



MASTER SUBSCRIPTION AGREEMENT

This Agreement is made and entered into by and between the party specified below with the address as set forth on the Service Order (“Subscriber,” “You” or “Your”) and Zendesk (as defined below). Subscriber and Zendesk are sometimes referred to herein individually as a “Party” and together as the “Parties.” Defined terms used in this Agreement with initial letters capitalized shall have the meaning given in the section entitled, “Definitions.”

The purpose of this Agreement is to establish the terms and conditions under which Subscriber may purchase Zendesk’s Services and Professional Services as described in a Service Order, Statement of Work or other document signed or agreed to by You.

In the event of any inconsistency or conflict between the terms of the Agreement and the terms of any Service Order or Statement of Work, the terms of the Service Order or Statement of Work shall control.

IN WITNESS WHEREOF, in consideration of the mutual promises contained in this Agreement, the Parties hereby agree to all of the terms of the Agreement, and have therefore executed this Agreement by their duly authorized officers or representatives, which shall be effective as of the last signature date below (“Effective Date”):

REFURBED GMBH (“SUBSCRIBER”)		ZENDESK, INC. (“ZENDESK”)	
BY	 F5C5A031ED054FD...	BY	 06F43CE39B914FC...
NAME	kilian kaminski	NAME	Norman Gennaro
TITLE	Managing Director	TITLE	President, Worldwide Sales
DATE	6/28/2023	DATE	6/28/2023



REFURBED GMBH (“Subscriber”)	
BY:	DocuSigned by: <i>Peter Windischhofer</i> 12AF2240D16F4AB...
NAME:	Peter Windischhofer
TITLE:	Managing Director
DATE:	6/28/2023



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GENERAL TERMS AND CONDITIONS

SECTION 1. ACCESS TO THE SERVICES

1.1 Service. We will make the Services and Your Service Data available to You pursuant to this Agreement and the applicable Service Order(s) and Documentation in accordance with Your Service Plan. We will use commercially reasonable efforts to make the Services available twenty-four (24) hours a day, seven (7) days a week, except during (a) Planned Downtime (of which We will give advance notice via Our Site or to the Account owner); and (b) Force Majeure Events.

1.2 Support. We will, at no additional charge, provide You standard customer support for the Services as detailed on the applicable Site and Documentation. We will provide You upgraded support if purchased.

1.3 Professional Services. Upon Your request, We may provide Professional Services subject to the terms and conditions stated at: <https://www.zendesk.com/company/agreements-and-terms/professional-services-terms>.

1.4 Modifications. You acknowledge that Zendesk may modify the features and functionality of the Services during the Subscription Term. Zendesk shall provide You with thirty (30) days' advance notice of any deprecation of any material feature or functionality. Zendesk will not materially decrease the overall functionality of the Services purchased by You during the Subscription Term. If, acting reasonably, Subscriber determines that such deprecation has had a material adverse effect on the Services, Subscriber shall notify Zendesk within thirty (30) days of such deprecation, in which case Zendesk shall be allowed the opportunity to mitigate such adverse effect within thirty (30) days of Subscriber's notice. If Zendesk is unable to do so, Subscriber shall be entitled to terminate the Services impacted by the deprecation. In such circumstances, Subscriber will receive a pro rata refund of all prepaid fees for such Service covering the remainder of the Subscription Term after the effective date of termination. For the avoidance of doubt, (a) material depreciations with respect to access and use of the API that limit the ability of the Subscriber to develop their own applications, and (b) material depreciations of the availability of Non-Zendesk Services (notwithstanding Section 8 of this Agreement) may qualify as deprecation of a material feature or functionality.

1.5 Additional Features. We will notify You of applicable Supplemental Terms or alternate terms and conditions prior to Your activation of any Additional Features. The activation of any Additional Features and our reference to the applicable Supplemental Terms during the activation process by You in Your Account will be considered acceptance of the applicable Supplemental Terms or alternate terms and conditions where applicable.

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

SECTION 2. USE OF THE SERVICES

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

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for such interaction. Further, Subscriber shall not use the API or any Software in such a way to circumvent applicable Service Plan restrictions or Agent licensing restrictions that are enforced in the Service user interface. Zendesk reserves the right to charge You, and You hereby agree to pay, for any overuse of a Service in violation of this Agreement or the Service Plan features and limitations on Our Site or Documentation, in addition to other remedies available to Us.

2.2 Compliance. 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, which Zendesk may verify from time to time. Without limiting the foregoing, You will ensure that Your use of the Services is compliant with all applicable laws and regulations as well as any and all privacy notices, agreements or other obligations You may maintain or enter into with Agents or End-Users.

2.3 Content and Conduct. You agree to comply with the Zendesk User Content and Conduct Policy (as defined below) which is hereby incorporated into this Agreement. Further, in Your use of the Services You agree not to (a) modify, adapt, or hack the Services or otherwise attempt to gain unauthorized access to the Services or related systems or networks; (b) attempt to bypass or break any security or rate limiting mechanism on any of the Services or use the Services in any manner that interferes with or disrupts the integrity, security or performance of the Services and its components; (c) attempt to decipher, decompile, reverse engineer or otherwise discover the source code of any Software making up the Services unless permitted under mandatory applicable law (in particular Section 69e German Copyright Act (*Gesetz über Urheberrecht und verwandte Schutzrechte*); or (d) to the extent You are subject to the US Health Insurance Portability and Accountability Act of 1996, and its implementing regulations (HIPAA), use the Services to store or transmit any “protected health information” as defined by HIPAA, unless expressly agreed to otherwise in writing by Zendesk.

2.4 System Requirements. A high-speed Internet connection is required for proper transmission of the Services. 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, 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.

2.5 Internal Business Purposes Only. Unless otherwise authorized by Zendesk in this Agreement or expressly agreed to otherwise in writing by Zendesk, You may not use the Services in any manner where You act as a service bureau or to provide any outsourced business process services on behalf of more than one (1) third party (other than Affiliates or merchants operating on Subscriber’s platform) through a single Account. This provision is not intended to prevent or inhibit the use of the Services to provide business support to multiple End-Users; however, You agree not to license, sublicense, sell, outsource, rent, lease, transfer, assign, distribute, time-share or otherwise commercially exploit or resell the Services to any third party, other than authorized Agents and End-Users in furtherance of Your internal business purposes as expressly permitted by this Agreement, unless expressly agreed to otherwise in writing by Zendesk. Without limiting the foregoing, Your right to access and use the API is also subject to the use restrictions and any applicable Zendesk Policies as set forth in this Agreement (in particular the Documentation).

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

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

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

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

SECTION 3. TERM, CANCELLATION AND TERMINATION

3.1 Term. Unless Your Account and subscription to a Service are terminated in accordance with this Agreement or the applicable Service Order (a) 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; and (b) the Subscription Charges applicable to any subsequent Subscription Term shall be Our standard Subscription Charges for the applicable Service Plan and Deployed Associated Services at the time of such renewal.

3.2 Cancellation. Either Party may elect to terminate Your Account and subscription to a Service at the end of Your then-current Subscription Term by providing notice in accordance with Section 18 of this Agreement no less than sixty (60) days prior to the end of such Subscription Term.

3.3 Mutual Termination for Cause. A Party may terminate this Agreement for cause upon written notice to the other Party of a material breach by the other Party if such breach remains uncured after thirty (30) days from the date of receipt of such notice. Both Parties' statutory rights for termination for cause shall remain unaffected.

3.3.1 We may immediately terminate this Agreement for cause without notice if You violate the Zendesk User Content and Conduct Policy, provided that we cannot be reasonably expected to continue the Agreement with you until the expiry of the thirty (30) day notice period (Section 3.3) or until the end of the Agreement due to such violation (after taking into account the given circumstances of the individual violation, in particular any fault on the part of both Parties, and weighing the interests of both parties).

3.3.2 We will refund any prepaid fees covering the remainder of the Subscription Term as of the effective date of termination if this Agreement is terminated by You in accordance with this Section for Zendesk's uncured material breach.

3.4 Payment Upon Termination. Except for Your termination under Section 3.3, if You terminate Your subscription to a Service or cancel Your Account prior to the end of Your then-effective Subscription Term, in addition to any other amounts You may owe Zendesk, You must immediately pay any and all unpaid Subscription Charges associated with the remainder of such Subscription Term.

3.5 No Refunds. Except for Your termination rights under Section 3.3, no refunds or credits for Subscription Charges or other fees or payments will be provided if You terminate a subscription to a Service prior to the end of a Subscription Term.

3.6 Export of Service Data. Upon Your written request, We will make Service Data available to You for export or download as provided in the Documentation for thirty (30) days after the effective date of termination, expiration or migration of Your Account. Thereafter, We will have no obligation to maintain or provide any Service Data and We will delete Your Service Data in accordance with Our Service Data Deletion Policy available on Our Agreement and Terms Website unless prohibited by law or legal order.

SECTION 4. BILLING, PLAN MODIFICATIONS AND PAYMENTS

4.1 Payment and Billing. Unless otherwise expressly set forth in this Agreement, a Service Order, a Statement of Work, or in Supplemental Terms, or as otherwise agreed for Usage Charges, all 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. You are responsible for providing valid and current payment information and You agree to promptly update your Account information, including

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payment information, with any changes that may occur (for example, a change in Your billing address or credit card expiration date). If You fail to pay Your Subscription Charges or any other charges indicated on any Service Order or Statement of Work, or in any Supplemental Terms, within five (5) business days of Our notice to You that payment is delinquent, or if You do not update payment information upon Our request, in addition to Our other remedies, We may suspend access to and use of the Services by You, Agents and End-Users.

4.2 Upgrades. 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, any incremental Subscription Charges associated with such upgrade will be charged in accordance with the remaining Subscription Term. In any subsequent Subscription Term, Your Subscription Charges will reflect any such upgrades.

4.3 Downgrades. You may not downgrade Your Service Plan or reduce the number of Agents during any Subscription Term. If You desire to downgrade Your Service Plan or reduce the number of Agents under any Service Plan for a subsequent Subscription Term, You must provide Zendesk with thirty (30) days written notice prior to the end of Your then-current Subscription Term. You must demote any downgraded Agents prior to the beginning of the subsequent Subscription Term. Downgrading Your Service Plan may cause loss of content, features, or capacity of the Service as available to You under Your Account, and Zendesk is not responsible for such loss.

4.4 Taxes. Unless otherwise stated, Our charges do not include any Taxes. You are responsible for paying Taxes assessed in connection with Your subscription to the Services 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. We agree to exempt You from any taxes for which You provide to Us a tax exemption certificate; provided, however, that no such exemption shall be extended to You following written notice to Us from a taxing authority of appropriate jurisdiction that You do not qualify for the claimed exemption.

4.5 Payment Agent. 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). 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. 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 prepaid credit. 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. 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. 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.

4.6 Payment Portals. If You mandate Zendesk use a vendor payment portal or compliance portal that 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.

4.7 Promotional Credits. Any promotional credits issued hereunder will be subject to the Zendesk Promotional Credits Policy available on the Zendesk Agreements and Terms Website.



SECTION 5. CONFIDENTIAL INFORMATION

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

SECTION 6. SUB-PROCESSORS AND SECURITY OF SERVICE DATA

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

6.2 Third-Party Service Providers. Zendesk may use third-party service providers that are utilized by the Zendesk Group to assist in providing the Services to You, but do not have access to Service Data. Any third-party service providers utilized by the Zendesk Group will be subject to confidentiality obligations which are at least as restrictive as the confidentiality terms herein.

6.3 Safeguards. The Zendesk Group will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Service Data for Enterprise Services in accordance with the Enterprise Security Measures described at "How We Protect Your Service Data (Enterprise Services)"; for Innovation Services in accordance with the Innovation Security Measures described at "How We Protect Your Service Data (Innovation Services)"; as well as in accordance with Supplemental Terms for any Deployed Associated Services, as applicable. The Zendesk Group's compliance with the Enterprise Security Measures or the Innovation Security Measures, each as applicable, shall be deemed compliance with the Zendesk Group's obligations to protect Service Data as set forth in the Agreement. Zendesk will access Service Data to provide, secure and improve the Services.

6.4 Agent Contact Information. Zendesk shall be the Data Controller of Agent Contact Information, and shall Process such Agent Contact Information in accordance with Our Privacy Notice and Zendesk's Controller Global Binding Corporate Rules. You are responsible for informing Your Agents of their rights set forth in Our Privacy Notice. You represent and warrant that You have obtained all relevant consents, permissions and rights and provided all relevant notices necessary under Applicable Data Protection Laws for Zendesk to lawfully Process Agent Contact Information as an independent Controller for the purposes set forth in Zendesk's Privacy Notice.



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

SECTION 7. TEMPORARY SUSPENSION

We reserve the right to restrict functionalities or suspend the Services (or any part thereof), Your Account or Your and/or Agents' or End-Users' rights to access and use the Services and remove, disable or quarantine any Service Data or other content if (a) You, Agents or End-Users have materially violated this Agreement (in particular the Zendesk User Content and Conduct Policy); or (b) We detect any Malicious Software connected to Your Account or use of a Service by You, Agents or End-Users.

Prior to exercising the rights under this Section 7, we will adhere to the warning notice and cure period of Section 3.3. We are entitled to exercise our rights without a warning notice if the breach cannot, by its nature, be reasonably cured or if we cannot be reasonably expected to wait out the thirty (30) days remedy period (Section 3.3) under the given circumstance (after weighing the interests of both Parties).

SECTION 8. NON-ZENDESK SERVICES

If You decide to enable, access or use Non-Zendesk Services, Your access and use of such Non-Zendesk Services shall be governed solely by the terms and conditions of such Non-Zendesk Services. Notwithstanding Zendesk's liability for its own subcontractors, Zendesk does not endorse, is not responsible or liable for, and makes no representations as to any aspect of such Non-Zendesk Services, including, without limitation, their content or the manner in which they handle, protect, manage or Process data (including Service Data), or any interaction between You and the provider of such Non-Zendesk Services. We cannot guarantee the continued availability of such Non-Zendesk Service features, and may cease enabling access to them without entitling You to any refund, credit or other compensation, if, for example and without limitation, the provider of a Non-Zendesk Service ceases to make the Non-Zendesk Service available for interoperation with the corresponding Service in a manner acceptable to Us. You irrevocably waive any claim against Zendesk with respect to such Non-Zendesk Services. 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 Non-Zendesk Services, or Your reliance on the privacy practices, data security processes or other policies of such Non-Zendesk Services.

SECTION 9. FREE TRIALS

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

SECTION 10. INTELLECTUAL PROPERTY RIGHTS

10.1 Intellectual Property Rights. Each Party shall retain all rights in any of its respective Intellectual Property Rights except as otherwise stated in this Agreement. The rights granted to You, Agents and End-Users to use the Service(s) under this Agreement do not convey any additional rights in the Service(s) or in any Intellectual Property Rights of Zendesk associated therewith. Subject only to limited rights to access and use the Service(s) as expressly stated herein, all rights, title and interest in and to the Services and all hardware, Software and other components of or used to provide the Services, including all related Intellectual Property Rights, will remain with Zendesk and belong exclusively to Zendesk.

10.2 Feedback. The Zendesk Group shall have a fully paid-up, royalty-free, worldwide, transferable, sub-licensable (through multiple layers), assignable, irrevocable and perpetual license to implement, use, modify, commercially exploit, incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or



other feedback regarding the Services that We receive from You, Agents, End-Users, or other third parties acting on Your behalf. The Zendesk Group also reserves the right to seek intellectual property protection for any features, functionality or components that may be based on or that were initiated by suggestions, enhancement requests, recommendations or other feedback regarding the Services that We receive from You, Agents, End-Users, or other third parties acting on Your behalf.

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

10.4 Rights to Service Data. Notwithstanding Applicable Data Protection Laws, Subscriber shall retain all usage rights, including all Intellectual Property Rights, to all Service Data Processed under the terms of this Agreement.

SECTION 11. REPRESENTATIONS, WARRANTY LIMITATIONS

11.1 Warranties. 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 this 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.

11.2 Zendesk Warranties. 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 pursuant to our obligations under this Agreement, Service Order(s) and Your Service Plan and not violate any third party's valid patent, copyright, trademark, trade secret or other intellectual property right. You shall report to Zendesk any material deviation of the Service from the Documentation, our obligations under this Agreement, Service Order(s), or Your Service Plan (defect in material) or if Your use of the Service as permitted hereunder infringes a third party's intellectual property right (defect in title) within thirty (30) days of the date on which the relevant defect in material or defect in title (collectively "**Defects**") first appeared. Your remedies for any Defect shall be: (a) to request re-performance or repair of the Services from Zendesk, or in the event of a defect in title, to assert your indemnification rights set out in Section 12.1 (Indemnification by Us), or (b) if Zendesk fails to provide such remedy within two objectively reasonable time periods set by You or if such remedy is objectively impracticable, to terminate the Subscription Period. Your right to claim damage (including your indemnification rights under Section 12.1 (Indemnification by Us) shall be limited in accordance with Section 13 (Limitation of Liability). Your right to rebate the remuneration due to Defects shall in any event be limited to claims for unjustified enrichment.

SECTION 12. INDEMNIFICATION

12.1 Indemnification by Us. We will indemnify and defend You from and against any claim brought by a third party against You proving that Your use of a Service as permitted hereunder infringes a third party's valid patent, copyright, trademark or trade secret (an "IP Claim") due to a culpable breach of Zendesk. We shall, at Our expense, defend such IP Claim and pay damages finally awarded against You in connection therewith, including reasonable fees and expenses of attorneys engaged by Zendesk for such defense, provided that You promptly notify Zendesk of the threat or notice of such IP Claim. If use of a Service by You, Agents or End-Users has become, or is likely to become, the subject of any such IP Claim, We shall, at Our expense (i) procure for You the right to continue using the Service(s)



as set forth hereunder; (ii) replace or modify a Service to make it non-infringing; or (iii) if We fail to remedy by means of options (i) or (ii), You can terminate Your subscription to the Service(s) and We will repay You, on a pro-rata basis, any Subscription Charges paid to Zendesk for the unused portion of Your Subscription Term for such Service(s).

12.1a We will have no liability or obligation under this Section 12.1 with respect to any IP Claim if such claim is caused in whole or in part by (i) compliance with designs, data, instructions or specifications provided by You; (ii) modification of the Service(s) by anyone other than Zendesk or Zendesk Personnel; 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.

12.2 Indemnification by You. You will indemnify, defend and hold Zendesk harmless against any claim brought by a third party against Zendesk (a) arising from or related to use of a Service (and not arising solely from the Service itself) by You, Agents or End-Users in breach of this Agreement, unless you have not culpably caused such claim; or (b) alleging that Your use of the Service or Your Service Data infringes a third party's valid patent, copyright, trademark or other Intellectual Property Right or trade secret (unless you have not culpably caused such infringement); provided that (i) We promptly notify You of the threat or notice of such claim.

SECTION 13. LIMITATION OF LIABILITY

13. 1 Unlimited Liability. Nothing shall limit a Party's liability in the event of (a) wilful misconduct or gross negligence, (b) within the scope of a guarantee taken over by the respective party, (c) in the event that a defect is maliciously concealed, (d) in case of an injury to life, body or health, and (e) according to the German Product Liability Act.

13. 2 Limited Liability. In case of damages caused by slight negligence, (a) if Cardinal Contractual Obligations are breached, either Party's liability is limited to foreseeable damages typical to the Agreement. "Cardinal Contractual Obligations" shall mean obligations fulfilment of which is essential to the proper implementation of the Agreement, and breach of which jeopardizes the achievement of the purpose of the Agreement and on fulfilment of which the customer regularly relies; (b) any other liability for damages caused by slight negligence is excluded.

13.3 Liability Exclusion. Regardless of the legal grounds giving rise to liability, Zendesk shall not be liable for indirect and/or consequential damages, including loss of profit and loss of interest, unless any such damage has been caused by Zendesk's wilful misconduct or gross negligence.

13.4 Liability Cap. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT THE ZENDESK GROUP'S AGGREGATE LIABILITY TO YOU, YOUR AFFILIATES, OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT, THE SERVICES OR PROFESSIONAL SERVICES, SHALL IN NO EVENT EXCEED THE SUBSCRIPTION CHARGES AND/OR PROFESSIONAL SERVICES FEES PAID BY YOU DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. THE LIMITATIONS SET FORTH IN SECTION 13.4 SHALL NOT APPLY TO CLAIMS OR DAMAGES RESULTING FROM ZENDESK'S IP CLAIMS INDEMNITY OBLIGATIONS IN SECTION 12.1 OF THIS AGREEMENT OR TO CLAIMS OR DAMAGES ARISING FROM OR IN CONNECTION WITH A BREACH OF THE DPA OR A BREACH OF ZENDESK'S CONFIDENTIALITY OBLIGATIONS.

13.5 LIMITATION OF LIABILITY IN THE AGGREGATE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN APPLIES IN AGGREGATE TO ANY AND ALL CLAIMS DURING ANY GIVEN SUBSCRIPTION TERM BY SUBSCRIBER AND ITS AFFILIATES, AND SHALL NOT BE CUMULATIVE, UNLESS OTHERWISE STIPULATED BY THIS AGREEMENT.

13.6 NOTWITHSTANDING SECTION 13.4 ABOVE, THE ZENDESK GROUP'S MAXIMUM AGGREGATE LIABILITY DURING ANY GIVEN SUBSCRIPTION TERM FOR ANY AND ALL CLAIMS OR DAMAGES ARISING FROM OR IN CONNECTION WITH A BREACH OF THE DPA SHALL BE THE GREATER OF: I)

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FOUR (4) TIMES 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; OR II) TWO MILLION AND FIVE HUNDRED THOUSAND EURO (€2,500,000.00). THIS SECTION DOES NOT LIMIT LIABILITY IN THE EVENT OF WILFUL MISCONDUCT OR GROSS NEGLIGENCE.

13.7 NOTWITHSTANDING SECTION 13.4 ABOVE, THE ZENDESK GROUP'S MAXIMUM AGGREGATE LIABILITY DURING ANY GIVEN SUBSCRIPTION TERM FOR ANY AND ALL CLAIMS OR DAMAGES ARISING FROM OR IN CONNECTION WITH ZENDESK'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 5 OF THIS AGREEMENT, WITH RESPECT TO CONFIDENTIAL BUSINESS INFORMATION, SHALL BE THE GREATER OF: I) FOUR (4) TIMES THE SUBSCRIPTION CHARGES AND/OR CONSULTING FEES PAID BY SUBSCRIBER DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY; OR II) TWO MILLION AND FIVE HUNDRED THOUSAND EURO (€2,500,000.00). THIS SECTION DOES NOT LIMIT LIABILITY IN THE EVENT OF WILFUL MISCONDUCT OR GROSS NEGLIGENCE.

13.8 Loss of Data. Liability for loss of data shall be limited to the recovery costs which would have arisen if backup copies had been regularly made in appropriate relation to the risk of such loss.

13.9 Duty to Mitigate Damages. You shall take all reasonable measures to mitigate and/or to avoid damages, including, in particular, an obligation for You to make back-up copies of data on a regular basis and to carry out security checks (in particular for the purpose of defending or detecting viruses, malware and other disruptive programmes within Your own IT System).

13.10 Vicarious Agents etc. To the extent Zendesk's liability is limited or excluded, the same shall apply in respect of any personal liability of Zendesk's legal representatives, employees and vicarious agents.

13.11 Initial Defect Liability. Zendesk's fault-independent liability for initial Defects ("*Garantiehaftung*" under Sec. 536a para. 1 of the German Civil Code), shall be excluded.

13.12 Guarantees. Nothing in this Agreement shall constitute or result in a liability for guarantees under the German Civil Code, unless the Parties have explicitly agreed on the same by using the terms "guarantee" ("*Garantie*"), "guaranteed" ("*garantiert*") or any variants of the same.

SECTION 14. ASSIGNMENT, ENTIRE AGREEMENT AND AMENDMENT

14.1 Assignment. You may not, directly or indirectly, by operation of law or otherwise, assign all or any part of this Agreement or Your rights under this Agreement (except for monetary claims as referenced under Section 354a of the German Commercial Code), without Our written prior consent, which consent will not be unreasonably withheld. Notwithstanding the foregoing, You may, with Our consent, assign this Agreement to an Affiliate or in connection with any merger, demerger or change of control of You or the sale of all or substantially all of Your assets, provided that (i) any such successor agrees to fulfill its obligations pursuant to this Agreement. You and the assignee can use Zendesk's assignment form to obtain Our consent. We may with your (and the assignee's) 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..

14.2 Entire Agreement. This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter hereof. There shall be no verbal or written ancillary agreements (*Nebenabreden*). This Agreement shall apply in lieu of the terms or conditions in any purchase order, request for information, request for proposal, or other order documentation You or any entity which You represent provide(s) and all such terms or conditions in such purchase order, request for information, request for proposal, or other order documentation shall be void.

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14.3 Amendment. This Master Subscription Agreement may only be amended upon the written agreement of both Parties. This applies likewise to changes to this Section.

SECTION 15. SEVERABILITY

If any term in this Agreement is determined to be invalid or unenforceable by a competent court, the Parties will replace such term or any incompleteness of this Agreement with another term, which comes as close as possible to the economic purpose and intent of this Agreement, and the remaining provisions of this Agreement shall remain in effect.

SECTION 16. EXPORT COMPLIANCE AND USE RESTRICTIONS

The Services and other Zendesk technology, and derivatives thereof, may be subject to export controls and economic sanctions laws and regulations of the United States and other jurisdictions. Subscriber agrees to comply with all such laws and regulations as they relate to the access to and use of the Services and other Zendesk technology. Each Party represents that it (nor its parents or controlling shareholders) is not named on any U.S. government or other applicable restricted-party list, and Subscriber will not, and will not permit any Agent or End-User to: (a) access or use any Service in a U.S.-embargoed or U.S.-sanctioned country or region, (e.g., Cuba, Iran, North Korea, Syria, Crimea, or any other country or region embargoed or sanctioned during the Subscription Term); (b) access or use any Service if Subscriber, Agent, or End-User is named on any U.S. government or other applicable restricted-party list; (c) place any information in the Services that is controlled under the U.S. International Traffic in Arms Regulations or other similar laws; or (d) access or use any Service for any purpose prohibited by the United States or applicable international import and export laws and regulations.

Zendesk reserves the unconditional right to refuse to enter into a contractual relationship with any particular company, legal entity or individual on the basis of export control restrictions, embargoes, sanctions or other considerations to the extent permitted by law.

SECTION 17. RELATIONSHIP OF THE PARTIES

The Parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, general agency, fiduciary or employment relationship between the Parties.

SECTION 18. NOTICE

18.1 Notices to Subscriber. All notices provided by Zendesk to You under this Agreement may be delivered in writing by (a) nationally recognized overnight delivery service (“Courier”) or commercial mail service to the contact mailing address provided by You on any Service Order; or (b) electronic mail to the electronic mail address provided for Your Account owner.

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

18.3 For the avoidance of doubt: Where the expressions “*in writing*”, “*written*” or variations thereof are used in this Agreement this shall include the exchange of personally signed (“*eigenhändig unterzeichnet*”) PDF documents or other exchanges of electronic declarations of intent (“*Willenserklärung*”) by way e-signing effected through a reputable signing provider that offers an e-signing solution (such as *DocuSign* or *Adobe Sign*). Unless expressly stated otherwise in this Agreement, the exchange of simple emails shall not be sufficient.



SECTION 19. GOVERNING LAW

This Agreement shall be governed by the laws of Germany, without reference to conflict of laws principles. Any disputes under this Agreement shall be resolved by the competent court in Munich, Germany.

SECTION 20. 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 Product” as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Services are licensed to You with only those rights as provided under the terms and conditions of this Agreement.

SECTION 21. ETHICAL CONDUCT AND COMPLIANCE

Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of its 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. We will abide by our Code of Conduct in the provision of the Services as stated here: <https://investor.zendesk.com/ir-home/corporate-governance/governance-documents/default.aspx>. If You learn of any violation of the above restrictions by Us, You will use reasonable efforts to promptly notify Us at legalnotice@zendesk.com.

SECTION 22. SURVIVAL

Sections 2.1, 3.5, 3.6, 4.4, 5 – 7, 10, 13 – 19 and 23 shall survive termination of this Agreement with respect to use of the Services by You, Agents or End-Users.

SECTION 23. DEFINITIONS

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

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

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

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

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



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

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

“Agreement” means the Master Subscription Agreement together with any and all Supplemental Terms, Service Order and other mutually executed documents.

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

“Applicable Data Protection Law” means the defined term in the Data Protection Agreement

“Associated Services” means products, services, features and functionality designed to be used in conjunction with the Services that are not included in the Service Plan to which You subscribe. For avoidance of doubt, Additional Features that are expressly stated to be governed by separate Supplemental Terms shall not be deemed an Associated Service. Where You have purchased, deployed, or subscribed to an Associated Service, such Associated Service is referred to as a “Deployed Associated Service.”

“Built by Zendesk Marketplace Applications” means integrations and applications created or developed by Zendesk or its Affiliates and made available in the Zendesk Marketplace (available at <https://www.zendesk.com/apps>) which will be governed by this Agreement unless Zendesk otherwise communicates a different agreement to You at the time of Your deployment of or access to the integration or application.

“Confidential Business Information” means all Confidential Information that is not Service Data, including, without limitation, Your Agents’ Personal Data and Account information, which Zendesk may store in its systems separate from the Service and in accordance with Our security policies and procedures.

“Confidential Information” means all information disclosed by one Party to the other Party which is in tangible form and designated as confidential or is information, regardless of form, which a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure, including but not limited to the pricing terms. Notwithstanding the foregoing, Confidential Information shall not include information that (a) was already known to the receiving Party at the time of disclosure by the disclosing Party; (b) was or is obtained by the receiving Party from a third party not known by the receiving Party to be under an obligation of confidentiality with respect to such information; (c) is or becomes generally available to the public other than by violation of this Agreement or another valid agreement between the Parties; or (d) was or is independently developed by the receiving Party without the use of the disclosing Party’s Confidential Information.

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

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



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

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

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

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

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

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

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

“Non-Zendesk Services” means third party products, applications, services, software, networks, systems, directories, websites, databases and information which a Service links to, or which You may connect to or enable in conjunction with a Service, including, without limitation, Non-Zendesk Services which may be integrated directly into Your Account by You or at Your direction.

“Payment Agent(s)” 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.

“Personal Data” shall have the meaning as in the Applicable Data Protection Law. (defined within the Data Processing Agreement), including but not limited to, 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” (“GDPR”) and any applicable national laws implemented by European Economic Area (“EEA”) member countries.

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

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

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

“Processing/to Process/Processed” shall have the meaning provided under Applicable Data Protection Laws (as defined within the Data Processing Agreement).

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



“Service(s)” means the products and services that are used or ordered by You online through a link or via a Service Order referencing this Agreement, whether on a trial or paid basis, and whether Enterprise Services or Innovation Services, and made available online by Us, via the applicable subscriber login link and other web pages designated by Us, including, individually and collectively, the applicable Software, updates, API, Documentation, and all Deployed Associated Services that are provided under this Agreement. “Services” exclude (a) Non-Zendesk Services as that term is defined in this Agreement; and (b) any Additional Features or Associated Services that are not provided under this Agreement or Your Service Plan. From time to time, the names and descriptions of the Services or any individual Service may be changed. To the extent Subscriber is given access to such Service as so described by virtue of a prior Service Order or other prior acceptance of this Agreement, this Agreement shall be deemed to apply to such Service as newly named or described.

“Service Data” means all electronic data, text, messages, communications or other materials submitted to and stored within a Service by You, Agents and End-Users in connection with Your use of such Service, excluding Agent Contact Information.

“Service Data Breach” means an unauthorized access or improper disclosure that has been verified by Zendesk to have affected Your Service Data.

“Service Order” means Our generated service order form(s) or online ordering document or process completed, 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 and the Service Plan applicable to Your subscription.

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

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

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

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

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

“Subscription Term” means the period during which You have agreed to subscribe to a Service.

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

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

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



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

“Zendesk” means Zendesk, Inc., a Delaware corporation, or any of its successors or assignees.

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

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

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

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

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

“Zendesk’s Policies and Guidelines Website” means the website located at: <https://www.zendesk.com/company/policies-and-guidelines/>.

“Zendesk’s Privacy and Data Protection Website” means the website located at: <https://www.zendesk.com/trust-center/>.

“Zendesk’s Region-Specific Terms” means the Supplemental Terms applicable in certain jurisdictions as stated at: <https://www.zendesk.com/company/agreements-and-terms/region-specific-terms/>.

“Zendesk’s Service-Specific Terms” means the Supplemental Terms applicable to use of different Services as stated at: <https://support.zendesk.com/hc/en-us/articles/360047508453>.

“Zendesk’s Sub-processor Policy” means the policy as stated at: <https://support.zendesk.com/hc/en-us/articles/4408883061530>.

“Zendesk User Content and Conduct Policy” means the policy as stated at: <https://support.zendesk.com/hc/en-us/articles/360022367333>.