

Zendesk Reseller Subscription Services Agreement

Zendesk has updated the terms applicable to the customers of Zendesk resellers which we refer to as the “Subscription Services Agreement.” If You are a new Subscriber, this Subscription Services Agreement is effective as of December 4, 2023. If You are an existing Subscriber, Zendesk are providing You with prior notice of these changes which will be effective as of January 4, 2024. For the prior version of Our Subscription Services Agreement, please 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 authorising or permitting any Agent or End-User to access or use a Service, Subscriber agrees to be bound by this Agreement as of the date of such access or use of the Service (the “Effective Date”). If You are entering into this Agreement on behalf of a company, organisation 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”, or “Your” herein refers 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 use or authorise any use of the Services. Subscriber and Zendesk shall each be referred to as a “Party” and collectively referred to as the “Parties” for purposes of this Agreement.

GENERAL TERMS AND CONDITIONS

SECTION 1. ACCESS TO THE SERVICES

1.1 Service. Zendesk will make the Services and Service Data available pursuant to this Agreement and the applicable Service Order(s) and Documentation in accordance with Subscriber’s Service Plan. Zendesk will use commercially reasonable efforts to make the Services available twenty-four (24) hours a day, seven (7) days a week, except during (a) Planned Downtime (of which Zendesk will give advance notice via Our Site or to the Account owner); and (b) Force Majeure Events. Zendesk reserves the right to monitor and periodically audit Subscriber’s use of the Zendesk Services to ensure that Subscriber’s use complies with the Agreement and the Service Plan restrictions on Zendesk’s Site. Should Zendesk discover that Subscriber’s use of a Service violates this Agreement or the Service Plan features and limitations on Our Site or Documentation, Zendesk reserves the right to charge the Subscriber, and the Subscriber hereby agrees to pay, for said overuse, in addition to other remedies available to Us.

1.2 Support. Zendesk will, at no additional charge, provide Subscriber standard customer support for the Services as detailed on the applicable Site and Documentation. If purchased by Subscriber, Zendesk will provide upgraded support or support that includes service level agreements.

1.3 Professional Services. If Subscriber engages Zendesk for the provision of Professional Services, either directly with Zendesk or from an unrelated third party authorized to sell such Professional Services, the provision of such Professional Services shall be subject to the terms and conditions stated at

<https://www.zendesk.com/company/agreements-and-terms/professional-services-terms>.

1.4 Modifications. Subscriber acknowledges that Zendesk may modify the features and functionality of the Services during the Subscription Term. Zendesk shall provide Subscriber with thirty (30) days' advance notice of any deprecation of any material feature or functionality. Zendesk will not materially decrease the overall functionality of the Services purchased by Subscriber during the Subscription Term.

1.5 Additional Features. Zendesk will notify Subscriber or the Reseller of applicable Supplemental Terms or alternate terms and conditions prior to Subscriber's activation of any Additional Features. Subscriber's activation of any Additional Features in Subscriber's Account or by the Reseller will be considered acceptance of the applicable Supplemental Terms or alternate terms and conditions where applicable.

1.6 Extension of Rights to Affiliates. Subscriber may extend its rights, benefits and protections provided herein to its Affiliates and to contractors or service providers acting on Subscriber's or Subscriber's Affiliates' behalf, provided that Subscriber remains responsible for their compliance hereunder.

SECTION 2. USE OF THE SERVICES

2.1 Login Management. Access to and use of certain Services is restricted, such as to the specified number of individual Agents permitted under Subscriber's subscription to the applicable Service, as detailed in the Documentation. For Services that are Agent-based, Subscriber agrees and acknowledges that an Agent Login cannot be shared or used by more than one (1) individual per Account. However, Agent Logins may be reassigned to new individuals replacing former individuals who no longer require ongoing use of the Services. Subscriber and Agents are responsible for maintaining the confidentiality of all Agent Login information for an Account. Absent a written license from Zendesk expressly stating otherwise, Subscriber agrees and acknowledges that Subscriber may not use the Services, including but not limited to the API, to circumvent the requirement for an individual Agent Login for each individual who (a) leverages the Services to interact with End-Users; (b) Processes data related to interactions with End-Users; or (c)

Processes data related to interactions originating from a Non-Zendesk Service that provides functionality similar to functionality provided by the Services and which would, pursuant to this Agreement, require an individual Agent Login, if utilising the Services for such interaction. Further, Subscriber shall not use the API or any Software in such a way to circumvent applicable Service Plan restrictions or Agent licensing restrictions that are enforced in the Service user interface. Zendesk reserves the right to charge Subscriber, and Subscriber hereby agrees to pay, for any overuse of a Service in violation of this Agreement or the Service Plan features and limitations on Our Site or Documentation, in addition to other remedies available to Us.

2.2 Compliance. Subscriber is responsible for compliance with the provisions of this Agreement by Agents and End-Users and for any and all activities that occur under an Account, which Zendesk may verify from time to time. Without limiting the foregoing, Subscriber will ensure that Subscriber's use of the Services is compliant with all applicable laws and regulations as well as any and all privacy notices, agreements or other obligations Subscriber may maintain or enter into with Agents or End-Users.

2.3 Content and Conduct. Subscriber agree to comply with the Zendesk User Content and Conduct Policy (as defined below) which is hereby incorporated into this Agreement. Further, in Subscriber's use of the Services Subscriber agree not to (a) modify, adapt, or hack the Services or otherwise attempt to gain unauthorised access to the Services or related systems or networks; (b) attempt to bypass or break any security or rate limiting mechanism on any of the Services or use the Services in any manner that interferes with or disrupts the integrity, security or performance of the Services and its components; (c) attempt to decipher, decompile, reverse engineer or otherwise discover the source code of any Software making up the Services; or (d) to the extent Subscriber is subject to the US Health Insurance Portability and Accountability Act of 1996, and its implementing regulations (HIPAA), use the Services to store or transmit any "protected health information" as defined by HIPAA, unless expressly agreed to otherwise in writing by Zendesk.

2.4 System Requirements. A high-speed Internet connection is required for proper transmission of the Services. Subscriber is responsible for procuring and maintaining

the network connections that connect Subscriber's 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. Zendesk are not responsible for notifying Subscriber, 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. Zendesk assume no responsibility for the reliability or performance of any connections as described in this Section.

2.5 Internal Business Purposes Only. Unless otherwise authorised by Zendesk in this Agreement or expressly agreed to otherwise in writing by Zendesk, Subscriber may not use the Services in any manner where Subscriber acts as a service bureau or to provide any outsourced business process services on behalf of more than one (1) third party (other than Affiliates) through a single Account. This provision is not intended to prevent or inhibit the use of the Services to provide business support to multiple End-Users; however, Subscriber agrees not to license, sublicense, sell, outsource, rent, lease, transfer, assign, distribute, time-share or otherwise commercially exploit or resell the Services to any third party, other than authorised Agents and End-Users in furtherance of Subscriber's internal business purposes as expressly permitted by this Agreement, unless expressly agreed to otherwise in writing by Zendesk. Without limiting the foregoing, Subscriber's 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 accordance with this Agreement.

2.6 No Competitive Access. You may not access the Services for competitive purposes or if You are a competitor of the Zendesk Group.

2.7 Service-Specific Terms. The provision and use of certain Services are subject to Zendesk's Service-Specific Terms.

2.8 Region-Specific Supplemental Terms. The provision and use of the Services in certain jurisdictions are subject to Zendesk's Region-Specific Terms.

2.9 In-Product Cookies. Whenever Subscriber, Subscriber's Agents or End-Users interact with Our Services, Zendesk's In-Product Cookie Policy applies.

2.10 Storage Limits. If Subscriber's Account is used to store data in excess of the storage limits provided here:

<https://support.zendesk.com/hc/en-us/articles/4408835043994-Adding-more-storage-to-your-default-data-storage-limit-for-Zendesk-Support>, and continues to do so after thirty (30) days from Zendesk's notification, Zendesk reserves the right to either enforce the storage limits or to charge Subscriber or the Reseller for such overage until Subscriber's Account is within the storage limits.

SECTION 3. CANCELLATION AND TERMINATION

3.1 Under the terms and conditions of Zendesk's agreement with Reseller (the "Reseller Agreement"), Zendesk is 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) Zendesk is 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 Zendesk 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. Subscriber sole recourse with respect to any such suspension or termination shall be against Reseller.

3.2 Following the termination or cancellation of Subscriber's subscription to the Service and/or Account, Zendesk reserves the right to delete all Service Data in the normal course of operation pursuant to Zendesk's Service Data Deletion Policy available on Zendesk's Agreements and Terms Website.

3.3 Mutual Termination for Cause. A Party may terminate this Agreement for cause (a) upon written notice to the other Party of a material breach by the other Party if such breach remains uncured after thirty (30) days from the date of receipt of such notice; 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. However, Zendesk may immediately terminate this

Agreement for cause without notice if Subscriber violates the Zendesk User Content and Conduct Policy or if provision of the Service violates applicable law, regulation or court order.

3.6 Export of Service Data. Upon Subscriber's written request, Zendesk will make Service Data available to Subscriber for export or download as provided in the Documentation for thirty (30) days after the effective date of termination, expiration or migration of the Account, except for Service Data which (i) has been deleted in accordance with the Documentation, (ii) was created and/or used in violation of this Agreement, or (iii) unless prohibited by law or legal order. Thereafter, Zendesk will have no obligation to maintain or provide any Service Data and Zendesk will delete Your Service Data in accordance with Our Service Data Deletion Policy available on Our Agreements and Terms Website unless prohibited by law or legal order.

SECTION 4. CONFIDENTIAL INFORMATION

In connection with the Services, each Party will protect the other's Confidential Information from unauthorised use, access or disclosure in the same manner as each Party protects its own Confidential Information, but with no less than reasonable care. Except as otherwise expressly permitted pursuant to this Agreement, each Party may use the other Party's Confidential Information solely to exercise its respective rights and perform its respective obligations under this Agreement and shall disclose such Confidential Information (a) solely to the employees and/or non-employee service providers and contractors who have a need to know such Confidential Information and who are bound by terms of confidentiality intended to prevent the misuse of 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. Except for Zendesk's Security Non-Disclosure Agreement (where executed by You), the provisions of this Section 5 shall control over any non-disclosure agreement by and between the Parties and any such non-disclosure agreement shall have no further force or effect with respect to the exchange of Confidential Information after the execution of this Agreement. This section shall not apply to any information which (a) was publicly known prior to the time of disclosure by the disclosing Party, or (b) becomes publicly known after such disclosure through

no action or inaction of the receiving Party in violation of this Agreement. For clarity, any exchange of Confidential Information prior to the execution of this Agreement shall continue to be governed by any such non-disclosure agreement. Given the unique nature of Confidential Information, the Parties agree that any violation or threatened violation by a Party to this Agreement with respect to Confidential Information may cause irreparable injury to the other Party. Therefore, the Parties agree such violation or threatened violation shall entitle the other Party to seek injunctive or other equitable relief in addition to all legal remedies.

SECTION 5. #section-5 SUB-PROCESSORS AND SECURITY OF SERVICE DATA

6.1 Sub-processors. Zendesk will utilise Sub-processors who will have access to or Process Service Data to assist in providing the Services to You. You hereby confirm and provide general authorisation for Zendesk's use of the Sub-processors listed within our Sub-processor Policy. Zendesk shall be responsible for the acts and omissions of members of Zendesk Personnel and Sub-processors to the same extent that Zendesk would be responsible if Zendesk was performing the services of each Zendesk Personnel or Sub-processor directly under the terms of this Agreement. You may sign up to receive notifications of any changes to our Sub-processor Policy within the policy webpage.

6.2 Third-Party Service Providers. Zendesk may use third-party service providers that are utilised by the Zendesk Group to assist in providing the Services to You, but do not have access to Service Data. Any third-party service providers utilised by the Zendesk Group will be subject to confidentiality obligations which are substantially similar to the confidentiality terms herein. Zendesk shall be responsible for the acts and omissions of members of Zendesk's third-party service providers to the same extent that Zendesk would be responsible if Zendesk was performing the services of each third-party service provider directly under the terms of this Agreement.

6.3 Safeguards. The Zendesk Group will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Service Data for Enterprise Services in accordance with the Enterprise Security Measures described at "[How We Protect Your Service Data \(Enterprise Services\)](#)"; for Innovation Services in accordance with the Innovation Security

Measures described at “[How We Protect Your Service Data \(Innovation Services\)](#)”; as well as in accordance with Supplemental Terms for any Deployed Associated Services, as applicable. The Zendesk Group’s compliance with the Enterprise Security Measures or the Innovation Security Measures, each as applicable, shall be deemed compliance with the Zendesk Group’s obligations to protect Service Data as set forth in the Agreement.

5.4 Service Data. Zendesk will, and Subscriber hereby instructs Zendesk to, access Service Data to provide, secure and improve the Services. Subscriber is solely responsible for the accuracy, content, and legality of all Service Data. When Service Data is used to improve Zendesk machine learning models, Zendesk will ensure that Service Data, including Personal Data, is not reproduced by the model to another customer, and will take necessary steps to prevent this, such as applying data sanitation algorithms to training data.

6.4 Agent Contact Information. Zendesk shall be the Data Controller of Agent Contact Information, and shall process such Agent Contact Information in accordance with Zendesk’s Privacy Notice and Zendesk’s Controller Global Binding Corporate Rules located at <https://www.zendesk.com/privacy/> and <https://www.zendesk.com/trust-center/>. Subscriber is responsible for informing its Agents of their rights set forth in Zendesk’s Privacy Notice. You represent and warrant that You have obtained all relevant consents, permissions and rights and provided all relevant notices necessary under Applicable Data Protection Laws for Zendesk to lawfully Process Agent Contact Information as an independent Controller for the purposes set forth in Zendesk’s Privacy Notice.

6.5 Data Processing Agreement. The Data Processing Agreement, US State Addendum, and/or any other Zendesk- provided privacy terms located at <https://www.zendesk.com/trust-centre/> shall be incorporated by reference herein into this Agreement once signed by the Parties.

SECTION 6. TEMPORARY SUSPENSION

Zendesk reserve the right to restrict functionalities or suspend 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 or quarantine any Service Data or other

content if (a) Zendesk reasonably believe that You, Agents or End-Users have violated this Agreement; or (b) Zendesk suspect or detect any Malicious Software connected to Your Account or use of a Service by You, Agents or End-Users. This right includes the removal or disablement of Service Data or other content in accordance with Our Copyright Infringement Notice and Takedown Policy available on Zendesk's Intellectual Property Website. Zendesk also reserve the right to immediately suspend Your Account for Your violation of the Zendesk User Content and Conduct Policy. Unless legally prohibited from doing so or where Zendesk are legally required to take immediate action, Zendesk will use commercially reasonable efforts to contact You via email to notify You when taking any of the foregoing actions. Zendesk shall not be liable to You, Agents, End-Users or any other third party for any modification, suspension or discontinuation of Your rights to access and use the Services. Zendesk may refer any suspected fraudulent, abusive, or illegal activity by You, Agents or End-Users to law enforcement authorities at Our sole discretion.

SECTION 7. NON-ZENDESK SERVICES

If You decide to enable, access or use Non-Zendesk Services, Your access and use of such Non-Zendesk Services shall be governed solely by the terms and conditions of such Non-Zendesk Services. Zendesk does not endorse, is not responsible or liable for, and makes no representations as to any aspect of such Non-Zendesk 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 Non-Zendesk Services. Zendesk cannot guarantee the continued availability of such Non-Zendesk Service features, and may cease enabling access to them without entitling You to any refund, credit or other compensation, if, for example and without limitation, the provider of a Non-Zendesk Service ceases to make the Non-Zendesk Service available for interoperation with the corresponding Service in a manner acceptable to Us. You irrevocably waive any claim against Zendesk with respect to such Non-Zendesk Services. Zendesk 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 Non-Zendesk Services, or Your reliance on the privacy practices, data security processes or other policies of such

Non-Zendesk Services. You may be required to register for or log into such Non-Zendesk Services on their respective websites. By enabling any Non-Zendesk Services, You are expressly permitting Zendesk to disclose Your login and Service Data to the provider of the Non-Zendesk Service as necessary to facilitate the use or enablement of such Non-Zendesk Services.

SECTION 8. FREE TRIALS

If You register for a free trial for any of the Services, Zendesk will make such Services available to You pursuant to the terms and conditions stated at: <https://www.zendesk.com/company/agreements-and-terms/free-trial-terms>.

SECTION 9. INTELLECTUAL PROPERTY RIGHTS

10.1 Intellectual Property Rights. Each Party shall retain all rights, title and interest in any of its respective 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 of Zendesk 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.

10.2 Feedback. The Zendesk Group shall have a fully paid-up, royalty-free, worldwide, transferable, sub-licensable (through multiple layers), assignable, irrevocable and perpetual licence to implement, use, modify, commercially exploit, incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback regarding the Services that Zendesk receive from You, Agents, End-Users, or other third parties acting on Your behalf. The Zendesk Group also reserves the right to seek intellectual property protection for any features, functionality or components that may be based on or that were initiated by suggestions, enhancement requests, recommendations or other feedback regarding the Services that Zendesk receive from You, Agents, End-Users, or other third parties acting on Your behalf.

10.3 Use of Zendesk Marks. You may only use the Zendesk Marks in a manner permitted by Our Trademark Usage Guidelines available on Zendesk's Intellectual Property Website, provided You do not attempt, now or in the future, to claim any rights in the Zendesk Marks, dilute or degrade the distinctiveness of the Zendesk Marks, or use the Zendesk Marks to disparage or misrepresent Zendesk or Our Services. Zendesk's ability to use Subscriber Marks will be set forth in a Service Order or by mutual agreement of the Parties.

10.4 Ownership of Service Data. Subscriber shall retain ownership rights, including all Intellectual Property Rights, to all Service Data Processed under the terms of this Agreement.

SECTION 10. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

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

11.2 Zendesk Warranties. Zendesk warrants that during an applicable Subscription Term (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 Service Data; and (b) the Services will perform materially in accordance with the applicable Documentation. For any breach of a warranty in this section, Your exclusive remedies are those described in Section 3.3 herein. The warranties herein do not apply to any misuse or unauthorized modification of the Services made by You, Your Agents or Your End-Users.

11.3 Disclaimers. EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 11.2, 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 ZENDESK EXPRESSLY DISCLAIMS 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 ZENDESK DOES 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.

SECTION 11. INDEMNIFICATION

11.1 Indemnification by Zendesk. Zendesk will indemnify and defend You from and against any claim brought by a third party against You alleging that Your use of a Service as permitted hereunder, infringes or misappropriates a third party's valid patent, copyright, trademark or trade secret (an "IP Claim"). Zendesk shall, at Our expense, defend such IP Claim and pay damages finally awarded against You in connection therewith, including reasonable fees and expenses of lawyers engaged by Zendesk for such defence, provided that (a) You promptly notify Zendesk of the threat or notice of such IP Claim; (b) Zendesk will have sole, exclusive control and authority to select defence lawyers, defend and/or settle any such IP Claim (however, Zendesk shall not settle or compromise any claim that results in liability or admission of any liability by You without Your prior written consent); 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, Zendesk may, at Our option and expense (i) procure for You the right to continue using the Service(s) as set forth hereunder; (ii) replace or modify a Service to make it non-infringing; or (iii) if options (i) or (ii) 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 paid to Zendesk for the unused portion of Your Subscription Term for such Service(s). Zendesk will have no liability or obligation under this Section 12.1 with respect to any IP Claim if such claim is caused in whole or in part by (x) compliance with designs, data, instructions or specifications provided by You; (y) modification of the Service(s) by anyone other than Zendesk or Zendesk Personnel; or (z) 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 12.1 state the sole, exclusive and entire liability of Zendesk to You and 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.

11.2 Indemnification by Subscriber. Subscriber will indemnify, defend and hold Zendesk harmless against any claim brought by a third party against Zendesk (a) arising from or related to Subscriber, Agents' or End-Users use of a Service in breach of this Agreement (and not arising solely from the Service itself); or (b) alleging that Subscriber Marks or content selected by Subscriber in the design and implementation of the Services, including but not limited to the URL, graphics, illustrations, logos, and marks, or Service Data infringes or misappropriates a third party's valid patent, copyright, trademark or trade secret; provided that (i) Zendesk promptly notifies Subscriber of the threat or notice of such claim; (ii) Subscriber will have the sole and exclusive control and authority to select defense attorneys, and to defend and/or settle any such claim (however, Subscriber shall not settle or compromise any claim that results in liability or admission of any liability by Zendesk without Zendesk's prior written consent); and (iii) Zendesk fully cooperates with Subscriber in connection therewith.

SECTION 12. LIMITATION OF LIABILITY

13.1 EXCLUSION OF DAMAGES. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) SHALL EITHER PARTY TO THIS AGREEMENT, OR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICE PROVIDERS, SUPPLIERS OR LICENSORS, BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA (WHERE SUCH DATA IS LOST IN THE COURSE OF TRANSMISSION VIA YOUR SYSTEMS OR OVER THE INTERNET THROUGH NO FAULT OF ZENDESK), BUSINESS INTERRUPTION, LOSS OF GOODWILL, COSTS OF COVER OR REPLACEMENT, OR FOR ANY OTHER TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR FOR ANY OTHER INDIRECT LOSS OR DAMAGES INCURRED BY THE OTHER PARTY OR ITS AFFILIATES IN CONNECTION WITH THIS AGREEMENT, THE SERVICES OR PROFESSIONAL SERVICES, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

13.2 LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE ZENDESK GROUP'S AGGREGATE LIABILITY TO SUBSCRIBER, ITS AFFILIATES, OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT, THE SERVICES OR PROFESSIONAL SERVICES, SHALL IN NO EVENT EXCEED THE SUBSCRIPTION CHARGES AND/OR PROFESSIONAL SERVICES FEES PAID BY THE 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 13.2 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE SUBSCRIPTION CHARGES AND PROFESSIONAL SERVICES FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF ZENDESK WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. ZENDESK HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE YOU WITH THE RIGHTS TO ACCESS AND USE THE SERVICES AND/OR THE PROFESSIONAL SERVICES PROVIDED FOR IN THIS AGREEMENT. THE LIMITATIONS SET FORTH IN SECTION 13.2 SHALL NOT APPLY TO CLAIMS OR DAMAGES RESULTING FROM ZENDESK'S IP CLAIMS INDEMNITY OBLIGATIONS IN SECTION 12.1 OF THIS AGREEMENT.

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13.3 LIMITATION OF LIABILITY IN THE AGGREGATE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN APPLIES IN AGGREGATE TO ANY AND ALL CLAIMS BY SUBSCRIBER AND ITS AFFILIATES, AND SHALL NOT BE CUMULATIVE.

13.4 Jurisdiction-specific exclusions. Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages or for a party's own fraud, willful injury to the person or property of another, or violation of law 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.

13.5 Enforceable against Zendesk. Any claims or damages that You may have against Zendesk shall only be enforceable against Zendesk and not any other entity, nor any officers, directors, representatives or agents of Zendesk or any other entity.

SECTION 13. ASSIGNMENT, ENTIRE AGREEMENT AND AMENDMENT

14.1 Assignment. Assignment. 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 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 Main Services 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 written prior consent, which consent will not be unreasonably withheld. Zendesk may assign this Agreement 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. If requested by Zendesk, You must execute Our form to give effect to Zendesk's assignment. 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.

14.2 Entire Agreement. This Agreement constitutes the entire agreement, and supersedes 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, request for information, request for proposal, or other order documentation You or any entity which You represent provide(s) and all

such terms or conditions in such purchase order, request for information, request for proposal, or other order documentation are null and void. 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. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind between the Parties, except as may otherwise be expressly provided herein. The headings used herein are for convenience only and shall not affect the interpretation of the terms of this Agreement.

14.3 Amendment. Zendesk may amend this Agreement from time to time, in which case the new Agreement will supersede prior versions. Zendesk will notify You not less than thirty (30) 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.

SECTION 14. SEVERABILITY

If any term in this Agreement is determined to be invalid or unenforceable by a competent court or governing body, such term shall be replaced with another term consistent with the purpose and intent of this Agreement, and the remaining provisions of this Agreement shall remain in effect.

SECTION 15. EXPORT COMPLIANCE AND USE RESTRICTIONS

The Services and other Zendesk technology, and derivatives thereof, may be subject to export controls and economic sanctions laws and regulations of the United States and other jurisdictions. Subscriber agrees to comply with all such laws and regulations as they relate to the access to and use of the Services and other Zendesk technology. Each Party represents that it (nor its parents or controlling shareholders) is not named on (nor directly or indirectly owned 50% or greater, in the aggregate, or otherwise controlled by, a person or persons named on) any U.S. government or other applicable restricted-party list, and Subscriber will not, and will not permit any Agent or End-User to: (a) access or use any Service in a U.S.-embargoed or U.S.-sanctioned country or region, (e.g., Cuba, Iran, North

Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People's Republic and Luhansk People's Republic regions of Ukraine, or any other country or region embargoed or sanctioned during the Subscription Term); (b) access or use any Service if Subscriber, Agent, or End-User is named on (or directly or indirectly owned 50% or greater, in the aggregate, or otherwise controlled by, a person or persons named on) any U.S. government or other applicable restricted-party list; (c) place any information in the Services that is controlled under the U.S. International Traffic in Arms Regulations or other similar laws; or (d) access or use any Service for any purpose prohibited by the United States or applicable international import and export laws and regulations. Zendesk shall have no obligation or liability to Subscriber if a governmental or regulatory action restricts access to the Services, and Subscriber agrees that this Agreement and any Service Order expressly exclude any right to access the Services from a jurisdiction where such governmental or regulatory restriction is in effect. Zendesk reserves the unconditional right to refuse to enter into a contractual relationship with any particular company, legal entity or individual on the basis of export control restrictions, embargoes, sanctions or other considerations to the extent permitted by law.

SECTION 16. RELATIONSHIP OF THE PARTIES

The Parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, general agency, fiduciary or employment relationship between the Parties. Subscriber is solely responsible for determining whether the Services meet Subscriber's technical, business, or regulatory requirements. Zendesk's business partners and other third parties, including any third parties with which the Services have integrations or that are retained by Subscriber to provide consulting services, implementation services or applications that interact with the Services, are independent of Zendesk.

SECTION 17. NOTICE

18.1 Notices to Subscriber. All notices provided by Zendesk to You under this Agreement may be delivered in writing by (a) nationally recognised overnight delivery service ("Courier") or US mail to the contact mailing address provided by

You on any Service Order; or (b) electronic mail to the electronic mail address provided for Your Account owner.

18.2 Notices to Zendesk. All Legal Notices provided by You to Zendesk under this Agreement must be delivered in English and in writing by (a) Courier or US mail to 989 Market Street, San Francisco, California 94103 USA. Attn: Legal Department; or (b) electronic mail to legalnotice@zendesk.com. All other notices provided by You to Zendesk under this Agreement must be delivered in English and in writing by electronic mail to revops@zendesk.com.

18.3 All notices provided by either Party to the other shall be deemed to have been given immediately upon delivery by electronic mail; or upon the earlier of proof of receipt or two (2) business days after being deposited in the mail or with a Courier as permitted above.

SECTION 18. 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 relating to access to or use of the Services by Subscriber, Agents or End-Users.

SECTION 19. FEDERAL GOVERNMENT END USE PROVISIONS

If You are a US federal government department or agency or contracting on behalf of such department or agency, each of the Services is a “Commercial Product” 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.

SECTION 20. ETHICAL CONDUCT AND COMPLIANCE

Neither Party, nor any of its employees or agents, has offered, received or been offered, directly or indirectly, any illegal or improper bribe or kickback (whether in the form of a payment, gift, undue advantage, or thing of value), or will offer or accept the same in connection with this Agreement. All parties agree to comply with the US Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010, and any equivalent anti-corruption requirements in other jurisdictions that are reasonably applicable to this Agreement. Modest and reasonable gifts, meals, entertainment, and other hospitality, provided in the ordinary course of business and without any corrupt intent to obtain or retain business, or influence a government decision, will not violate the above restriction. Zendesk will abide by its Code of Conduct in the provision of the Services as available here:

<https://www.zendesk.com/company/policies-and-guidelines/>. If You learn of any violation of the above restrictions by Us, You will use reasonable efforts to promptly notify Us at legalnotice@zendesk.com.

SECTION 21. SURVIVAL

Sections 2.1, 3.5, 3.6, 4.4, 5 – 7, 10, 12 – 19 and 23 shall survive termination of this Agreement with respect to use of the Services by You, Agents or End-Users. Termination of this Agreement shall not limit a Party's liability for obligations accrued as of or prior to termination or for any breach of this Agreement.

SECTION 22. DEFINITIONS

When used in this Agreement with initial letters capitalised, these terms have the following meaning:

“Account” means any accounts or instances created by, or on behalf of, Subscriber or its Affiliates within the Services.

“Additional Feature(s)” means additional features or functionality (e.g. Built by Zendesk Marketplace Applications, Zendesk Labs apps, or Early Access Programs) that are available or enabled through the Services, but do not form part of the Service. Additional Features also include third party services that are purchased and/or subscribed to via a Service Order and that are identified as being resold by Zendesk and governed by such third party's alternate agreement. Additional

Features are purchased or enabled separately and distinctly from Your Service Plan and Deployed Associated Services.

“Affiliate(s)” 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(s)” means an individual (including those of Your Affiliates) authorised to use the Service(s) through Your Account as an agent, account owner and/or administrator, each as identified through an individual Agent Login.

“Agent Contact Information” means Personal Data about Your Agents, such as their name and email address, that Zendesk stores separate from the Services in order to, among other things, communicate with Your Agents and provide customer support. Agent Contact Information is not considered Service Data.

“Agent Login” means a unique username and associated password provisioned to an individual to permit them to access the Services.

“Agreement” means the Master Subscription Agreement together with any and all Supplemental Terms, Service Order and other mutually executed documents. The Main Services Agreement may also be referred to as “Master Subscription Agreement” or “MSA.”

“API” means the application programming interfaces developed, made available and enabled by Zendesk that permit 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 that are not included in the

Service Plan to which You subscribe. For avoidance of doubt, Additional Features that are expressly stated to be governed by separate Supplemental Terms shall not be deemed an Associated Service. Where You have purchased, deployed, or subscribed to an Associated Service, such Associated Service is referred to as a “Deployed Associated Service.”

“Built by Zendesk Marketplace Applications” means 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 will be governed by this Agreement unless Zendesk otherwise communicates a different agreement to You at the time of Your deployment of or access to the integration or application.

“Confidential Information” means all information disclosed by one Party to the other Party which is in tangible form and designated as confidential or is information, regardless of form, which a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure, including but not limited to the pricing terms. 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 from 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 the use of the disclosing Party’s Confidential Information.

“Data Controller” refers to the entity that determines the purposes and means for Processing Personal Data.

“Documentation” means any written or electronic documentation, images, video, text or sounds specifying the functionalities or limitations of the Services or describing Service Plans, as applicable, provided or made available by Zendesk to You in the applicable Zendesk help centre(s), Site or Zendesk developer website (<https://developer.zendesk.com/>); provided, however, that Documentation shall specifically exclude any “community moderated” forums as provided or accessible through such knowledge base(s).

“End-User(s)” means any person or entity other than Subscriber or Agents with whom Subscriber, its Agents, or its other End-Users interact while using a Service.

“Enterprise Services” means any Service not designated on Zendesk’s Innovation Services List available on Zendesk’s Agreements and Terms Website. Professional Services are also not considered Enterprise Services.

“Force Majeure Event” means any circumstances beyond Our reasonable control, including, but not limited to, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving Our employees), Internet service provider failure or delay, Non-Zendesk Services, or acts undertaken by third parties, including without limitation, denial of service attack.

"How Zendesk Protect Your Service Data (Enterprise Services)" means the website located at:

<https://www.zendesk.com/company/customers-partners/protect-service-data-enterprise-services/>

"How Zendesk Protect Your Service Data (Innovation Services)" means the website located at:

<https://www.zendesk.com/company/customers-partners/protect-service-data-innovation-services/>

“Innovation Services” means any Service or feature described on Zendesk’s Innovation Services List available on Zendesk’s Agreements and Terms Website.

“Intellectual Property Rights” means any and all of a Party’s patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights.

“Legal Notice” means any notice provided by Subscriber to Zendesk under Sections 3.3 and 12.1 of this Agreement.

“Malicious Software” means any viruses, malware, Trojan horses, time bombs, or any other similar harmful software.

“Non-Zendesk Services” means third party products, applications, services, software, 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, Non-Zendesk Services which may be integrated directly into Your Account by You or at Your direction.

“Personnel” means employees and/or non-employee contractors of the Zendesk Group engaged by the Zendesk Group in connection with performance hereunder.

“Planned Downtime” means planned downtime for upgrades and maintenance to the Services scheduled in advance of such upgrades and maintenance.

“Privacy Notice” means Zendesk’s Privacy Notice located at <https://www.zendesk.com/company/agreements-and-terms/privacy-notice/>.

“Professional Services” means consulting or professional services (including any training, success and implementation services) provided by Zendesk Personnel as indicated on a Service Order or other written document such as an SOW. Professional Services may also be referred to as Consulting Services in the Documentation or SOW.

“Service(s)” means the products and services that are used or ordered by You online through a link or via a Service Order referencing this Agreement, whether on a trial or paid basis, and whether Enterprise Services or Innovation Services, 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 Deployed Associated Services that are provided under this Agreement. “Services” exclude (a) Non-Zendesk Services as that term is defined in this Agreement; and (b) any Additional Features or Associated Services that are not provided under this Agreement or Your Service Plan. 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 Service Order 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 all electronic data, text, messages, communications or other materials submitted to and stored within a Service by You, Agents and End-Users in connection with Your use of such Service, excluding Agent Contact Information.

"Service Order" means Zendesk’s generated service order form(s) or online ordering document or process completed, executed or approved by the Reseller managing Subscriber's subscription to the Service with respect to Subscriber’s subscription to a Service, which may detail, among other things, the number of Agents authorized to use a Service under Subscriber's subscription and the applicable Service Plan.

“Service Plan(s)” means the packaged service plan(s) and the functionality and services associated therewith (as detailed on the Site and in Documentation applicable to the Service) for the Services.

“Site” means a website operated by the Zendesk Group, including www.zendesk.com, as well as all other websites that the Zendesk Group operates (but shall not include the Services).

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

“Sub-processor(s)” means any third-party data processor engaged by Zendesk, including entities from the Zendesk Group, who receives Service Data from Zendesk for Processing on behalf of Subscriber and in accordance with Subscriber’s instructions (as communicated by Zendesk) and the terms of its written subcontract, as provided at: <https://support.zendesk.com/hc/en-us/articles/360022185294>.

"Subscriber" means the party specified above with the address as set forth on the Service Order and may also be referred to as “You” or “Your.”

"Subscriber Marks" means any trademarks, service marks, service or trade names, taglines, logos or other designations of Subscriber.

“Subscription Charges” means all charges associated with Subscriber’s access to and use of an Account.

“Subscription Term” means the period during which Subscriber has agreed to subscribe to a Service.

“Supplemental Terms” means the additional terms and conditions that are (a) included or incorporated on a Service Order via hyperlink or other reference (e.g., when a Deployed Associated Service is purchased); (b) applicable to Professional Services when purchased by Subscriber; (c) applicable to Additional Features when activated by Subscriber; and (d) Zendesk’s Service-Specific Terms; and (e) Zendesk’s Region-Specific Terms.

“Taxes” means taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes assessable by any local, state, provincial or foreign jurisdiction.

“Usage Charges” means additional Subscription Charges that are incurred by Subscriber relating to the use of certain features and functionality that Subscriber enables within the Service.

“Zendesk” means Zendesk, Inc., a Delaware corporation, or any of its successors or assignees and may also be referred to as “We,” “Us” or “Our.”

“Zendesk’s Agreements and Terms Website” means the website located at:
<https://www.zendesk.com/company/agreements-and-terms>.

“Zendesk Group” means Zendesk, Inc., a Delaware corporation together with all its Affiliates.

“Zendesk’s In-Product Cookie Policy” means the policy as stated at
<https://support.zendesk.com/hc/en-us/articles/360022367393-Zendesk-in-product-cookie-policy>.

“Zendesk’s Intellectual Property Website” means the website located at:
<https://www.zendesk.com/company/trademark-property/>.

“Zendesk Marks” means any trademarks, service marks, service or trade names, logos or other designations of Zendesk, the Zendesk Group, or its or their Affiliates, whether registered or unregistered.

“Zendesk’s Region-Specific Terms” means the Supplemental Terms applicable in certain jurisdictions as stated at:

<https://www.zendesk.com/company/agreements-and-terms/region-specific-terms/>.

“Zendesk’s Service-Specific Terms” means the Supplemental Terms applicable to use of different Services as stated at:

<https://support.zendesk.com/hc/en-us/articles/360047508453>.

“Zendesk’s Sub-processor Policy” means the policy as stated at:

<https://support.zendesk.com/hc/en-us/articles/4408883061530>.

“Zendesk User Content and Conduct Policy” means the policy as stated at:

<https://support.zendesk.com/hc/en-us/articles/360022367333>.