G-Cloud 12 Terms & Conditions

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1. Unifii Terms & Conditions

- Terms & Conditions as laid out in the G-Cloud 12 agreement shall be adhered to.
- In addition, the following terms and conditions shall apply.

1.1. Terms of Service

These terms of service govern the use of cloud based contact center software as-a-service (the "Talkdesk Service") provided by Talkdesk, Inc., a Delaware corporation ("**Talkdesk**") to the **Customer** named in an order form.

The parties agree as follows:

1. **Effectiveness**

This agreement will become effective when the Customer signs the order form or when the Customer begins using the Talkdesk Service, whichever comes first.

2. **Service subscription.**
    a. Subject to the terms of the applicable subscription agreement, the Customer may access and use the Talkdesk Service for its own commercial use. In addition to any other rights or remedies available at law or in equity, Talkdesk may immediately terminate the Customer's access to the Talkdesk Service if it determines that the Customer (1) has violated its obligations under section 2(b) of this agreement, (2) has violated any use restriction in section 9 of this agreement, or (3) has resold access to the Talkdesk Service or has made access to the Talkdesk Service available to any third party on a time- sharing, service bureau, software-as-a-service or other basis.
    b. Talkdesk provides access to the Talkdesk Service on a per-seat subscription basis for the Customer's end-users. Each end-user must create and use unique access credentials and the Customer shall ensure its end-users do not share their access credentials with any other person or permit any other person to access the Talkdesk Services using their access credentials. Talkdesk may monitor the Customer's access to detect any violation of this section.
    c. Talkdesk may make any change to the Talkdesk Service that it determines will (1) maintain or improve the quality or marketability of the Talkdesk Service; or (2) bring its provision of the Talkdesk Service into compliance with applicable law.
3. **Subcontractors.**

Talkdesk may use third-party sub-processors or other subcontractors to provide certain features of the Talkdesk Service or to perform any of its obligations under this agreement or the subscription agreement. Talkdesk will be liable for the performance of its subcontractors under this section 3 as if Talkdesk had performed those actions itself.

4. **Third-party services.**
    a. Talkdesk may offer the ability to integrate the Talkdesk Service with applications and other services provided by third parties. Talkdesk will not be liable for (1) the content of third-party services, (2) the availability or reliability of third-party services, or (3) any acts or omissions of the parties offering the third-party services.
    b. If the Customer integrates any third-party service with the Talkdesk Service, the Customer hereby grants Talkdesk permission to access and use the Customer's information provided

by the third-party service and to store the Customer's access credentials for the third- party service to enable the integration.

5. **AppConnect Marketplace.**

Talkdesk may make certain third-party services available through its AppConnect Marketplace. The Customer's use of any such service is subject to the AppConnect terms of service, which are available online at talkdesk.com/terms-of- service/appconnect.

6. **Customer Content.**
    a. The Customer acknowledges that Talkdesk does not screen any Customer Content and that Talkdesk is not responsible for the Customer's creation or use of the Customer Content. The Customer states that it owns or has acquired the necessary licenses to grant the license in section 6(b). The Customer shall not make any Customer Content available in violation of any third party's intellectual property or other proprietary rights.
    b. The Customer hereby grants Talkdesk a perpetual, worldwide, non-exclusive, royalty-free, license to use, copy, reproduce, distribute, prepare derivative works of, and display any Customer Content to provide and improve the Talkdesk Service.

7. **Privacy policy.**

Talkdesk shall comply with its privacy policy, which is available at https://www.talkdesk.com/privacy-policy.

8. **Intellectual property.**

a. Except for the right to access and use the Talkdesk Service and accompanying documentation in accordance with the applicable subscription agreement, Talkdesk does not grant the Customer any interest in the Talkdesk Service, any documentation related to the Talkdesk Service, or any other intellectual property belonging to Talkdesk.
b. The Customer shall not, during or after its use of the Talkdesk Service: (1) represent to any third party that it possesses any proprietary interest in the Talkdesk Service; (2) assert any claim that the Talkdesk Service (as it existed at or before the time of the Customer's use) infringes the Customer's intellectual property; or (3) authorize, assist, or encourage any third party to assert any claim that the Talkdesk Service (as it existed at or before the time of the Customer's use) infringes the third party's intellectual property.
c. The Customer hereby grants Talkdesk a perpetual, worldwide, non-exclusive, royalty free license to use, copy, reproduce, distribute, prepare derivative works of, and display any ideas, suggestions, or feedback given by the Customer in relation to the Talkdesk Service.

9. **Use restrictions.**

The Customer shall not permit its employees or other representatives (1) to introduce malicious or foreign software, reverse engineer, disassemble, decompile, decode, adapt, or to otherwise gain access to the source code of the Talkdesk Service; (2) to perform any vulnerability scanning or penetration testing; (3) to explore any possible vulnerability; (4) to attempt to do any of the actions prohibited in items (1)-(3) of this section; or (5) to bypass or breach any security device or protection used by the Talkdesk Service.

10. **Modification.**

Talkdesk may modify this agreement by posting revised terms online at talkdesk.com/terms-of-service, without additional notice to the Customer. The revised terms will be effective on the date of posting, but will not apply retroactively to any event occurring before the date the revised terms are posted. No other modification to these terms of service will be effective unless made in a writing signed by both parties to the agreement.

11. **Compliance with law.**

a. The Customer acknowledges that use of certain features of the Talkdesk Service may not comply with its regulatory or other legal obligations. The Customer shall ensure that its use of any feature of the Talkdesk Service complies with its regulatory or other legal obligations.
b. If the Customer is subject to the General Data Protection Regulation (GDPR) (EU) 2016/67 (the "GDPR"), the Customer and Talkdesk shall sign a data processing agreement before the Customer transfers any personal data (as defined by the GDPR) to Talkdesk.
c. If the Customer is subject to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Customer and Talkdesk shall sign a business associate agreement before the Customer transfers any electronic personal health information (as defined by HIPAA) to Talkdesk.
d. Talkdesk maintains a formal security program and the Talkdesk Service is compatible with the requirements of the Payment Card Industry Data Security Standard (the "PCI DSS"). If the Customer receives or processes credit card information, it shall comply with Talkdesk's PCI DSS requirements and shall ensure that its employees and other representatives do not store cardholder data within the Talkdesk Service.

12. Disclaimer

a. Talkdesk provides the Talkdesk Service to the Customer on an "as is" basis. Talkdesk does not warrant that the Talkdesk Service or any related services will be free of errors or disruptions, or that the Customer will achieve any particular business results by its use of the Talkdesk Service.
b. Any description of the Talkdesk Service provided on Talkdesk's website or promotional materials is provided only to identify the Talkdesk Service, does not form a part of the basis of the bargain, and does not constitute a warranty that the Talkdesk Service will conform to that description.
c. To the extent permitted by applicable law, Talkdesk hereby disclaims the implied warranties of merchantability, fitness for a particular purpose, noninfringement of intellectual property rights, and all other express or implied warranties.

13. Indemnification.

The Customer shall indemnify Talkdesk against (1) any claim arising from the Customer's use of any feature of the Talkdesk Service in violation of its contractual, regulatory, or other legal obligations; or (2) any claim that Talkdesk's display, distribution, or use of the Customer Content infringes any third party's intellectual property or other proprietary rights.

14. Limit of liability.

Regardless of the theory of liability, Talkdesk will not be liable for any claim arising from (1) the Customer's use of the Talkdesk Service in violation of its contractual,regulatory, or other legal obligations; or (2) the Customer's inability to use the Talkdesk Services because of a failure or degradation of a third-party provider's network, a failure or degradation of broadband internet service, a force majeure event, or any other third-party cause.

15. Class action waiver.

To the extent permitted by applicable law, the parties hereby waive their rights to assert any claim as a plaintiff or class member in any purported class action, collective action, private attorney general action, or other representative proceeding.

16. Binding arbitration.

Except for enforcement of an arbitration order under this section 15, if the parties are unable to resolve, by direct negotiation, any dispute arising from this agreement or from Talkdesk's provision of the Talkdesk Service, they shall resolve the dispute through binding arbitration in San Francisco, CA before a single arbitrator from the American Arbitration Association in accordance with its Commercial Arbitration Rules. The parties hereby waive any right to a jury trial in connection with any claim arising from this agreement.

17. **Governing law; jurisdiction; attorneys' fees.**
    a. This agreement is governed by the laws of the State of California. If any litigation is validly instituted in connection with this agreement, the parties hereby consent to the exclusive personal jurisdiction of the state and federal courts in San Francisco, CA and waive any objection as to venue or inconvenient forum.
    b. The parties acknowledge that this agreement and any associated subscription agreement are not contracts for the sale of goods and hereby exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to any such agreement.
    c. If any arbitration or legal proceeding is validly instituted to resolve a dispute or to enforce the terms of this agreement, the prevailing party may recover its attorneys' fees and other costs.
18. **Assignment**.

Either party may assign its rights and obligations under this agreement to any successor of substantially all of its assets. Except for Talkdesk's subcontractors under section 3, the parties shall not otherwise assign their rights or obligations under this agreement without the written consent of the other party. Any purported assignment contrary to this section will be void.

19. **Definitions**.

In this agreement, the following definitions apply:

"access credentials" means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual's identity and authorization to access and use the applicable services;

"claim" means the assertion of any existing right; any demand for money, property, legal or equitable remedy; any interest, remedy or liability recognized at law or equity; attorneys' fees, court costs, or any other cost or expense; and any judgments, orders or duties relating to any matters of any kind;

"Customer Content" means (1) the content of telephone calls made to or from the Customer and its end-users, and (2) all other information that the Customer makes available to Talkdesk to facilitate its use of the Talkdesk Service;

"end-user" means an employee or other representative who needs access to the Talkdesk Service to carry on the Customer's business;

"force majeure event" means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents that party from complying with any of its obligations under this agreement, except that a force majeure event will not include a strike or labor unrest that affects only one party, an increase in prices, or a change in law; and

"representative" means a party's director, officer, agent, employee, subsidiary, parent company, or financial or legal adviser.