel who have a need to know such Confidential Information for such purposes and who are bound to maintain the confidentiality of, and not misuse, such Confidential Information; (b) as necessary to

comply with an order or subpoena of any administrative agency or court of competent jurisdiction; or (c) as reasonably necessary to comply with any applicable law or regulation. The provisions of this Section 3.1 shall supersede any non-disclosure agreement by and between the Parties that would purport to address the confidentiality and security of Service Data and such agreement shall have no further force or effect with respect to Service Data.

3.2 The Zendesk Group will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Service Data, as described in the Agreement, the Supplemental Terms entitled, “How We Protect Service Data” attached hereto, and Supplemental Terms for the Deployed Associated Services, as applicable. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Service Data by Personnel except (a) to provide the Services and prevent or address service, support or technical problems; (b) as compelled by law in accordance with Section 3.1(b) or 3.1(c); (c) in accordance with the provisions of Section 3.4; or (d) as You expressly permit in writing. The Zendesk Group’s compliance with the provisions of Sections 3.2 through 3.5 shall be deemed compliance with the Zendesk’s Group’s obligations to protect Service Data as set forth in the Agreement.

3.3 To the extent Service Data constitutes Personal Data, You and the Zendesk Group hereby agree that You shall be deemed to be the data controller and the relevant entity in the Zendesk Group Party shall be deemed to be the data processor as those terms are understood under the Directive (and any applicable national legislation implementing the Directive). Unless otherwise specifically agreed to by Zendesk, Service Data may be hosted by the Zendesk Group or their respective authorized third-party service providers in the United States, the EEA or other locations around the world. In providing the Services, Zendesk will engage entities within the Zendesk Group and other authorized service providers, to Process Service Data, including and without limitation, any associated Personal Data pursuant to this Agreement within the European Economic Area (the “EEA”), the United States and in other countries and territories. Under no circumstances will any entity in the Zendesk Group be deemed a data controller with respect to Service Data under the Directive or any relevant law or regulation of any Member State as defined in the Directive.



3.4 If Your principal location is in the EEA, We will ensure, pursuant to Article 25 of the Directive that, to the extent that any Service Data constitutes Personal Data, if Service Data is transferred to a country or territory outside of the EEA (a “non-EEA country”), that such transfer will only take place if: (a) the non-EEA country in question ensures an adequate level of data protection; (b) one of the conditions listed in Article 26(1) of the Directive is satisfied; or (c) the transfer is via the EU-US Privacy Shield or Swiss-US Safe Harbor frameworks. Upon Your request and subject to Your entry into Zendesk’s Data Processing Agreement (“DPA”) We will further ensure that the transfer is subject to the standard contractual clauses designed to facilitate transfers of Personal Data from the EEA to all third countries that have been adopted by the European Commission (known as the, “Model Clauses”), which have been incorporated into the DPA. As a Subscriber, You can execute Our DPA by emailing Your request to Us at [privacy@zendesk.com](mailto:privacy@zendesk.com).

3.5 You agree that the Zendesk Group and the third-party service providers that are utilized by the Zendesk Group to assist in providing the Services to You shall have the right to access Your Account and to use, modify, reproduce, distribute, display and disclose Service Data to the extent necessary to provide the Services, including, without limitation, in response to Your support requests. Any third-party service providers utilized by the Zendesk Group will only be given access to Your Account and Service Data as is reasonably necessary to provide the Services and will be subject to (a) confidentiality obligations which are commercially reasonable and substantially consistent with the standards described in Section 3.2; and (b) their agreement to comply with the data transfer restrictions applicable to Personal Data as set forth in Section 3.3.

3.6 In addition to Service Data, We collect certain information (which may include Personal Data) about You, Agents and End-Users as well as Your and their respective devices, computers and use of the Service. This includes, among other things:

1. Collecting analytics information when You use the Services. In the Services, analytics information may consist of the feature and function of the Service

being used, the associated domain name, the username and IP address of Your Agents or End-Users and additional information required to detail the operation of the function and which parts of a Service are being affected. The analytics information that Zendesk collects may include elements of Service Data related to the function the Agents or End-Users are performing.

2. Aggregating information related to the use of the Services and publishing this information, as segmented by industry, geography and other metrics to provide qualitative insight on customer support metrics and other relevant insights through “Zendesk Benchmark” or similar features. You have the choice whether to participate by enabling Zendesk Benchmark from within the settings in the Services. If You do not want to participate then You should not enable Zendesk Benchmark.
3. Collecting Usage Data which is used to help understand trends in usage of the Services. In addition to collecting and using Usage Data ourselves, the Zendesk Group may share the Usage Data with third parties, including our subscribers, partners and service providers, for various purposes, including to help us better understand our subscribers’ needs and improve our Services. We may also publish Usage Data to provide relevant information about and to market the Services.

3.7 We use cookies and other tracking technologies in connection with Your access to and use the Services. These cookies and other tracking technologies may provide Us with Personal Data, information about devices and networks utilized to access Our Services, and other information regarding interactions with our Services by You, Your Agents and End-Users. This information allows Us to remember You and Your preferences and maximize and analyze the performance of the Services. We also use cookies to operate, enhance and personalize certain aspects of the Services. The aim of these cookies is to provide You with a more personal experience so that You do not have to reset your preferences each time You use the Services.

3.8 Zendesk may also obtain other information, including Personal Data, from third parties and combine that with information we collect through our Service. For example, we may have access to certain information from a third party social media or authentication service if you log into our Services through the service or otherwise provide us with access to information from the service. Any access that we may have to such information from a third party social or authentication service is in accordance with the authorization procedures determined by that service. By authorizing us to connect

with a third party service, you authorize us to access and store your name, email address(es), current city, profile picture URL, and other Personal Data that the third party service makes available to us, and to use and disclose it in accordance with this Agreement and the Zendesk Privacy Policy as in effect from time to time and available [here](#).

#### 4. INTELLECTUAL PROPERTY RIGHTS

Each Party shall maintain all rights, title and interest in and to all our respective patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights (collectively, “Intellectual Property Rights”). The rights granted to You, Agents and End-Users to use the Service(s) under this Agreement do not convey any additional rights in the Service(s), or in any Intellectual Property Rights associated therewith. Subject only to limited rights to access and use the Service(s) as expressly stated herein, all rights, title and interest in and to the Services and all hardware, Software and other components of or used to provide the Services, including all related Intellectual Property Rights, will remain with Zendesk and belong exclusively to Zendesk. The Zendesk Group shall have a fully paid-up, royalty-free, worldwide, transferable, sub-licensable (through multiple layers), assignable, irrevocable and perpetual license to implement, use, modify, commercially exploit, and/or incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback We receive from You, Agents, End-User, or other third parties acting on Your behalf. Zendesk®, and the Zendesk Group’s other product and service names, and logos used or displayed in or on the Services are registered or unregistered trademarks of one or more members of the Zendesk Group (collectively, “Marks”), and You may only use applicable Marks in a manner permitted by Our [Trademark Usage Guidelines](#) to identify You as a Subscriber; provided You do not attempt, now or in the future, to claim any rights in the Marks, degrade the distinctiveness of the Marks, or use the Marks to disparage or misrepresent Us, Our services or products.

#### 5. THIRD PARTY SERVICES

If You decide to enable, access or use Other Services, be advised that Your access and use of such Other Services is governed solely by the terms and conditions of such Other Services, and We do not endorse, are not responsible or liable for, and make no representations as to any aspect of such Other Services, including, without limitation, their content or the manner in which they handle, protect, manage or Process data (including Service Data) or any interaction between You and the provider of such Other Services. We cannot guarantee the continued availability of such Other Service features, and may cease providing them without entitling You to any refund, credit, or other compensation, if for example and without limitation, the provider of an Other Service ceases to make the Other Service available for interoperability with the corresponding Service in a manner acceptable to Us. You irrevocably waive any claim against Zendesk with respect to such Other Services. We are not liable for any damage or loss caused or alleged to be caused by or in connection with Your enablement, access or use of any such Other Services, or Your reliance on the privacy practices, data security processes or other policies of such Other Services. You may be required to register for or log into such Other Services on their respective websites. By enabling any Other Services, You are expressly permitting Zendesk to disclose Your Login as well as Service Data as necessary to facilitate the use or enablement of such Other Services.

## 6. CREDITS POLICY

We may, at our sole discretion, choose to offer credits for the Services in various ways, including but not limited to, coupons, promotional campaigns and referrals. Zendesk reserves the right to award credits at its sole discretion. Credits have no monetary or cash value and can only be used by You or a Reseller to offset Your subsequent payments of Subscription Charges for the applicable Service. Credits may only be applied to Subscription Charges due for the Service specifically identified by Zendesk when issuing the credit. Credits can only be used by You and are non-transferable.

To the extent that You have been awarded credits, unless the instrument (including any coupon) states an earlier expiration date, credits shall expire and no longer be redeemable twelve (12) months from the date the credit was issued.

## 7. CANCELLATION AND TERMINATION

7.1 Under the terms and conditions of Our agreement with Reseller (the “Reseller Agreement”), We are entitled to suspend or terminate Your subscription to the Service, Your rights to access and use the Service or Your Account, and remove and discard any Service Data if: (a) We are notified by Reseller of Your failure to pay amounts due to Reseller with respect to Your subscription to a Service; or (b) Reseller fails to pay any amounts due to Us pursuant to the Reseller Agreement with respect to Your subscription to a Service. You consent to these suspension and termination rights and acknowledge and agree that Zendesk shall have no liability to You of any kind with respect to any such suspension or termination. Your sole recourse with respect to any such suspension or termination shall be against Reseller.

7.2 Following the termination or cancellation of Your subscription to the Service and/or Account, We reserve the right to delete all Service Data in the normal course of operation. Service Data cannot be recovered once Your Account is cancelled.

7.3 We reserve the right to modify, suspend or terminate the Services (or any part thereof), Your Account or Your and/or Agents’ or End-Users’ rights to access and use the Services, and remove, disable and discard any Service Data if We believe that You, Agents or End-Users have violated this Agreement. This includes the removal or disablement of Service Data in accordance with Our Copyright Infringement Notice and Takedown Policy available at [www.zendesk.com/company/trademark-property/#DMCA](http://www.zendesk.com/company/trademark-property/#DMCA). Unless legally prohibited from doing so, We will use commercially reasonable efforts to

contact You directly via email to notify You when taking any of the foregoing actions. We shall not be liable to You, Agents, End-Users or any other third party for any such modification, suspension or discontinuation of Your rights to access and use the Services. Any suspected fraudulent, abusive, or illegal activity by You, Agents or End-Users may be referred to law enforcement authorities at Our sole discretion.

7.4 A Party may terminate this Agreement for cause (a) upon thirty (30) days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period; or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. If this Agreement is terminated by You in accordance with this section, We will, to the extent permitted by applicable law, refund You any prepaid fees covering the remainder of the Subscription Term after the effective date of termination. If this Agreement is terminated by Us in accordance with this section, You will pay any unpaid fees covering the remainder of the Subscription Term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

7.5 Upon request by You made within thirty (30) days after the effective date of termination or expiration of this Agreement, We will make Your Service Data available to You for export or download as provided in the Documentation. After such 30-day period, We will have no obligation to maintain or provide any Your Service Data, and as provided in the Documentation will have the right to delete or destroy all copies of Your Service Data in Our systems or otherwise in Our possession or control, unless legally prohibited.

## 8. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

8.1 Each Party represents that it has validly entered into this Agreement and has the legal power to do so.

8.2 We warrant that during an applicable Subscription Term that (a) this Agreement and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Service Data; and (b) the Services will perform materially in accordance with the applicable Documentation. For any breach of a warranty above, Your exclusive remedies are those described in Section 7.4 herein.

8.3 EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 8.2, THE SITES AND THE SERVICES, INCLUDING ALL SERVER AND NETWORK COMPONENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW, AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ACKNOWLEDGE THAT WE DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE, AND NO INFORMATION OR ADVICE OBTAINED BY YOU FROM US OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

## 9. LIMITATION OF LIABILITY

9.1 UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) WILL EITHER PARTY TO THIS

AGREEMENT, OR THEIR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICE PROVIDERS OR SUPPLIERS OR LICENSORS BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA, BUSINESS INTERRUPTION, LOSS OF GOODWILL, OR FOR ANY TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR ANY OTHER LOSS OR DAMAGES INCURRED BY SUCH PARTY OR THIRD PARTY IN CONNECTION WITH THIS AGREEMENT, THE SERVICES OR CONSULTING SERVICES, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

9.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE ZENDESK GROUP'S AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT OR OTHERWISE IN CONNECTION WITH ANY SUBSCRIPTION TO, OR USE OR EMPLOYMENT OF THE SERVICES, SHALL IN NO EVENT EXCEED THE SUBSCRIPTION CHARGES PAID BY RESELLER TO ZENDESK WITH RESPECT TO YOUR SUBSCRIPTION TO SUCH SERVICE DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. YOU ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS SECTION 9.2 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE SUBSCRIPTION CHARGES FOR YOUR SUBSCRIPTION, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF WE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. WE HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE YOU THE RIGHTS TO ACCESS AND USE THE SERVICE PROVIDED FOR IN THIS AGREEMENT.

9.3 Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, which means that some of the above limitations may not apply to You. IN THESE JURISDICTIONS, THE ZENDESK GROUP'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.



9.4 Any claims or damages that You may have against Zendesk shall only be enforceable against Zendesk and not any other entity or its officers, directors, representatives or agents.

## 10. INDEMNIFICATION

10.1 We will indemnify and hold You harmless, from and against any claim against You by reason of Your use of a Service as permitted hereunder, brought by a third party alleging that such Service infringes or misappropriates a third party's valid patent, copyright, trademark or trade secret (an "IP Claim"). We shall, at Our expense, defend such IP Claim and pay damages finally awarded against You in connection therewith, including the reasonable fees and expenses of the attorneys engaged by Zendesk for such defense, provided that (a) You promptly notify Zendesk of the threat or notice of such IP Claim; (b) We will have the sole and exclusive control and authority to select defense attorneys, and defend and/or settle any such IP Claim; and (c) You fully cooperate with Zendesk in connection therewith. If use of a Service by You, Agents or End-Users has become, or in Our opinion is likely to become, the subject of any such IP Claim, We may at Our option and expense (a) procure for You the right to continue using the Service(s) as set forth hereunder; (b) replace or modify a Service to make it non-infringing; or (c) if options (a) or (b) are not commercially reasonable or practicable as determined by Zendesk, terminate Your subscription to the Service(s) and repay You, on a pro-rata basis, any Subscription Charges previously paid to Zendesk for the corresponding unused portion of Your Subscription Term for such Service(s). We will have no liability or obligation under this Section 10.1 with respect to any IP Claim if such claim is caused in whole or in part by (i) compliance with designs, data, instructions or specifications provided by You; (ii) modification of the Service(s) by anyone other than Zendesk; or (iii) the combination, operation or use of the Service(s) with other hardware or software where a Service would not by itself be infringing.

The provisions of this Section 10.1 state the sole, exclusive and entire liability of Zendesk to You and constitute Your sole remedy with respect to an IP Claim brought by reason of access to or use of a Service by You, Agents or End-Users.

10.2 You will indemnify and hold Zendesk harmless against any claim brought by a third party against Zendesk arising from or related to use of a Service by You, Agents or End-Users in breach of this Agreement or matters which You have expressly agreed to be responsible pursuant to this Agreement; provided that We promptly notify You of the threat or notice of such a claim. We shall promptly notify You of the threat or notice of such claim; (b) You will have the sole and exclusive control and authority to select defense attorneys, and defend and/or settle any such claim (however, You shall not settle or compromise any claim that results in liability or fault upon Us without Our prior written consent); and (c) We fully cooperate with You in connection therewith.

## 11. ASSIGNMENT, ENTIRE AGREEMENT AND AMENDMENT

11.1 Under the terms of the Reseller Agreement, Your agreement with the Reseller with respect to Your subscription to the Service may be assigned to Zendesk. You agree that if the Your agreement with Reseller is assigned to Zendesk, Your continued rights to access and use the Service shall be subject to Zendesk's then standard Master Subscription Agreement and You consent to the application of such terms and conditions, including without limitation, the billing and payment provisions contained therein. You agree that following any such assignment, You shall, upon request by Zendesk, provide such information as is required to secure payment for any Subscription Term commencing after such assignment. You may not, directly or indirectly, by operation of law or otherwise, assign all or any part of this Agreement or Your rights under this Agreement or delegate performance of Your duties under this Agreement without Our prior consent, which consent will not be unreasonably withheld. We may, without Your consent, assign Our agreement with You to any member of the Zendesk Group or in connection with any merger or change of control of Zendesk or the Zendesk Group or the sale of all or substantially all of Our assets provided that any such

successor agrees to fulfill its obligations pursuant to this Agreement. Subject to the foregoing restrictions, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

11.2 This Agreement, together with any Order Form(s) and Supplemental Term(s) constitute the entire agreement, and supersede any and all prior agreements between You and Zendesk with regard to the subject matter hereof. This Agreement shall apply in lieu of the terms or conditions in any purchase order or other order documentation You or any Entity which You represent provides (all such terms or conditions being null and void), and, except as expressly stated herein, there are no other agreements, representations, warranties, or commitments which may be relied upon by either party with respect to the subject matter hereof. Notwithstanding the foregoing, additional terms may apply to certain features, functionality, or services as detailed in a Supplement hereto or that We offer as part of or distinct from the Services (the "Additional Terms"). In those instances, We will notify You of such Additional Terms prior to the activation of these features, functionality, or services and the activation of these features, functionality, or services in Your Account will be considered acceptance of the Additional Terms. All such Additional Terms will be considered incorporated into this Agreement when You or any Agent authorized as an administrator in Your Account activate the feature, functionality, or service. Where there is a conflict between this Agreement and the Additional Terms, the Additional Terms will control.

11.3 We may amend this Agreement from time to time, in which case the new Agreement will supersede prior versions. We will notify You not less than ten (10) days prior to the effective date of any such amendment and Your continued use of the Services following the effective date of any such amendment may be relied upon by Zendesk as Your consent to any such amendment. Our failure to enforce at any time any provision of this Agreement does not constitute a waiver of that provision or of any other provision of this Agreement.

## 12. SEVERABILITY

If any provision in this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

### 13. EXPORT COMPLIANCE AND USE RESTRICTIONS

The Services and other Software or components of the Services that We may provide or make available to You, Agents or End-Users may be subject to U.S. export control and economic sanctions laws. You agree to comply with all such laws and regulations as they relate to access to and use of the Services, Software and such other components by You, Agents and End-Users. You shall not access or use the Services if You are located in any jurisdiction in which the provision of the Services, Software or other components is prohibited under U.S. or other applicable laws or regulations (a "Prohibited Jurisdiction") and You shall not provide access to the Services to any government, entity or individual located in any Prohibited Jurisdiction. You represent, warrant and covenant that (a) You are not named on any U.S. government list of persons or entities prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) You are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) You shall not permit Agents or End-Users to access or use the Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) You shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which You, Agents and End-Users are located.

### 14. RELATIONSHIP OF THE PARTIES

The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship among the Parties.

## 15. NOTICE

All notices to be provided by Zendesk to You under this Agreement may be delivered in writing (a) by nationally recognized overnight delivery service ("Courier") or U.S. mail to the contact mailing address provided by You on any Order Form; or (b) electronic mail to the electronic mail address provided for Your Account owner. You must give notice to Zendesk in writing by Courier or U.S. mail to 1019 Market Street, San Francisco, California 94103 U.S.A. Attn: Legal Department. All notices shall be deemed to have been given immediately upon delivery by electronic mail, or if otherwise delivered upon receipt or, if earlier, two (2) business days after being deposited in the mail or with a Courier as permitted above.

## 16. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California, without reference to conflict of laws principles. Any disputes under this Agreement shall be resolved in a court of general jurisdiction in San Francisco County, California. You hereby expressly agree to submit to the exclusive personal jurisdiction of this jurisdiction for the purpose of resolving any dispute relating to this Agreement or access to or use of the Services by You, Agents or End Users.

## 17. FEDERAL GOVERNMENT END USE PROVISIONS

If You are a U.S. federal government department or agency or contracting on behalf of such department or agency, each of the Services is a “Commercial Item” as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Services are licensed to You with only those rights as provided under the terms and conditions of this Agreement.

## 18. ANTI-CORRUPTION

You agree that You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department at [legal@zendesk.com](mailto:legal@zendesk.com).

## 19. SURVIVAL

Sections 1, 3.1, 4 and 8-19 shall survive any termination of our agreement with respect to use of the Services by You, Agents or End Users. Termination of such agreement

shall not limit a Party's liability for obligations accrued as of or prior to such termination or for any breach of this Agreement.

## SUPPLEMENTAL TERMS AND CONDITIONS

### SECTION 1: SERVICE-SPECIFIC TERMS

The terms and conditions in the section entitled, "General Terms and Conditions" ("General Terms") apply generally to all Services. This section contains supplemental service-specific terms that are in addition to the General Terms.

#### *Supplemental Terms for Zendesk's Talk Service ("Zendesk Talk"):*

If Your Service Plan for Zendesk Support allows You to use Zendesk Talk or You otherwise subscribe to or utilize Zendesk Talk as a Service, the following Supplemental Terms apply:

You understand and agree that (a) Zendesk Talk is not intended to support or carry emergency calls to any emergency services such as public safety answering points; (b) We will not be held liable for any claim, damages or loss (and You hereby waive any and all such claims or causes of action), arising from or relating to Your (or Agents' or End-Users') inability to use Zendesk Talk to make such emergency calls; (c) You are solely responsible for Your operation of Zendesk Talk (including the available texting functionality) in compliance with all applicable laws in all jurisdictions, including but not

limited to telephone recording and wiretapping laws and laws related to telemarketing and spam such as the Telephone Consumer Protection Act; and (d) You will defend, hold harmless and indemnify Us from and against any third party claim arising from any of the foregoing.

Zendesk may disable the phone numbers provided to You if unused or substantially underused for sixty (60) days, or if Your subscription to the Service, Account or rights to access and/or use the Service is otherwise suspended, terminated, or cancelled.

At Zendesk's election, Subscription Charges for Zendesk Talk may be charged in arrears or by requiring Reseller to prepay for expected usage. To the extent that Reseller is required to prepay for expected usage of Zendesk Talk, the credit card on file will automatically be recharged with the same amount and by the same payment method chosen when Your Account first establishes a prepaid credit for Zendesk Talk, or by such additional amount Reseller requests as a regular prepaid credit.

If Reseller prepays for Zendesk Talk via check, wire, or ACH, Zendesk reserves the right to automatically re-invoice Reseller for the same amount as the previous pre-payment amount if Subscriber's balance reaches \$0.00. If Reseller wishes to cancel or change this automatic re-charge option, then Reseller should contact its Sales Representative or [support@zendesk.com](mailto:support@zendesk.com).

If Your Zendesk Talk Service Plan includes Zendesk Text, then Subscriber agrees that only its Agents who have purchased both Zendesk Talk and Zendesk Text are authorized to use Zendesk Text. Zendesk reserves the right to monitor and periodically audit Your use of Zendesk Talk and Zendesk Text to ensure that Your use complies with these Supplemental Terms and the Zendesk Talk Service Plan restrictions on Our Site. Should Zendesk discover that Your or any Agent's use of Zendesk Talk or Zendesk Text is not in compliance with these Supplemental Terms and the Zendesk Talk Service Plan



restrictions on Our Site, Zendesk reserves the right to charge Reseller, and You hereby agree to pay for, said usage.

Use of Zendesk Talk and the related functionality is subject to the obligation to pay applicable usage fees, Subscription Charges and other applicable charges stated here. By enabling or otherwise using Zendesk Talk, You are agreeing to pay these charges through Reseller. Usage fees and charges are subject to change and may be revised by Zendesk at any time.

Some jurisdictions may require that Your business have an address within the jurisdiction to purchase a phone number through Zendesk Talk. If You are in such a jurisdiction, You agree to provide a business address within the jurisdiction. You further authorize Zendesk to disclose the given address to our third party voice service provider, Twilio, Inc. ("Twilio"), and any necessary governmental agency. Twilio's and the necessary governmental agency's terms and policies will govern their use of the address and the Reseller Customer Master Service Agreement and Privacy Policy do not govern their use of the address. You further understand that Your phone number in the jurisdiction may be taken out of service if You are unable to provide a local address in any such jurisdiction.

*Supplemental Terms for Zendesk's Explore Service ("Zendesk Explore"):*

If Your Service Plan for Zendesk Support allows You to use Zendesk Explore or You otherwise subscribe to or utilize Zendesk Explore as a Service, the following Supplemental Terms apply:

The definition of “Software” in the Agreement shall include connectors that are used by You to connect Your data sources to Zendesk Explore or that allow You to use any functionality in connection with Zendesk Explore.

Use of Zendesk Explore may be subject to the obligation to pay applicable usage fees, platform fees and other applicable data storage charges as detailed on the Site. By enabling or otherwise using Zendesk Explore, You are agreeing to pay all applicable fees and charges, through Reseller, with Your use of Zendesk Explore.

*Supplemental Terms for Certain Zendesk Deployed Associated Services (Add-Ons):*

For Subscribers who have purchased or been given access to the Deployed Associated Services listed below, there are Supplemental Terms which will supplement the Agreement:

- Light Agent Associated Deployed Service for Zendesk Support
- High Volume API Associated Deployed Service for Zendesk Support
- Data Center Location Associated Deployed Service for Zendesk Support
- Priority Customer Support Associated Deployed Service for Zendesk Support
- Advanced Security Associated Deployed Service for Zendesk Support

*Supplemental Terms for Zendesk’s API and SDKs:*

If You use or access any API for the purpose of developing, implementing and Publishing Applications (as defined in the API Agreement), You hereby agree that Your use shall be governed by the [Application Developer and API License Agreement](#) (“API Agreement”). Further, if You use or access any SDK (defined below), You hereby agree that Your use of the SDK shall be governed by the API Agreement, in addition to this Agreement. “SDK” means any software development kit related to a Service developed by Zendesk and made available to You.

#### *Supplemental Terms for Zendesk’s Marketplace:*

If You use or access the Marketplace, as available in Your Account and at <https://www.zendesk.com/apps/>, You hereby agree to the [Marketplace Terms of Use](#) (the “Marketplace Terms”). As described in the Marketplace Terms, certain additional terms may apply to Your use of Applications (as defined in the Marketplace Terms).

## SUPPLEMENTAL TERMS AND CONDITIONS

### SECTION 2: HOW WE PROTECT YOUR SERVICE DATA

The Zendesk Group is committed to providing a robust and comprehensive security program including the security measures set forth in these Supplemental Terms (“Security Measures”). During the Subscription Term, these Security Measures may

change without notice, as standards evolve or as additional controls are implemented or existing controls are modified as We deem reasonably necessary.

## Security Measures Utilized by Us

As provided for in Section 3.2 of the Agreement, We will abide by the these Security Measures to protect Your Service Data as is reasonably necessary to provide the Services:

1. Security Policies and Personnel. We have and will maintain a managed security program to identify risks, implement preventative technology as well as technology and processes for common attack mitigation. This program is and will be reviewed on a regular basis to provide for continued effectiveness and accuracy. We have, and will maintain, a full-time information security team responsible for monitoring and reviewing security infrastructure for Our networks, systems and services, responding to security incidents, and developing and delivering training to Our employees in compliance with Our security policies.

2. Data Transmission. We will maintain commercially reasonable administrative, physical and technical safeguards to protect the security, confidentiality and integrity of Service Data. These safeguards include encryption of Service Data in transmission (using TLS or similar technologies) over the internet, except for certain Other Services that do not support encryption, which You may link to through the Services at Your election.

3. Incident Response. We have an incident management process for security events that may affect the confidentiality, integrity, or availability of its systems or data. This process specifies courses of action, procedures for notification, escalation, mitigation, and

documentation. The incident response program includes 24×7 centralized monitoring systems and on-call staffing to respond to service incidents.

4. Access Control and Privilege Management. We restrict access to customer production systems to operational personnel. We require such personnel to have unique IDs and associated cryptographic keys. These keys are used to authenticate and identify each person's activities on Our systems, including access to Service Data. Upon hire, Our operational personnel are assigned unique keys. Upon termination, these keys are revoked. Access rights and levels are based on Our employees job function and role, using the concepts of least-privilege and need-to-know to match access privileges to defined responsibilities.

5. Network Management and Security. The data centers utilized by Us maintain industry standard fully redundant and secure network architecture with reasonably sufficient bandwidth as well as redundant network infrastructure to mitigate the impact of individual component failure. Our security team utilizes industry standard utilities to provide defense against known common unauthorized network activity, monitors security advisory lists for vulnerabilities, and undertakes regular external vulnerability audits.

6. Data Center Environment and Physical Security. The data center environments which are utilized by Us in connection with Our provision of the Service employ the following security measures:

- A security organization responsible for physical security functions 24x7x365.
- Access to areas where systems or system components are installed or stored within data centers is restricted through security measures and policies consistent with industry standards.
- N+1 uninterruptable power supply and HVAC systems, backup power generator architecture and advanced fire suppression.

## Technical and Organizational Security Measures for Third-Party Service Providers

As provided for in Section 3.5 of the Agreement, any third-party service providers that are utilized by the Zendesk Group will only be given access to Your Account and Service Data as is reasonably necessary to provide the Service and will be subject to, among the other requirements in Section 3.5, their implementing and maintaining compliance with the following appropriate technical and organizational security measures:

1. Physical Access Controls. Third-party service providers shall take reasonable measures to prevent physical access, such as security personnel and secured buildings and factory premises, to prevent unauthorized persons from gaining access to data processing systems in which Service Data is Processed.

2. System Access Controls. Third-party service providers shall take reasonable measures to prevent data processing systems from being used without authorization. These controls shall vary based on the nature of Processing undertaken and may include, among other controls, authentication via passwords and/or two-factor authentication, documented authorization processes, documented change management processes, and/or logging of access on several levels.

3. Data Access Controls. Third-party service providers shall take reasonable measures to provide that Service Data is accessible and manageable only by properly authorized staff, direct database query access is restricted and application access rights are established and enforced to ensure that persons entitled to access Service Data only have access to Service Data to which they have privilege of access; and, that Service

Data cannot be read, copied, modified or removed without authorization in the course of Processing.

4. Transmission Controls. Third-party service providers shall take reasonable measures to ensure that it is possible to check and establish to which entities the transfer of Service Data by means of data transmission facilities is envisaged so Service Data cannot be read, copied, modified or removed without authorization during electronic transmission or transport.

5. Input Controls. Third-party service providers shall take reasonable measures to provide that it is possible to check and establish whether and by whom Service Data has been entered into data processing systems, modified or removed; and, any of transfer of Service Data to a third-party service providers is via secure file transfer.

6. Data Protection. Third-party service providers shall take reasonable measures to provide that Service Data is secured to protect against accidental destruction or loss.

7. Logical Separation. Third-party service providers shall logically segregate Service Data from the data of other parties on its systems to ensure that Service Data may be Processed separately.

## SUPPLEMENTAL TERMS AND CONDITIONS

### SECTION 3: COUNTRY-SPECIFIC TERMS

Japan:

You agree that you are responsible for notifying the End-Users using our Services via your Account about how the Zendesk Group may use End-Users' Personal Data as described in this Policy and obtaining prior consent from End-Users to disclose their Personal Data to us.

Brazil:

Personal Data collected, stored, used and/or processed by the Zendesk Group, as described in this Policy, is collected, stored, used and/or processed in accordance with Brazilian Law No. 12,965/2014. By using our Services you expressly consent to the collection, use, storage and processing of your Personal Data by us as described.

Australia:

Personal Data collected, stored, used and/or processed by the Zendesk Group, as described in this Policy, is collected, stored, used and/or processed in compliance with the Australian Privacy Act 1988 (Commonwealth) and the Australia Privacy Principles as



we further detail [here](#). If you are dissatisfied with our handling of a complaint or do not agree with the resolution proposed by us, you may make a complaint to the Office of the Australian Information Commissioner (OAIC) by contacting the OAIC using the methods listed on their [website](#). Alternatively, you may request that we pass on the details of your complaint to the OAIC directly.

New Zealand:

Personal Data collected, stored, used and/or processed by the Zendesk Group, as described in this Policy, is collected, stored, used and/or processed in compliance with the New Zealand's Privacy Act (1993) and its 12 Information Privacy Principles (NZ IPPs) as we further detail [here](#).

Singapore:

Personal Data collected, stored, used and/or processed by the Zendesk Group, as described in this Policy, is collected, stored, used and/or processed in compliance with the Zendesk Group's obligations under the Personal Data Protection Act 2012 of Singapore ("PDPA") as we further detail [here](#).

Canada:

Personal Data (as the term is defined in the Personal Information Protection and Electronic Documents Act of Canada (PIPEDA)) will be collected, stored, used and/or

processed by the Zendesk Group in compliance with the Zendesk Group's obligations under PIPEDA.

## SUPPLEMENTAL TERMS AND CONDITIONS

### SECTION 4: CONSULTING SERVICES

If Subscriber has engaged Zendesk for the provision of professional services (including any Training, Success or Implementation Services, "Consulting Services") as indicated on a Order Form, the provision of such Consulting Services will be governed by the Agreement, including these Supplemental Terms. Unless otherwise agreed to in a Statement of Work, Subscriber agrees that any Consulting Services must be scheduled for completion by Subscriber within six (6) months following the commencement of the Subscription Term as indicated on the Order Form. In consideration of the foregoing, Subscriber and Zendesk, intending to be legally bound, agree to the terms set forth below.

1. Scope. All Consulting Services pursuant to the Agreement provided by Zendesk to Subscriber will be outlined in one or more in one or more mutually agreed-upon and jointly executed Statement of Work(s) ("SOW(s)") or Order Forms, each incorporated into the Agreement and describing in detail the scope, nature and other relevant characteristics of services to be.

2. Retention. Subscriber hereby retains Zendesk to provide the Consulting Services described in one or more SOWs, subject to the terms and conditions set forth in the Agreement. Zendesk shall not be obligated to perform any Consulting Services until both Parties have mutually agreed upon and executed an SOW. After execution of an SOW,

the Consulting Services to be provided under that SOW may only be changed through a change order mutually executed by the Parties ("Change Order").

### 3. Performance of Consulting Services.

3.1 Each SOW will include reasonable details, at a minimum, about the Consulting Services, Fees charged and the qualified employees and/or non-employee contractors of Zendesk ("Subcontractors" and together with Zendesk's employees for the purposes of these Supplemental terms, "Consulting Services Personnel") employed in performing the Consulting Services. Zendesk and Subscriber agree to cooperate in good faith to achieve satisfactory completion of the Consulting Services in a timely and professional manner.

3.2 The Parties will each designate a representative to interface and facilitate the successful completion of the Consulting Services ("Subscriber's Representative" and "Zendesk's Representative", respectively). Any Subcontractor (defined below) designated by Zendesk to perform any portion of the Consulting Services will designate a representative to interface with Subscriber and Zendesk on all matters relating to Subcontractor's performance of Consulting Services ("Subcontractor's Representative").

3.3 Zendesk will perform the Consulting Services, directly or through a Subcontractor of its choice. Subscriber agrees to provide, at no cost to Zendesk, timely and adequate assistance and other resources reasonably requested by Zendesk to enable the performance of the Consulting Services (collectively, "Assistance"). Neither Zendesk, nor its Subcontractors will be liable for any deficiency in performance of Consulting Services to the extent resulting from any acts or omissions of Subscriber, including but not limited to, Subscriber's failure to provide Assistance as required hereunder.

3.4 In performing the Consulting Services, Zendesk will provide such resources, and utilize Consulting Services Personnel as it deems necessary to perform the Consulting Services or any portion thereof. Subscriber may object to Zendesk's election of Subcontractors by specifying its objection to Zendesk, in which case the Parties will cooperate in good faith to appoint another Subcontractor to perform such Consulting Services. Zendesk may replace Consulting Services Personnel in its normal course of business, provided that Zendesk will be responsible for the performance of Consulting Services by all Consulting Services Personnel.

3.5 Zendesk will control the method and manner of performing all work necessary for completion of Consulting Services, including but not limited to the supervision and control of any Personnel performing Consulting Services. Zendesk will maintain such number of qualified Consulting Services Personnel and appropriate facilities and other resources sufficient to perform Zendesk's obligations under the Agreement in accordance with its terms.

3.6 With Subscriber's approval, Zendesk may enter ("assume into") Subscriber's Account as needed to provide the Consulting Services.

3.7 In the event that Subscriber seeks to change the scope of Consulting Services to be provided under any SOW (including but not limited to any changes to the project schedule described in the SOW), Subscriber shall discuss such proposed changes with Zendesk. If Zendesk elects to perform such changes to the Consulting Services, the Parties shall work together in good faith to execute a Change Order. Zendesk shall be entitled to an adjustment in Fees pursuant to the changes reflected in the Change Order. Zendesk shall not be obligated to perform any differing or additional Consulting Services unless the Parties have mutually agreed upon a written Change Order.

3.8 For SOWs that are deliverable/milestone based, upon delivery of all deliverables or completion of all milestones detailed in the SOW, Zendesk shall provide Subscriber with written notice ("Completion Notice"). Thereafter, Subscriber shall have five (5) days after the date of the Completion Notice to provide Zendesk with written notice describing any deliverables that have not been provided or milestones not met. The SOW shall be deemed complete absent Subscriber's timely written notice of any deliverables or milestones not having been met. For the avoidance of doubt, a Completion Notice shall not be necessary for SOWs that are Time and Materials based.

#### 4. Fees; Payment Terms.

4.1 Subscriber will pay Zendesk the fees to provide the Consulting Services as detailed or described in an Order Form or SOW (the "Fees"). Unless agreed upon otherwise in the applicable SOW or Order Form, Zendesk shall invoice Subscriber for the Services provided on a monthly basis. All Fees are due and payable upon date of invoice, except for Fees that Subscriber disputes in good faith for reasons articulated in writing by Subscriber within thirty (30) days after receiving such invoice.

4.2 All Consulting Services will be provided on either a time and materials or fixed-fee basis, as indicated in the applicable SOW. Each SOW providing for time and materials based Fees will contain a detailed estimate of such time and materials necessary for performance of Consulting Services ("T&M Estimate"). Zendesk will make a commercially reasonable effort to provide such Consulting Services within such T&M Estimate, up to the number of hours agreed to by the Parties. Zendesk will make a reasonable effort to notify Subscriber as soon as practicable if it appears that T&M Estimate may be exceeded. Upon receiving such amended T&M Estimate, Subscriber will assess, and accept or reject the amended T&M Estimate. Unless Subscriber rejects such amended T&M Estimate within five (5) days of delivery, such amended T&M Estimate shall be deemed accepted by Subscriber and Subscriber shall be liable for all Fees associated with Consulting Services delivered in reliance on such amended T&M

Estimate. Any amended T&M Estimate which is or is deemed accepted by Subscriber shall be deemed a Change Order.

4.3 The performance of Consulting Services may be subject to a retainer to be paid in advance by Subscriber upon execution and delivery of the SOW. Such retainer will be applied against Fees which become payable by Subscriber . Zendesk may refuse to perform Consulting Services unless and until such retainer is paid to Zendesk.

4.4 In addition to any and all Fees, Subscriber will reimburse Zendesk for any reasonable expenses for travel, lodging, communications, shipping charges and out-of-pocket expenses, including change fees to travel and accommodations resulting from Subscriber's request,. incurred by Zendesk in connection with providing the Consulting Services ("Expenses"). Zendesk will provide reasonable documentation for all Expenses as requested by Subscriber. Subscriber shall reimburse Zendesk for Expenses within thirty (30) days of submission of the Expenses to Subscriber by Zendesk.

4.5 Any unpaid Fees or Expenses will become overdue thirty (30) days after payment is due and shall be subject to a late fee of one and one and a half percent (1.5%) per month for each month where payment is not received.

4.6 Cancellation/Changes: Any cancellations/changes less than five (5) days prior to agreed services commencement date are subject to forfeiture of fees paid and reserved date(s).

5. Relationship of the Parties. Zendesk is an independent contractor and will maintain complete control of and responsibility for its Consulting Services Personnel, methods

and operations in providing Consulting Services. Zendesk at no time will hold itself out as an agent, subsidiary or affiliate of Subscriber for any purpose, including reporting to any government authority. The Agreement will not be construed so as to create a partnership, other joint venture or undertaking, or any agency relationship between the Parties, and neither Party shall become liable for any representation, act or omission of the other Party or have the authority to contractually bind the other Party. Any Fees, Expenses or other amounts paid by Subscriber to Zendesk hereunder shall not be considered salary for pension or wage tax purposes and neither Zendesk nor its Consulting Services Personnel will be entitled to any fringe benefits, including sick or vacation pay, or other supplemental benefits of Subscriber, unless otherwise required by law. Subscriber shall not be responsible for deducting or withholding from Fees or Expenses paid for Consulting Services any taxes, unemployment, social security or other such expense unless otherwise required by law.

## 6. Warranties, Limitation of Liability.

### 6.1 Zendesk hereby represents and warrants that:

1. the Consulting Services provided pursuant to the Agreement will be performed in a timely and professional manner by Zendesk and its Consulting Services Personnel, consistent with generally-accepted industry standards; provided that Subscriber's sole and exclusive remedy for any breach of this warranty will be, at Zendesk's option, re-performance of the Consulting Services or termination of the applicable SOW and return of the portion of the Fees paid to Zendesk by Subscriber for the nonconforming portion of the Consulting Services; and
2. it is under no contractual or other restrictions or obligations which are inconsistent with the execution of the Agreement, or, to its best knowledge, which will interfere with its performance of the Consulting Services.

6.2 NOTWITHSTANDING SECTION 9.2 OF THE AGREEMENT, THE ZENDESK GROUP'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT OR OTHERWISE IN CONNECTION WITH ANY CONSULTING SERVICES, SHALL IN NO EVENT EXCEED THE FEES PAID BY SUBSCRIBER PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE ESSENTIAL PURPOSE OF THIS SECTION 6.2 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF THE ZENDESK GROUP WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. ZENDESK HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE SUBSCRIBER WITH THE CONSULTING SERVICES PROVIDED UNDER THE AGREEMENT.

6.3 The Parties hereby agree that:

CUSTOMIZED DELIVERABLES, SUCH AS, BUT NOT LIMITED TO, CUSTOM APPLICATIONS THAT RESIDE WITHIN THE ZENDESK SERVICE FRAMEWORK; HELP CENTER CUSTOMIZATIONS; INTEGRATIONS; AND PROGRAMMING SCRIPTS, THAT ARE IDENTIFIED AND BEING DELIVERED UNDER A SOW (COLLECTIVELY, "CUSTOMIZED DELIVERABLE") ARE PROVIDED TO SUBSCRIBER "AS IS" AND ZENDESK MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OR ANY REPRESENTATIONS TO SUBSCRIBER OR ANY THIRD PARTY REGARDING THE USABILITY, CONDITION, OPERATION OR FITNESS OF THE CUSTOMIZED DELIVERABLE. ZENDESK SHALL NOT BE RESPONSIBLE, AT LAW OR OTHERWISE, FOR ANY CUSTOMIZED DELIVERABLE DESPITE ANY OTHER WARRANTIES OR GUARANTEES, IN THE EVENT THAT SUBSCRIBER MODIFIES ANY CUSTOMIZED DELIVERABLE IN A MANNER NOT INSTRUCTED BY ZENDESK. ZENDESK DOES NOT WARRANT THAT SUBSCRIBER'S OR ANY THIRD PARTY'S ACCESS TO OR USE OF THE CUSTOMIZED DELIVERABLE SHALL BE UNINTERRUPTED OR ERROR-FREE, OR THAT IT WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY. ZENDESK EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING CUSTOMIZED DELIVERABLE, INCLUDING,



WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COMPATIBILITY, SECURITY OR ACCURACY. FURTHER, ZENDESK EXPRESSLY DISCLAIMS ANY RESPONSIBILITY TO SUPPORT OR MAINTAIN CUSTOMIZED DELIVERABLE AND WILL NOT DO SO UNLESS OTHERWISE AGREED BY THE PARTIES. THIS DISCLAIMER OF WARRANTY AND LIABILITY IS EXPRESSLY MADE IN ADDITION TO ANY DISCLAIMERS MADE BY ZENDESK OR ITS AFFILIATES UNDER THE AGREEMENT WITH RESPECT TO THE SERVICES AS APPLICABLE TO SUBSCRIBER AND ANY THIRD PARTY'S USE OF THE SERVICES.

## 7. Rights to Deliverables; Ownership.

7.1 The Parties hereby agree that the specified Consulting Services to be completed pursuant to any SOW primarily involve the configuration of Subscriber's subscription to a Service and integration of Subscriber data with and into one or more Services using Pre-existing Technology, Developed Technology, and/or Generic Components (each as defined below). Unless otherwise expressly specified in a SOW, no deliverable provided in connection with the Consulting Services provided pursuant to the Agreement shall constitute a "Work Made For Hire" under the Agreement. In the event that any such deliverable is held to be a Work Made For Hire, Subscriber hereby assigns to Zendesk all right, title and interest therein or to the extent such assignment is not permitted or effective, hereby grants to Zendesk a perpetual, irrevocable, exclusive, worldwide, fully-paid, sub-licensable (through multiple layers), assignable license to any such deliverable. Additionally, Zendesk shall have a perpetual, irrevocable, non-exclusive, worldwide, fully-paid, sub-licensable (through multiple layers), assignable license to incorporate into the Pre-existing Technology, Developed Technology, and/or Generic Components or otherwise use any suggestions, enhancement requests, recommendations or other feedback Zendesk receives from Subscriber.

7.2 Without limiting the foregoing, Zendesk and its licensors reserve and retain ownership to all Preexisting Technology, Developed Technology and Generic Components (each as defined below), and Zendesk hereby grants to Subscriber a non-exclusive, fully-paid, limited license to use Preexisting Technology, Developed Technology and Generic Components solely in connection with Subscriber's use of the

Service(s). "Preexisting Technology" means all of Zendesk's inventions (including those of Zendesk's Affiliates) (whether or not patentable), works of authorship, designs, know-how, ideas, concepts, information and tools in existence prior to the commencement of the Consulting Services. "Developed Technology" means ideas (whether or not patentable) know-how, technical data, techniques, concepts, information or tools, and all associated intellectual property rights thereto developed by Zendesk and its Affiliates or their Consulting Services Personnel in connection with providing Consulting Services pursuant to the Agreement that derive from, improve, enhance or modify Zendesk's Preexisting Technology. "Generic Components" means all inventions (whether or not patentable), works of authorship, designs, know-how, ideas, information and tools, including without limitation software and programming tools developed by Zendesk and its Affiliates or their Consulting Services Personnel in connection with providing Consulting Services generally to support Zendesk's product and/or service offerings (including, without limitation the Services) and which can be so used without use of Subscriber's Confidential Information.