




OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Board Office Use: Legislative File Info.	
File Number	18-2276
Introduction Date	11/14/2018
Enactment Number	18-1695
Enactment Date	11/14/18 lf

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Marcus Battle, Chief Business Officer
Susan Beltz, Chief Technology Officer 

Board Meeting Date November 14, 2018

Subject Ratification of Service Order Addition to Master Subscription Agreement between Zendesk, Inc. and Oakland Unified School District

Action Requested Ratification of Service Order Addition to Master Subscription Agreement beginning October 1, 2018 through June 30, 2019 in the amount of \$10,106.56 between Zendesk, Inc. and Oakland Unified School District.

Background
A one paragraph explanation of why the consultant's services are needed.

The ZenDesk platform currently provides end user support capabilities to the Technology Services, Talent, Enrollment and Transportation departments. The Board ratified the Master Subscription Agreement and associated 2018-19 renewal Service Order on September 26, 2018 (Legistar Enactment Number 18-1516).

Discussion
One paragraph summary of the scope of work.

The current Service Order adds ZenDesk licenses to the existing Master Subscription Agreement to support the OUSD Programs for Exceptional



Children (PEC) department. Similar to the other OUSD departments using ZenDesk, the PEC department responds to a large number of requests each school year, and has requested the ZenDesk platform to assist in tracking and managing these requests.

ZenDesk is a fully integrated multi-channel support platform to manage support requests. Zendesk includes capabilities well beyond standard email and phone communication channels. The platform supports inbound requests across multiple channels, including e-mail, voicemail, and chat, and allows requests to be smoothly routed and tracked to resolution. Metrics and data dashboards are included to help measure the overall efficacy of end user support operations.

Ratification of this item will provide PEC with ZenDesk access similar to that currently provided to the Technology Services, Talent, Enrollment and Transportation departments, thereby enabling PEC to use the Zendesk platform to smoothly support OUSD staff and families who request assistance from their department.

Recommendation	Ratification of Service Order Addition to Master Subscription Agreement beginning July 1, 2018 through June 30, 2019 in the amount of \$10,106.56 between Zendesk, Inc. and Oakland Unified School District.
Fiscal Impact	\$10,106.56 from Funding Resource 9999994701: General Purpose (GP) Software Licensing
Attachments	Master Subscription Agreement between Zendesk, Inc. and Oakland Unified School District (included with September 26, 2018 Board Item) Service Order Form



CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office With Every Consent Agenda Contract.

Legislative File ID No. 18-2276
Department: Technology Services Department
Vendor Name: Zendesk, Inc.
Contract Term: Start Date: October 1, 2018 End Date: June 30, 2019
Annual Cost: \$ 10,106.56
Approved by: Susan Beltz
Is Vendor a local Oakland business? Yes ___ No X

Why was this Vendor selected?

Zendesk is an industry-leading platform for end user support which has been successfully used by the Oakland Unified School District since 2014. Zendesk includes capabilities well beyond standard email and phone communication channels. The platform supports inbound requests across multiple channels, including e-mail, voicemail, and chat, and allows requests to be smoothly routed and tracked to resolution. Metrics and data dashboards are included to help measure the overall efficacy of end user support operations. The 2018-19 ZenDesk renewal was ratified by the Board on September 26, 2018 (Legistar Enactment Number 18-1516), which enabled the Technology, Talent, Enrollment and Transportation departments to continue using Zendesk. The current item will add licenses for the Programs for Exceptional Children (PEC) department to use ZenDesk.

Summarize the services this Vendor will be providing.

Zendesk, Inc. will provide hosting, maintenance and upgrades of the Zendesk platform and related customer support.

Was this contract competitively bid? Yes ___ No X

If No, answer the following:

1) How did you determine the price is competitive?

OUSD receives a significant discount from standard list pricing on the 2018-19 renewal, which would cost \$210,768 as opposed to the \$79,352.48 price we received for our 2018-19 contract. Pricing for Zendesk and its competitors varies based upon the features purchased. However, we believe that our \$78.27 per agent cost for Zendesk compares favorably against other full-featured price tiers for competing solutions such as Freshdesk (up to \$99 per support agent) and Happy Fox (up to \$89 per support agent). In addition, we believe that a switch in support platforms would incur significant startup costs in terms of staff time along with moderate external professional services costs. The current item to add licenses for the PEC department provides those licenses at the same per-license cost as the 2018-19 renewal to provide licenses for Technology, Talent, Enrollment and Transportation.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$ 90,200 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$ 90,200 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - Western States Contracting Alliance Contracts (WSCA)
 - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**



1019 Market Street
San Francisco, CA 94103

SERVICE ORDER FORM

SUBSCRIBER INFORMATION

Sold To:		Bill To:	
Subscriber Legal Name:	Oakland Unified School District	Accounts Payable Contact:	Susan Beltz
Address:	Technology Services 1000 Broadway, Suite 300 Oakland, California 94607 United States	Address:	Technology Services 1000 Broadway, Suite 300 Oakland, California 94607 United States
Subdomain:	ousdspecialeducation	Email:	susan.beltz@ousd.org
Support ID:	2444922	Phone:	

SUBSCRIPTION DETAILS

Currency: USD	Payment Frequency: Quarterly	Service Start Date: Oct 1, 2018
	Payment Terms: Net 30	Service End Date: Jun 30, 2019
	Payment Method: Check	

ORDER DETAILS

Product	Start Date	End Date	# of Months	List Price	Effective Price	Qty	Line Item Total
Talk Telephony Credits (Credits)	Oct 1, 2018	Jun 30, 2019	1	0.01	0.01	103100	1,000.00
Talk Advanced Subscription (Per Agent)	Oct 1, 2018	Jun 30, 2019	9	59.00	26.52	17	4,057.56
Support Enterprise Subscription (Per Agent)	Oct 1, 2018	Jun 30, 2019	9	139.00	33.00	17	5,049.00
Grand Total:							10,106.56

***First Invoice Total Due:** 4,035.52
(10/1/18 – 12/31/18)

The First Invoice Total calculation is determined by the Payment Frequency displayed above and may differ from the Grand Total in cases where this Payment Frequency is a shorter term than the Contract Term (determined by the Service Start Date and the Service End Date).

SPECIAL TERMS AND NOTES

Subscriber consents to the identification of Subscriber as a customer of Zendesk on Zendesk Group's websites, and in other marketing materials distributed by the Zendesk Group (which may include emails and other web and print materials) (collectively, "Zendesk Marketing Materials"). In connection with such activity, Zendesk may also display Subscriber's trademarks, service marks, and/or logos in Zendesk Marketing Materials. The foregoing shall be deemed a worldwide, nonexclusive and (except as set forth below) irrevocable license to the use of Subscriber's name, trademarks, service marks, and logos for this purpose. The Parties agree that such license and consent shall terminate upon termination of Subscriber's subscription to all Services.

Subject to prior approval of Subscriber, Subscriber also agrees to be referenced in press releases, case studies prepared by Zendesk, Zendesk's announcement of its financial results, Zendesk's filings with the U.S. Securities and Exchange Commission related thereto, and Zendesk investor relations materials (collectively "Zendesk Press Materials"). In connection with such activity, Zendesk may also use and display Subscriber's trademarks, service marks, and/or logos in Zendesk Press Materials. The foregoing shall be deemed a worldwide, nonexclusive and (except as set forth below) irrevocable license to the use of Subscriber's name, trademarks, service marks, and logos for this purpose. The Parties agree that such license and consent shall terminate upon termination of Subscriber's subscription to all Services.

TERMS AND CONDITIONS

The products and services provided by Zendesk under this Service Order Form ("Order Form") are governed by and subject to the Master Subscription Agreement found at: <https://www.zendesk.com/company/customers-partners/#master-subscription-agreement> unless there is a separately negotiated agreement between you and Zendesk along with the Privacy Policy found at: <https://www.zendesk.com/company/customers-partners/#privacy-policy> (collectively, the "Agreement").

The Agreement exclusively governs the relationship and agreement between Zendesk and Subscriber related to the Services (as defined in the Agreement) and Consulting Services (as defined in the Agreement); and, supersedes any other agreement/purported terms of any type, including, without limitation, the terms of any purchase order or other ordering document that may be referenced herein or otherwise issued by Subscriber. No purported modification of the Agreement by Subscriber or

any terms or conditions of any purchase order or other similar document shall have any force or effect regardless of any statement to the contrary in such modification, purchase order or other document. This Order Form shall be subject to, and Subscriber hereby unconditionally accepts, the Agreement, except to the extent the Agreement is expressly modified herein. Upon Subscriber executing this Order Form, the Agreement shall become legally binding between the parties.

The Subscription Term for any Agents added by Subscriber after the beginning of the then- current Subscription Term ("Additional Agents") shall be coterminous with the then current Subscription Term for the existing Agents. Subscription Charges for Additional Agents shall be at the Subscriber's Subscription Charges under the then current Subscription Term, unless otherwise expressly agreed by the parties in writing. Any discount provided to Subscriber is applicable only to the initial Subscription Term detailed in this Service Order, unless otherwise expressly agreed by the parties in writing, and will not be applied to any subsequent Subscription Term.

Payments made by credit card or debit card are billed and processed by Zendesk, Inc. if denominated in U.S. dollars and by Zendesk International Ltd (Registration No. 519184) if denominated in a currency other than the U.S. dollar. To the extent that any such entity billing or processing this transaction (the "Zendesk Payment Agent") is not Zendesk, Inc., the Billing Entity is acting solely as a billing and processing agent for and on behalf of Zendesk, Inc. for the economic benefit of Zendesk, Inc. in its role as principal and the Zendesk Payment Agent has no interest in the payments. You are contracting with and the Services and Consulting Services are provided and delivered by Zendesk, Inc.

PURCHASE ORDER OPTIONS

My organization requests you reference a Purchase Order (PO#)

Subscriber acknowledges and agrees that any reference to a purchase order in this Form or any associated invoice is solely for Subscriber's convenience in record keeping, and no such reference or any delivery of Services to Subscriber following receipt of any purchase order shall be deemed an acknowledgement of or agreement to any terms or conditions associated with any such purchase order or in any way be deemed to modify, alter, supersede or supplement the Agreement. The terms and conditions of the Agreement are the exclusive agreement of the parties with respect to the subject matter hereof and no other terms or conditions shall be binding upon Zendesk or otherwise have any force or effect.



SERVICE ORDER FORM

SIGNATURES

By signing this Form the Subscriber authorizes that it has read it and agrees to its terms.

Subscriber Signature:

Title:

DocuSigned by:
Susan Beltz
153A970983AF4DE...

Chief Technology Officer

Print Name:

Date:

susan beltz

October 11, 2018

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE

By: *[Signature]* 10.11.18
Amy Brandt, Attorney at Law

Aimee Eng

11/15/18

Aimee Eng
President, Board of Education

[Signature]

11/15/18

Kyla R. Johnson-Trammell
Secretary, Board of Education



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Board Office Use: Legislative File Info.	
File Number	18-1897
Introduction Date	9/26/2018
Enactment Number	18-1516
Enactment Date	9/26/18

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Marcus Battle, Chief Business Officer
Susan Beltz, Chief Technology Officer *SB*

Board Meeting Date September 26, 2018

Subject Ratification of Master Subscription Agreement between Zendesk, Inc. and Oakland Unified School District

Action Requested Ratification of Master Subscription Agreement beginning July 1, 2018 through June 30, 2019 in the amount of \$79,352.48 between Zendesk, Inc. and Oakland Unified School District.

Background The Technology Services department has successfully used ZenDesk for 2017-18 and is using this firm going forward for the same services as previously provided. The ZenDesk platform provides end user support capabilities to the Technology Services, Talent, Enrollment and Transportation departments.

Discussion The Technology Services HelpDesk receives approximately 24,000 support requests per year. These requests originate from OUSD school



OAKLAND UNIFIED
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sites and central departments, and include everything from basic training and computer needs to sophisticated data and reporting requests. Many requests are solved with a single response to the end user, but many others are escalated to network engineers, software developers, and other team members as needed. Tracking and resolving inbound requests in a timely manner avoids negative impacts across the District.

Our metrics indicate high overall satisfaction ratings by end users and high volumes of tickets being closed in a timely manner. However, this would be impossible to achieve without a fully integrated multi-channel support platform to manage these requests. Zendesk includes capabilities well beyond standard email and phone communication channels. The platform supports inbound requests across multiple channels, including e-mail, voicemail, and chat, and allows requests to be smoothly routed and tracked to resolution. Metrics and data dashboards are included to help measure the overall efficacy of end user support operations.

Ratification of this item will enable the Technology Services, Talent, Enrollment and Transportation departments to continue using the Zendesk platform to smoothly support OUSD staff and families who request help from these departments.

Recommendation	Ratification of Master Subscription Agreement beginning July 1, 2018 through June 30, 2019 in the amount of \$79,352.48 between Zendesk, Inc. and Oakland Unified School District.
Fiscal Impact	\$79,352.48 from Funding Resource 9999994701: General Purpose (GP) Software Licensing
Attachments	Master Subscription Agreement between Zendesk, Inc. and Oakland Unified School District. Service Order Form



CONTRACT JUSTIFICATION FORM

**This Form Shall Be Submitted to the Board Office
With *Every* Consent Agenda Contract.**

Legislative File ID No. 18- _____

Department: Technology Services

Vendor Name: Zendesk, Inc.

Contract Term: Start Date: July 1, 2018 End Date: June 30, 2019

Annual Cost: \$ 79,352.48

Approved by: Susan Beltz

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Zendesk is an industry-leading platform for end user support which has been successfully used by the Oakland Unified School District since 2014. Zendesk includes capabilities well beyond standard email and phone communication channels. The platform supports inbound requests across multiple channels, including e-mail, voicemail, and chat, and allows requests to be smoothly routed and tracked to resolution. Metrics and data dashboards are included to help measure the overall efficacy of end user support operations.

Summarize the services this Vendor will be providing.

Zendesk, Inc. will provide hosting, maintenance and upgrades of the Zendesk platform and related customer support.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

OUSD receives a significant discount from standard list pricing, which would cost \$210,768 as opposed to the \$79,352.48 price we are receiving for our 2018-19 contract. Pricing for Zendesk and its competitors varies based upon the features purchased. However, we believe that our \$78.27 per agent cost for Zendesk compares favorably against other full-featured price tiers for competing solutions such as Freshdesk (up to \$99 per support agent) and Happy Fox (up to \$89 per support agent). In addition, we believe that a switch in support platforms would incur significant startup costs in terms of staff time along with moderate external professional services costs.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - Western States Contracting Alliance Contracts (WSCA)
 - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**



1019 Market Street
San Francisco, CA 94103

SERVICE ORDER FORM

SUBSCRIBER INFORMATION

Sold To:		Bill To:	
Subscriber Legal Name:	Oakland Unified School District	Accounts Payable Contact:	Susan Beltz
Address:	Technology Services 1000 Broadway, Suite 300 Oakland, California 94607 United States	Address:	Technology Services 1000 Broadway, Suite 300 Oakland, California 94607 United States
Subdomain:	ousd2, ousdtransportation, ousd-enroll, ousd, ousdhr	Email:	susan.beltz@ousd.org
Support ID:	244272, 1996029, 1942341, 195348, 307549	Phone:	
Chat ID:	-244272, -1996029, -1942341, 742979		

SUBSCRIPTION DETAILS

Currency: USD	Payment Frequency: Quarterly	Service Start Date: Jul 1, 2018
	Payment Terms: Net 30	Service End Date: Jun 30, 2019
	Payment Method: Check	

ORDER DETAILS

Product	Start Date	End Date	# of Months	List Price	Effective Price	Qty	Line Item Total
Chat Advanced Subscription (Per Agent) <i>ousd2</i>	Jul 1, 2018	Jun 30, 2019	12	25.00	18.75	10	2,250.00
Talk Advanced Subscription (Per Agent) <i>ousd2</i>	Jul 1, 2018	Jun 30, 2019	12	39.00	26.52	10	3,182.40
Support Enterprise Subscription (Per Agent) <i>ousd2</i>	Jul 1, 2018	Jun 30, 2019	12	119.00	33.00	66	26,136.00
Talk Telephony Credits (Credits) <i>ousdtransportation</i>	Jul 1, 2018	Jun 30, 2019	1	0.01	0.01	103100	1,000.00
Support Enterprise Subscription (Per Agent) <i>ousdtransportation</i>	Jul 1, 2018	Jun 30, 2019	12	119.00	33.00	3	1,188.00
Talk Advanced Subscription (Per Agent) <i>ousdtransportation</i>	Jul 1, 2018	Jun 30, 2019	12	39.00	26.52	3	954.72
Chat Advanced Subscription (Per Agent) <i>ousdtransportation</i>	Jul 1, 2018	Jun 30, 2019	12	25.00	18.75	3	675.00
Talk Telephony Credits (Credits) <i>ousd-enroll</i>	Jul 1, 2018	Jun 30, 2019	1	0.01	0.01	103100	1,000.00
Support Enterprise Subscription (Per Agent) <i>ousd-enroll</i>	Jul 1, 2018	Jun 30, 2019	12	119.00	33.00	15	5,940.00
Talk Advanced Subscription (Per Agent) <i>ousd-enroll</i>	Jul 1, 2018	Jun 30, 2019	12	39.00	26.52	15	4,773.60
Chat Advanced Subscription (Per Agent) <i>ousd-enroll</i>	Jul 1, 2018	Jun 30, 2019	12	25.00	18.75	15	3,375.00
Support Enterprise Subscription (Per Agent) <i>ousd</i>	Jul 1, 2018	Jun 30, 2019	12	119.00	33.00	6	2,376.00
Chat Advanced Subscription (Per Agent) <i>ousdhr</i>	Jul 1, 2018	Jun 30, 2019	12	25.00	18.75	24	5,400.00
Talk Advanced Subscription (Per Agent) <i>ousdhr</i>	Jul 1, 2018	Jun 30, 2019	12	39.00	26.52	24	7,637.76

Support Enterprise Subscription (Per Agent) <i>ousdhr</i>	Jul 1, 2018	Jun 30, 2019	12	119.00	33.00	34	13,464.00
Grand Total:							79,352.48

***First Invoice Total Due: 21,338.12**

The First Invoice Total calculation is determined by the Payment Frequency displayed above and may differ from the Grand Total in cases where this Payment Frequency is a shorter term than the Contract Term (determined by the Service Start Date and the Service End Date).

SPECIAL TERMS AND NOTES

Subscriber consents to the identification of Subscriber as a customer of Zendesk on Zendesk Group's websites, and in other marketing materials distributed by the Zendesk Group (which may include emails and other web and print materials) (collectively, "Zendesk Marketing Materials"). In connection with such activity, Zendesk may also display Subscriber's trademarks, service marks, and/or logos in Zendesk Marketing Materials. The foregoing shall be deemed a worldwide, nonexclusive and (except as set forth below) irrevocable license to the use of Subscriber's name, trademarks, service marks, and logos for this purpose. The Parties agree that such license and consent shall terminate upon termination of Subscriber's subscription to all Services.

Subject to prior approval of Subscriber, Subscriber also agrees to be referenced in press releases, case studies prepared by Zendesk, Zendesk's announcement of its financial results, Zendesk's filings with the U.S. Securities and Exchange Commission related thereto, and Zendesk investor relations materials (collectively, "Zendesk Press Materials"). In connection with such activity, Zendesk may also use and display Subscriber's trademarks, service marks, and/or logos in Zendesk Press Materials. The foregoing shall be deemed a worldwide, nonexclusive and (except as set forth below) irrevocable license to the use of Subscriber's name, trademarks, service marks, and logos for this purpose. The Parties agree that such license and consent shall terminate upon termination of Subscriber's subscription to all Services.

TERMS AND CONDITIONS

The products and services provided by Zendesk under this Service Order Form ("Order Form") are governed by and subject to the Master Subscription Agreement found at: <https://www.zendesk.com/company/customers-partners/#master-subscription-agreement> unless there is a separately negotiated agreement between you and Zendesk along with the Privacy Policy found at: <https://www.zendesk.com/company/customers-partners/#privacy-policy> (collectively, the "Agreement").

The Agreement exclusively governs the relationship and agreement between Zendesk and Subscriber related to the Services (as defined in the Agreement) and Consulting Services (as defined in the Agreement); and, supersedes any other agreement/purported terms of any type, including, without limitation, the terms of any purchase order or other ordering document that may be referenced herein or otherwise issued by Subscriber. No purported modification of the Agreement by Subscriber or any terms or conditions of any purchase order or other similar document shall have any force or effect regardless of any statement to the contrary in such modification, purchase order or other document. This Order Form shall be subject to, and Subscriber hereby unconditionally accepts, the Agreement, except to the extent the Agreement is expressly modified herein. Upon Subscriber executing this Order Form, the Agreement shall become legally binding between the parties.

The Subscription Term for any Agents added by Subscriber after the beginning of the then-current Subscription Term ("Additional Agents") shall be coterminous with the then current Subscription Term for the existing Agents. Subscription Charges for Additional Agents shall be at the Subscriber's Subscription Charges under the then current Subscription Term, unless otherwise expressly agreed by the parties in writing. Any discount provided to Subscriber is applicable only to the initial Subscription Term detailed in this Service Order, unless otherwise expressly agreed by the parties in writing, and will not be applied to any subsequent Subscription Term.

Payments made by credit card or debit card are billed and processed by Zendesk, Inc. if denominated in U.S. dollars and by Zendesk International Ltd (Registration No. 519184) if denominated in a currency other than the U.S. dollar. To the extent that any such entity billing or processing this transaction (the "Zendesk Payment Agent") is not Zendesk, Inc., the Billing Entity is acting solely as a billing and processing agent for and on behalf of Zendesk, Inc. for the economic benefit of Zendesk, Inc. in its role as principal and the Zendesk Payment Agent has no interest in the payments. You are contracting with and the Services and Consulting Services are provided and delivered by Zendesk, Inc.

PURCHASE ORDER OPTIONS

My organization requests you reference a Purchase Order (PO#)

Subscriber acknowledges and agrees that any reference to a purchase order in this Form or any associated invoice is solely for Subscriber's convenience in record keeping, and no such reference or any delivery of Services to Subscriber following receipt of any purchase order shall be deemed an acknowledgement of or agreement to any terms or conditions associated with any such purchase order or in any way be deemed to modify, alter, supersede or supplement the Agreement. The terms and conditions of the Agreement are the exclusive agreement of the parties with respect to the subject matter hereof and no other terms or conditions shall be binding upon Zendesk or otherwise have any force or effect.



1019 Market Street
San Francisco, CA 94103

SERVICE ORDER FORM

SIGNATURES

By signing this Form the Subscriber authorizes that it has read it and agrees to its terms.

Subscriber Signature:
DocuSigned by:

Susan Beltr
153A970683AF4DB

Title:

Chief Technology Officer

Print Name:

susan Beltr

Date:

7/16/2018

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By: *Amy Brandt* 8-29-18
Amy Brandt, Attorney at Law



MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement (the "Agreement"), together with any Order Form (as defined herein) referencing this Agreement by and between the party detailed below with the address as set forth on the Order Form ("Subscriber," "You" or "Your") and Zendesk (as defined herein) contain the terms and conditions that govern access to and use of our Services. Subscriber and Zendesk are sometimes referred to herein individually as a "Party" and together as the "Parties." In consideration of the mutual promises and upon the terms and conditions herein, the Parties agree as follows:

Each Party represents and warrants to the other that (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such Party's execution, delivery or performance of the Agreement; and (c) the execution, delivery and performance of the Agreement does not and will not violate the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound, or any applicable law or regulation.

The purpose of this Agreement is to establish the terms and conditions under which Subscriber may purchase Zendesk's Services and Consulting Services as described in an Order Form or Statement of Work signed by You. This Agreement, including all Order Forms, Exhibits, Supplemental Terms, Statements of Work, any Data Processing Agreement ("DPA"), and any Business Associate Agreement ("BAA") (each, where applicable), constitutes the entire agreement between You and Zendesk with regard to the Services to be provided and/or Consulting Services to be performed by Zendesk and supersedes all prior agreements, understandings, statements, proposal and representations, whether written or oral, between the Parties. In the event of any inconsistency or conflict between the terms of the Agreement and the terms of any Order Form or Statement of Work the terms of the Order Form or Statement of Work shall control.

The following Exhibits are incorporated as a part of this Agreement:

- Exhibit A: General Terms and Conditions**
- Exhibit B: Supplemental Terms and Conditions**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized officers or representatives as of the last date of execution below ("Effective Date"):

SUBSCRIBER: Oakland Unified School District		ZENDESK, INC.	
BY		BY	
NAME		NAME	
TITLE		TITLE	
DATE		DATE	



OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By: *Amy Brandt* 8.29.18
Amy Brandt, Attorney at Law

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Exhibit A: General Terms and Conditions

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14. Export Compliance and Use Restrictions
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19. Anti-Corruption
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Exhibit B: Supplemental Terms and Conditions

1. Service-Specific Terms
2. How We Protect Service Data
3. Country-Specific Terms
4. Consulting Services

EXHIBIT A: GENERAL TERMS AND CONDITIONS

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:

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

1.2 Additional Feature(s): means additional features or functionality (including, but not limited to, Our API or SDK, Built by Zendesk Marketplace Applications, Early Access Programs, or Beta Services) that are available or enabled through the Service, but do not form part of the Service. Additional Features are purchased or enabled separately and distinctly from Your Service Plan and Deployed Associated Services.

1.3 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.

1.4 Agent: means an individual (including those of Your Affiliates) authorized to use a Service through Your Account as an agent and/or administrator as identified through a unique login.

1.5 Agreement: means the Master Subscription Agreement together with any and all Supplemental Terms, Order Forms, Statements of Work ("SOW"), BAA, and DPA (each, where applicable) along with the Zendesk Privacy Policy located on Our Site.

1.6 API: means the application programming interfaces developed 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.

1.7 Applicable Data Protection Law: means the following data protection law(s): (i) where You (acting as data controller or data processor) are established in an European Economic Area ("EEA") member state or where Your Agents or End-Users access the Services from an European Economic Area ("EEA") member state the EU Regulation 2016/679 entitled "On the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)" and any applicable national laws made

under it; and (ii) where You are established in Switzerland, the Swiss Federal Act of 19 June 1992 on Data Protection (as may be amended or superseded).

1.8 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. For avoidance of doubt, Additional Features that are expressly stated to be governed by separate Supplemental Terms shall not be deemed an Associated Service.

1.9 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.

1.10 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).

1.11 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 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, 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 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 use of the disclosing Party's Confidential Information.

1.12 Consulting Services: means consulting and professional services (including any training, success or implementation services) provided by Zendesk or its authorized subcontractors as indicated on an Order Form or other written document such as a SOW.

1.13 Documentation: means any written or electronic documentation, images, video, text or sounds specifying the functionalities of the Services or describing Service Plans, 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).

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

1.15 Order Form: means any of Our generated service order forms executed or approved by You with respect to Your subscription to a Service, which 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.

1.16 Payment Agent: means Zendesk, Inc. or a payment agent designated by Zendesk. For example, if You choose to pay for a Service with a credit card or certain other payment instruments in a currency other than the U.S. Dollar, Zendesk may designate the Payment Agent to be Zendesk International Limited, a corporation organized under the laws of Ireland, Registration No. 519184.

1.17 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.

1.18 Personnel: means employees and/or non-employee service providers and contractors of the Zendesk Group engaged by the Zendesk Group in connection with performance hereunder.

1.19 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.

1.20 Service(s): means the products and services that are ordered by You 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") that are provided under this Agreement. "Services" exclude (i) Third Party Services as that term is defined in this Agreement; and (ii) 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 Order Form or other prior acceptance of this Agreement, this Agreement shall be deemed to apply to such Service as newly named or described.

1.21 Service Data: means 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, which may include, without limitation, Personal Data.

1.22 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.

1.23 Site: means a website operated by the Zendesk Group, including www.zendesk.com, as well as all other websites that the Zendesk Group operates.

1.24 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.

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

1.26 Supplemental Terms: means the additional terms and conditions that are (a) contained in Exhibit B to this Agreement entitled, "Supplemental Terms and Conditions"; (b) included or incorporated on an Order Form via hyperlink or other reference (e.g. when a Deployed Associated Service is purchased); (c) applicable to Consulting Services when purchased by You; or (d) applicable to Additional Features when activated by You.

1.27 Third Party Services: means third party products, applications, services, software, networks, systems, directories, websites, databases and information obtained separately by You which a Service links to, or which You may connect to or enable in conjunction with a Service, including, without limitation, Third Party Services which may be integrated directly into Your Account by You or at Your direction.

1.28 "We," "Us" or "Our": means Zendesk as defined below.

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

1.30 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, 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. An Affiliate may purchase a subscription to the Services under this Agreement provided that You or such Affiliate executes an Order Form for such Services. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Subscriber also agrees that it will be responsible for its Affiliates' compliance with this Agreement.

2.2 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; (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, Third Party Services, or acts undertaken by third parties, including without limitation, denial of service attack ("Force Majeure Event").

2.3 We will notify You of applicable Supplemental Terms prior to Your activation of any Additional Features. The activation of any Additional Features by You in Your Account will be considered acceptance of the applicable Supplemental Terms.

2.4 You may not use the Services to provide outsourced business process services, such as customer service or support, on behalf of more than one (1) 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 accordance with Section 2.3 above.

2.5 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.

2.6 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 Services 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 Services 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 online web browser; or (n) attempt to use, or use the Services in violation of this Agreement.

2.7 As between You and Zendesk, 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. 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. Zendesk reserves the right to periodically verify that Your use of the Zendesk Services complies with the Agreement and the Service Plan restrictions on Our Site. Should Zendesk discover that Your use of a Zendesk Service is not in compliance with this Agreement or the Service Plan restrictions on Our Site, Zendesk reserves the right to charge You, and You hereby agree to pay for, said usage in addition to other remedies available to Us.

2.8 In addition to Our rights as set forth in Sections 2 and 8.4, 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.

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

2.10 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 competitive purposes.

2.11 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. 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.

2.12 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 Supplemental 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 Third Party 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 Party may use each other'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. The provisions of this Section 3.1 shall supersede any non-disclosure agreement by and between the Parties and such agreement shall have no further force or effect.

We understand that student records are considered Your Confidential Information and agree to comply with the confidentiality obligations outlined herein.

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 Your 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 Sections 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 and the Security Measures set forth in Exhibit B, Section 2 ("How We Protect Service Data") 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 Applicable Data Protection Law. 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 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 Applicable Data Protection Law or any relevant law or regulation of any Member State as defined in Applicable Data Protection Law.

3.4 If Personal Data originates from an Agent or End-User in the EEA, We will ensure that, pursuant to Applicable Data Protection Law, 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 46 GDPR (or its equivalent under any successor legislation) is satisfied; (c) done so on the basis of Zendesk's approved binding corporate rules known as the Zendesk Binding Corporate Rules ("Zendesk's BCR") which establish adequate protection of such personal information and are legally binding on the Zendesk Group (Zendesk's BCR can be accessed at <https://d1eipm3vz40hy0.cloudfront.net/pdf/ZENDESK%20-%20BCR%20Processor%20Policy.pdf>); or (d) the transfer is via the EU-U.S. or Swiss-U.S. Privacy Shield frameworks. Upon Your request and subject to Your entry into Zendesk's 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.

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 or improve 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 3.4.

3.6 Whenever You, Your Agents or End-Users interact with Our Services, We automatically receive and record information on Our server logs from the browser or device, which may include IP address, "cookie" information, and the type of browser and/or device being used to access the Services. "Cookies" are identifiers We transfer to the browser or device of Your Agents or End-Users that allow Us to recognize Agent or End-User and their browser or device along with how our Services are being utilized. When We collect this information, We only use this data in aggregate form, and not in a manner that would identify Your Agents or End-Users personally. For example, this aggregate data can tell Us how often users use a particular feature of the Services, and We can use that knowledge to improve the Services.

3.7 We receive and store any information that You knowingly provide to Us. For example, through the registration process for Our Services and/or through your Account settings, We may collect Personal Data such as your name, email address, phone number, credit card information and third-party account credentials (for example, your login credentials for third party sites that integrate with the Services as further detailed in Section 3.9) of You and Your Agents. In addition, We may communicate with You and Your Agents. For example, We may send You and Your Agents product announcements and promotional offers or contact You and Your Agents about Your use of the Services. If You or an Agent does not want to receive communications from Us, please indicate this preference by sending an email to privacy@zendesk.com and provide us with the name and email address of each Agent that no longer wishes to receive these communications.

3.8 We never sell, rent, or lease Your Service Data to any third party. We do not share Your Service Data with third parties, except as permitted by Section 3.5 of this Agreement and in order to provide and support the Services. We may, however, share aggregated and anonymized information regarding Your use of the Services with third parties as described in this Section. To be clear, we would never disclose aggregated and/or anonymized information to a third party in a manner that would identify You as the source of the information or Your Agents or End-Users personally, as an individual.

3.8.1 Zendesk Benchmark. You have the choice whether to enable (i.e., opt-in) Zendesk Benchmark from within the settings in the Services. If You do not wish to participate in Zendesk Benchmark then You should not enable Zendesk Benchmark. If enabled, Zendesk Benchmark aggregates and anonymizes the Personal Data of Your Agents and Service Data and publishes this information, segmented by industry, geography, and other metrics, in order to provide qualitative insight on customer support metrics and other relevant insights.

3.8.2 Improving the Services. The Zendesk Group uses third party analytics providers in the following ways for the purpose of assessing and improving the usage of our Services.

(i) **Usage Data.** Third party analytics providers may collect metrics information regarding Your use of the Service(s), including evaluating how Agents and End-Users use the Services ("Usage Data"). To be clear, although Usage Data may be derived from aggregated and anonymized Service Data, it does not include actual Service Data or Personal Data. Usage Data is used to compile reports on activity within the Services for the Zendesk Group to improve the Services. The third party analytics providers will not share or otherwise disclose Usage Data, although We may make Usage Data publicly available from time to time.

(ii) **Anonymized Data.** We may anonymize the Personal Data of your Agents or End-Users so they cannot be individually identified, and provide that information to third party analytics providers for analysis. We will use this information to maintain, enhance, or add to the functionality of the Service(s) and to personalize the user experience. The third party analytics providers will not share or otherwise disclose this information.

3.9 Zendesk may also obtain other information, including Personal Data, from third parties and combine that with information We collect through Our Services such as in the case where You use a Third Party Service or where We may have access to certain information from a third party social media or authentication service if You log into Our Services through such service or otherwise provide Us with access to information from such 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: <https://www.zendesk.com/company>

4. INTELLECTUAL PROPERTY RIGHTS

Each Party shall retain all rights, title and interest in and to all its 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-Users, 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 found here: <https://www.zendesk.com/company/trademark-property/#trademarks> 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 Third Party Services, be advised that Your access and use of such Third Party Services are governed solely by the terms and conditions of such Third Party Services, and We do not endorse, are not responsible or liable for, and make no representations as to any aspect of such Third Party 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 Third Party Services. We cannot guarantee the continued availability of such Third Party 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 Third Party Service ceases to make the Third Party

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 Third Party 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 Third Party Services, or Your reliance on the privacy practices, data security processes or other policies of such Third Party Services. You may be required to register for or log into such Third Party Services on their respective websites. By enabling any Third Party 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 Third Party Services.

6. BILLING, PLAN MODIFICATIONS AND PAYMENTS

6.1 Unless otherwise indicated on an Order Form or Statement of Work referencing this Agreement or in the Supplemental Terms, and subject to Section 6.2, all charges associated with Your access to and use of a Service ("Subscription Charges") are due in full upon commencement of Your Subscription Term, or, with respect to a Deployed Associated Service, at the time such Deployed Associated Service is purchased, subscribed to or otherwise deployed. If You fail to pay Your Subscription Charges or other charges indicated on any Order Form within ten(10) business days of Our notice to You that payment is due or delinquent, or if You do not update payment information upon Our request, in addition to Our other remedies, We may suspend or terminate access to and use of such Service by You, Agents and End-Users.

6.2 If You choose to upgrade Your Service Plan or increase the number of Agents authorized to access and use a Service during Your Subscription Term (a "Subscription Upgrade"), any incremental Subscription Charges associated with such Subscription Upgrade will be prorated over the remaining period of Your then current Subscription Term, charged to Your Account and due and payable upon implementation of such Subscription Upgrade. In any future Subscription Term, Your Subscription Charges will reflect any such Subscription Upgrades.

6.3 No refunds or credits for Subscription Charges or other fees or payments will be provided to You if You elect to downgrade Your Service Plan. Downgrading Your Service Plan may cause loss of content, features, or capacity of the Service as available to You under Your Account, and Zendesk does not accept any liability for such loss.

6.4 Unless otherwise stated, Our charges do not include any taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes assessable by any local, state, provincial or foreign jurisdiction (collectively "Taxes"). You are responsible for paying Taxes, except those assessable against the Zendesk Group measured

by its net income. We will invoice You for such Taxes if We believe We have a legal obligation to do so and You agree to pay such Taxes if so invoiced.

6.5 If You pay by credit card or certain other payment instruments, the Services provide an interface for the Account owner to change credit card information (e.g. upon card renewal). The Account owner will receive a receipt upon each acceptance of payment by the Payment Agent, or they may obtain a receipt from within the Services to track subscription status. You hereby authorize the Payment Agent to bill Your credit card or other payment instrument in advance on a periodic basis in accordance with the terms of the Service Plan for the Services and for periodic Subscription Charges applicable to Deployed Associated Services to which You subscribe until Your subscription to the Services terminates, and You further agree to pay any Subscription Charges so incurred. If applicable, You hereby authorize Zendesk and the Payment Agent to charge Your credit card or other payment instrument to establish such prepaid credit. You agree to promptly update Your Account information with any changes (for example, a change in Your billing address or credit card expiration date) that may occur. The Payment Agent uses a third-party intermediary to manage credit card processing and this intermediary is not permitted to store, retain or use Your billing information except to process Your credit card information for the Payment Agent.

6.6 Payments made by credit card, debit card or certain other payment instruments for the Zendesk Service are billed and processed by Zendesk's Payment Agent. To the extent the Payment Agent is not Zendesk, the Payment Agent is acting solely as a billing and processing agent for and on behalf of Zendesk and shall not be construed to be providing the applicable Service.

6.7 If You mandate Zendesk use a vendor payment portal or compliance portal which charges Zendesk a subscription fee or a percentage of any uploaded invoice as a required cost of doing business, You shall be invoiced by Zendesk for, and You are obligated to pay, the cost of this fee.

7. PROMOTIONAL 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 for Zendesk services such as training. 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 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.

8. CANCELLATION AND TERMINATION

8.1 Either Party may elect to terminate Your Account and subscription to a Service as of the end of Your then current Subscription Term by providing notice, in accordance with this Agreement, on or prior to the date sixty (60) days preceding the end of such Subscription Term. Unless Your Account and subscription to a Service is so terminated, Your subscription to a Service (including any and all Deployed Associated Services) will renew for a Subscription Term equivalent in length to the then expiring Subscription Term. Unless otherwise provided for in an Order Form, the Subscription Charges applicable to Your subscription to a Service for any such subsequent Subscription Term shall be Our standard Subscription Charges for the Service Plan and Deployed Associated Services to which You have subscribed or which You have deployed, as applicable, as of the time such subsequent Subscription Term commences.

8.2 No refunds or credits for Subscription Charges or other fees or payments will be provided to You if You elect to terminate Your subscription to the Service or cancel Your Account prior to the end of Your then effective Subscription Term.

8.3 Except for Your termination under Section 8.5, if You terminate Your subscription to a Service or cancel Your Account prior to the end of Your then effective Subscription Term or We effect such termination or cancellation pursuant to Sections 8.4 and 8.5, in addition to other amounts You may owe Zendesk, You must immediately pay any then unpaid Subscription Charges associated with the remainder of such Subscription Term. This amount will not be payable by You in the event You terminate Your subscription to a Service or cancel Your Account as a result of a material breach of this Agreement by Zendesk, provided that You provide advance notice of such breach to Zendesk and afford Zendesk no less than thirty (30) days to reasonably cure such breach as provided for in Section 8.5 herein.

8.4 We reserve the right to restrict functionality, 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 quarantine any Service Data if We believe that You, Agents or End-Users have violated this Agreement. This right 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. 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.

8.5 A Party may terminate this Agreement for cause (a) upon written notice to the other Party of a material breach if such breach remains uncured at the expiration of thirty (30) days from the date of the breaching Party's 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. 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 pursuant to all applicable 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.

8.6 Upon request by You made within thirty (30) days after the effective date of termination or expiration of this Agreement, We will make 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 Service Data, and, as provided in the Documentation, will have the right to delete or destroy all copies of Service Data in Our systems or otherwise in Our possession or control, unless prohibited by law.

9. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

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

9.2 We warrant 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 above, Your exclusive remedies are those described in Section 8.5 herein.

9.3 EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 9.2, 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.

10. LIMITATION OF LIABILITY

10.1 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, SUPPLIERS OR LICENSORS BE LIABLE TO THE OTHER PARTY OR ANY AFFILIATE FOR ANY LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA (BEING DATA LOST IN THE COURSE OF TRANSMISSION VIA YOUR SYSTEMS OR OVER THE INTERNET THROUGH NO FAULT OF ZENDESK), 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 THE OTHER PARTY OR ANY AFFILIATE 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.

10.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT WITH RESPECT TO (I) EACH PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 11; (II) A PARTY'S MISUSE OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; AND (III) SUBSCRIBER'S OBLIGATION TO PAY SUBSCRIPTION CHARGES, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER, ANY AFFILIATE, OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT, THE SERVICES OR CONSULTING SERVICES, SHALL IN NO EVENT EXCEED THE SUBSCRIPTION CHARGES AND/OR CONSULTING FEES PAID BY YOU 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 10.2 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE SUBSCRIPTION CHARGES AND CONSULTING FEES, 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 WITH THE RIGHTS TO ACCESS AND USE THE SERVICES AND/OR THE CONSULTING SERVICES PROVIDED FOR IN THIS AGREEMENT. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN WILL APPLY IN AGGREGATE TO SUBSCRIBER AND ITS AFFILIATES AND SHALL NOT BE CUMULATIVE.

10.3 Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages or for personal injury or death, 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.

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

11. INDEMNIFICATION

11.1 We will indemnify and hold You harmless from and against any claim brought by a third party against You by reason of Your use of a Service as permitted hereunder, 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 11.1 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 11.1 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.

11.2 You will indemnify and hold Zendesk harmless against any claim (i) arising from or related to use of a Service by You, Agents or End-Users in breach of this Agreement; or (ii) alleging that the intellectual property rights of a third party have been violated; provided (a) We 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 admission of any liability by Us without Our prior written consent); and (c) We fully cooperate with You in connection therewith.

12. ASSIGNMENT, ENTIRE AGREEMENT AND AMENDMENT

12.1 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 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. 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.

12.2 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. 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.

12.3 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.

13. 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.

14. 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.

15. RELATIONSHIP OF THE PARTIES
The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

16. NOTICE

All notices 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 the earlier of receipt or two (2) business days after being deposited in the mail or with a Courier as permitted above.

17. 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 Alameda 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.

18. 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.

19. 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.

20. SURVIVAL

Sections 1, 3.1, 4 and 9-20 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.

EXHIBIT B: 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 Chat Service ("Zendesk Chat"):

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

If You are accessing and using Zendesk Chat in connection with an integration to a third party messaging platform (e.g. Facebook Messenger), You hereby acknowledge that such messaging platforms are Third Party Services and certify that You have agreed to the terms of service that such third party uses to govern use of their platform. If You use such Third Party Service functionality, You hereby represent that You have provided notice to and received all necessary consents from Your End-Users to contact such End-Users using Zendesk Chat and/or the Third Party Services You enable within Your Account. Further, You agree that Your Service Data may be transferred to and processed by the Third Party Services that You enable in Zendesk Chat as necessary to provide the Service.

You agree not to use any functionality of Zendesk Chat that integrates with third party messaging platforms to (i) facilitate conversations between End-Users and healthcare providers or to send; or (ii) collect any patient data obtained from healthcare providers. Use of Zendesk Chat is subject to the obligation to pay Subscription Charges and the use restrictions described on the Site. By enabling or otherwise using Zendesk Chat, You are agreeing to pay the Subscription Charges and agreeing to the feature restrictions described on the Site.

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.

At Zendesk's election, Subscription Charges and usage fees for Zendesk Talk may be charged in arrears or by requiring You to prepay for expected usage. To the extent that You have or are required to prepay for expected usage of Zendesk Talk, Your credit card will automatically be charged with the same amount and by the same payment method chosen when You first establish a prepaid credit for Zendesk Talk, or by such additional amount You request as a regular prepaid credit.

If You prepay for Zendesk Talk via check, wire, or ACH, Zendesk reserves the right to automatically re-invoice You for the same amount as the previous pre-payment amount if Your balance approaches \$0.00. If You wish to cancel or change this automatic recharge option, then You should contact Your Sales Representative or support@zendesk.com. Zendesk Talk usage credits will expire one (1) year from the date of purchase if unused at that time.

If Your Zendesk Talk Service Plan includes Zendesk Text, then You agree that only Your 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 the Agreement 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 the Agreement and the Zendesk Talk Service Plan restrictions on Our Site, Zendesk reserves the right to charge You, and You hereby agree to pay for, said usage in addition to other remedies available to Us.

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 at: <https://www.zendesk.com/talk/pricing/>. By enabling or otherwise using Zendesk Talk, You are agreeing to pay these charges. Usage fees and charges are subject to change and may be revised by Zendesk at any time. Any changes made to usage fees will be made across all Subscribers and will not be targeted towards individual Subscribers.

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 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 Subscription Charges as detailed on the Site. By enabling or otherwise using Zendesk Explore, You are agreeing to pay all applicable fees and charges with Your use of Zendesk Explore.

Supplemental Terms for Zendesk's Guide Service ("Zendesk Guide"):

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

Use of Zendesk Guide is subject to the obligation to pay applicable Subscription Charges as stated here: <https://www.zendesk.com/answer-bot/#pricing>. Some features of Zendesk Guide may be subject to additional Subscription Charges and Consumption Capacity limits as explained on the Zendesk Guide pricing page on the Site. By enabling or otherwise using Zendesk Guide, You are agreeing to pay these charges and agreeing to the applicable feature terms. "Consumption Capacity," as it relates to Zendesk Guide, means the maximum number of Ticket deflections available to You using the Answer Bot feature of Zendesk Guide for the Service Plan to which You subscribe.

Subscription Charges for certain Zendesk Guide features may be charged in arrears or require You to prepay for expected consumption. Unless an earlier expiration date is communicated to You at time of purchase, Consumption

Capacity will expire and no longer be redeemable at the end of the time period to which the Consumption Capacity is allocated. If Your Account reaches a Consumption Capacity limit during the applicable time period, the functionality of the relevant feature will not be available in Your Account until the beginning of the next time period unless You purchase additional Consumption Capacity by upgrading to a higher Service Plan.

Supplemental Terms for Zendesk's Connect Service ("Zendesk Connect"):

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

1. Subscription Charges and Monthly Messaged Users.

Use of Zendesk Connect is subject to the obligation to pay applicable Subscription Charges as stated on the pricing pages of the Site. Unless an earlier expiration date is communicated to You at time of purchase, Monthly Messaged Users will expire and no longer be redeemable at the end of the month to which the Monthly Message User amount is allocated. "Monthly Messaged Users," as it relates to Zendesk Connect, means the maximum amount of individual End-Users You may contact in a given month under the Zendesk Connect Monthly Messaged User tier to which You subscribe. In no event will Monthly Messaged Users carry over outside of the month to which it is allocated. If Your Account reaches a Monthly Messaged User limit during the applicable month and You continue to contact additional End-Users during the month, You will be upgraded to the subscription tier applicable to Your actual Monthly Messaged User amount for the remainder of Your Subscription Term as described on the Site.

2. End-User Consent

You hereby represent that You have provided notice to and received all necessary consents from Your End-Users to contact them using Zendesk Connect.

3. Third Party Services

Zendesk Connect provides functionality that allows You to enable Third Party Services within Zendesk Connect to send campaigns to End-Users through the Third Party Service. If You are accessing and using Zendesk Connect in connection with an integration to a Third Party Service, You hereby acknowledge that such providers are Third Party Services and certify that You have agreed to the terms of service that such

third party uses to govern use of their platform. If You use such Third Party Services, You hereby represent that You have provided notice to and received all necessary consents from Your End-Users to contact such End-Users using Zendesk Connect and/or the Third Party Services You enable within Your Account. Further, You agree that Your Service Data may be transferred to and processed by the Third Party Service that You enable in Zendesk Connect as necessary to provide the Service.

4. Restrictions

You are prohibited from putting the following types of information into Zendesk Connect's email campaign functionality: (a) social security number, passport number, driver's license number, or similar identifier (or any portion thereof); (b) credit or debit card number, financial information, banking account numbers or passwords; (c) employment, financial, or health information; (d) political, ethnic, or religious affiliation, union membership, or sexual orientation; (e) account passwords, mother's maiden name, or date of birth; (f) criminal history; or (g) any other information or combinations of information that is deemed sensitive under the legal framework of any applicable jurisdiction.

Further, You are prohibited from engaging in the following activities in Your use of the Zendesk Connect email campaign functionality: (a) using non-permission based email lists (i.e., lists in which each recipient has not explicitly granted permission to receive emails from You by affirmatively opting-in to receive those emails); (b) using purchased or rented email lists; (c) using third party email addresses, domain names, or mail servers without proper permission; (d) sending emails to non-specific addresses (e.g., webmaster@domain.com or info@domain.com); (e) sending emails that result in an unacceptable number of spam or UCE complaints (even if the emails themselves are not actually spam or UCE); (f) failing to include a working "unsubscribe" link in each email that allows the recipient to remove themselves from Your mailing list; (g) failing to comply with any request from a recipient to be removed from Your mailing list within ten (10) days of receipt of the request; (h) failing to include in each email a link to the then-current privacy policy applicable to that email; (i) disguising the origin or subject matter of any email or falsifying or manipulating the originating email address, subject line, headers, or transmission path information for any email; (j) failing to include in each email Your valid physical mailing address or a link to that information; and (k) including "junk mail," "chain letters," "pyramid schemes," incentives (e.g., coupons, discounts, awards, or other incentives) or other material in any email that encourages a recipient to forward the email to another recipient. You will not use Zendesk Connect's email campaign functionality for high risk activities which shall mean uses such as the operation of nuclear facilities, air traffic control, life support systems or where the use or failure of

Zendesk Connect could lead to death, personal injury, or environmental damage. You shall be solely responsible for ensuring that Your use of the Service, including without limitation Your provision of Service Data to Zendesk Connect through Services, complies with all applicable laws, rules, regulations, industry self-regulatory regimes and third-party contracts, terms and policies, including without limitation the initiator obligations under CAN-SPAM or other email marketing regulations, telephone recording and wiretapping laws and laws related to telemarketing and spam, such as the Telephone Consumer Protection Act and for obtaining all consents, authorizations and clearances from Customer's End-Users, Third Party Services and any other third parties that may be required in connection therewith.

Zendesk does not intend use of the Zendesk Connect's email campaign functionality to create obligations under The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Gramm-Leach-Bliley Act ("GLBA") or similar laws and makes no representations that the Service's email campaign functionality satisfies the requirements of such laws. If You are (or become) a Covered Entity or Business Associate (as defined in HIPAA) or a Financial Institution (as defined in GLBA), You agree not to use Zendesk Connect's email campaign functionality for any purpose or in any manner involving Protected Health Information (as defined in HIPAA) or Nonpublic Personal Information (as defined in GLBA).

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 that will be provided to You on the corresponding Order Form which will supplement the Agreement:

- Light Agent Deployed Associated Service for Zendesk Support
- High Volume API Deployed Associated Service for Zendesk Support
- Data Center Location Deployed Associated Service for Zendesk Support
- Priority Customer Support Deployed Associated Service for Zendesk Support
- Premier Customer Support Deployed Associated Service for Zendesk Support
- Advanced Security Deployed Associated Service for Zendesk Support
- Premium Sandbox Deployed Associated 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 found at: <https://www.zendesk.com/company/customers-partners/application-developer-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 found at: <https://www.zendesk.com/company/customers-partners/#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).

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 these Security Measures to protect 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 and 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 any Third Party Service that does 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 Our systems or data that includes a response time under which Zendesk will contact its subscribers upon verification of a security incident that affects Your Service Data. This process specifies courses of action, procedures for notification, escalation, mitigation, and documentation. The incident response program includes 24x7 centralized monitoring systems and on-call staffing to respond to service incidents.

4. Access Control and Privilege Management. We restrict administrative access to subscriber 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 uninterruptible 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, such as security personnel and secured buildings and factory premises, to prevent unauthorized persons from gaining physical 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 provider is made via a secure transmission.

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.

SECTION 3: COUNTRY-SPECIFIC TERMS

The following country-specific terms may be applicable to Your use of the Service.

Japan:

You agree that You are responsible for (i) 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 Agreement; and (ii) obtaining prior consent from End-Users to disclose their Personal Data to Us.

Brazil:

You agree that You are responsible for notifying End-Users that Personal Data is collected, stored, used and/or processed by the Zendesk Group, as described in this Agreement and is collected, stored, used and/or processed in accordance with Brazilian Law No. 12,965/2014. You agree You are responsible for notifying End-Users that by using our Services they expressly consent to the collection, use, storage and processing of their Personal Data by us as described.

Australia:

You agree that You are responsible for notifying End-Users that Personal Data collected, stored, used and/or processed by the Zendesk Group, as described in this Agreement, is collected, stored, used and/or processed in compliance with the Australian Privacy Act 1988 (Commonwealth) and the Australian Privacy Principles as we further detail here: <https://www.zendesk.com/company/anz-privacy>. You are responsible for notifying End-Users that if they are dissatisfied with our handling of a complaint or do not agree with the resolution proposed by Us, they may make a complaint to the Office of the Australian Information Commissioner (OAIC) by contacting the OAIC using the methods listed on their website at <http://www.oaic.gov.au>. Alternatively, they may request that We pass on the details of their complaint to the OAIC directly.

New Zealand:

You agree that You are responsible for notifying End-Users that Personal Data collected, stored, used and/or processed by the Zendesk Group, as described in this Agreement, 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: <https://www.zendesk.com/company/anz-privacy>.

Singapore:

You agree that You are responsible for notifying End-Users that Personal Data collected, stored, used and/or processed by the Zendesk Group, as described in this Agreement, 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: <https://www.zendesk.com/company/singapore-pdpa/>.

Canada:

You agree that You are reasonable for notifying End-Users that 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.

SECTION 4: CONSULTING SERVICES

If Subscriber has engaged Zendesk for the provision of professional services (including any training, success, and implementation services, "Consulting Services") as indicated on an Order Form or other written document such as a Statement of Work, 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 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 Consulting Services to be provided.

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 with respect to such Consulting Services. 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 about Consulting Services, including, at a minimum, the Consulting Fees charged and the Consulting Services provided. 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 through 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"). 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 Consulting 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 and the deliverables accepted 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. Consulting 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 "Consulting Fees"). Unless agreed upon otherwise in the applicable SOW or Order Form, Zendesk shall invoice Subscriber for the Consulting Services provided on a monthly basis. All Consulting Fees are due and payable upon date of invoice, except for Consulting 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 Consulting 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 Consulting 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 Consulting 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 Consulting 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 Consulting Fees or Expenses will become overdue thirty (30) days after payment is due and shall be subject to a late fee of 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 Consulting Services commencement date are subject to forfeiture of Consulting 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 Consulting 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 Consulting Fees or Expenses paid for Consulting Services any taxes, unemployment, social security or other such expense unless otherwise required by law.

6. Warranties.

6.1 Zendesk hereby represents and warrants that:

(a) 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 Consulting Fees paid to Zendesk by Subscriber for the nonconforming portion of the Consulting Services; and

(b) 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 The Parties hereby agree that:

EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 6.1 ABOVE, 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 DELIVERABLES") 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 DELIVERABLES. ZENDESK SHALL NOT BE RESPONSIBLE, AT LAW OR OTHERWISE, FOR ANY CUSTOMIZED DELIVERABLES DESPITE ANY OTHER WARRANTIES OR GUARANTEES, IN THE EVENT THAT SUBSCRIBER MODIFIES ANY CUSTOMIZED DELIVERABLES 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 DELIVERABLES 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 DELIVERABLES, 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 DELIVERABLES 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 of 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 Pre-existing Technology, Developed Technology and Generic Components solely in connection with Subscriber's use of the Service(s). "Pre-existing 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 Pre-existing 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.