



## MASTER SUBSCRIPTION AGREEMENT

This Agreement (as defined below) sets forth the terms and conditions of the customer relationship between \_\_\_\_\_, a \_\_\_\_\_ (the "**Customer**") and Talkdesk, Inc., a Delaware corporation ("**Talkdesk**") and will be effective on the date of Customer's signature set forth below (the "**Effective Date**").

Customer Address for Notices:	Talkdesk Address for Notices:
	Talkdesk, Inc. 440 N Barranca Avenue #4375 Covina, CA 91723 Attn: General Counsel; Legal Department Email: <a href="mailto:legal@talkdesk.com">legal@talkdesk.com</a>

Agreed to and accepted:

**Customer**

By: \_\_\_\_\_  
\_\_\_\_\_

Title:

Name:

Date:

Agreed to and accepted:

**Talkdesk, Inc.**

By: \_\_\_\_\_

Title:

Name:

Date:



## MASTER SUBSCRIPTION AGREEMENT TERMS

### 1. DEFINITIONS.

**"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control", for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity. Affiliates of Customer are included in the definition of "Customer".

**"Agreement"** includes, as applicable, any SOW, any Order Form, these Master Subscription Agreement Terms, and any other exhibit expressly incorporated by reference or attached hereto. In the event of a conflict between the terms of any Order Form with the other provisions of the Agreement, the terms of the Order Form will control, but (a) only with respect to the specific Product(s) or Services purchased under such Order Form, and (b) only if the Order Form specifically references the conflicting provisions(s) of this Agreement with the intention to supersede such provision(s).

**"Authorized Partner"** means a third-party reseller or distributor who has been authorized by Talkdesk to resell, distribute, or provide Talkdesk Services or Professional Services.

**"Authorized Users"** means Customer's employees and independent contractors working for or on behalf of Customer in the ordinary course of Customer's business for whom access to the Talkdesk Services has been purchased, regardless of actual usage, pursuant to this Agreement.

**"Communication Service"** means a service which provides the ability to send or receive communications, as specified in the Order Form and/or an invoice, including, but not limited to, minutes for calls, phone number line access, SMS and any other service defined as such by the law or regulation.

**"Confidential Information"** means all information disclosed by a party (a "Disclosing Party") to the other party (the "Receiving Party"), whether in oral, written, or other tangible or intangible form, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Talkdesk includes the Services and the terms and conditions of this Agreement and all Order Forms (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. Confidential Information of Customer does not include Customer Data.

**"Customer Data"** means any electronic data, information or material provided or submitted by or for Customer or its Authorized Users into the Talkdesk Services, excluding Third-Party Content and Third-Party Products; provided, however, that Customer Data does not include Usage Data or Customer Data that is aggregated and de-identified. The obligations governing Customer Data are defined in Section 3.6.

**"Damages"** means any damages awarded by a court of competent jurisdiction against Customer (or agreed to in a settlement by Talkdesk) resulting from the IP Claim, including any awarded costs and awarded attorneys' fees.

**"Documentation"** means any usage guides and policies that are provided or made available by Talkdesk, as updated from time to time, accessible online or via login to the applicable Services.

**"Early Access Services"** means Talkdesk Services or functionality that is pre-release and may be made available to Customer at Talkdesk's discretion.

**“GDPR”** means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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).

**“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996.

**“Intellectual Property Rights”** or **“IP rights”** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

**“Marketplace”** means an online directory, catalog or marketplace of applications that interoperates with the Services, including, for example, the AppConnect marketplace at <https://www.talkdesk.com/call-center-software/platform/appconnect/>, and any successor websites.

**“Order Form”** shall mean an ordering document governed by this Agreement identifying the Services to be made available by Talkdesk pursuant to this Agreement, which may detail, among other things, the number of Authorized Users, or any click-through agreement entered into by Customer within the Talkdesk Services.

**“Professional Services”** are professional services rendered under the scope of an SOW.

**“Representatives”** means a party’s director, officer, agent, employee, subsidiary, parent company, or financial or legal adviser. Any recipient of a permitted disclosure of Confidential Information under **Section 7.2** shall be deemed a Representative.

**“Services”** means the Professional Services together with the Talkdesk Services.

**“Services Fees”** means the fees charged to the Customer by Talkdesk and/or its Affiliates for the provision of the Services pursuant to this Agreement, including, but not limited to, License Fees, Usage Fees and Professional Services Fees.

**“Service Term”** means the period of time identified in the Order Form, beginning on the Start Date and ending on the End Date, for which Customer is purchasing and will be entitled access to the applicable Talkdesk Services (the “Initial Term”, and any renewal thereof, each, a “Renewal Term”), as applicable.

**“SOW”** means a document governed by this Agreement describing any Professional Services.

**“Talkdesk Services”** means the software as a service and the Communication Services to be provided by Talkdesk as identified in the Order Form, as may be modified by Talkdesk to maintain or improve the quality or marketability of the Talkdesk Services or to bring Talkdesk’s provision of the Talkdesk Services into compliance with applicable law.

**“Taxes and Charges”** means any value added, consumption, sales, use, gross receipts, withholding, excise, access, bypass, ad valorem, franchise or other taxes, fees, duties, assessments, or surcharges associated with government programs (e.g., 911 or other emergency services, number pooling and portability, and universal service programs) along with similar charges.

**“Third-Party Product”** means a Web-based, mobile, offline or other software application functionality and/or Communication Service that interoperates with the Services, that is provided by Customer or a third party and/or listed on a Marketplace.

**“Third-Party Content”** means information obtained by Talkdesk from publicly available sources or its third-party content providers and made available to Customer through the Services, Early Access Services or pursuant to an Order Form, as more fully described in the Documentation.

**“Usage Data”** means any information or data associated with or collected from Customer and each Authorized User relating to the usage or results of the Talkdesk Services.

## **2 SERVICES.**

- 2.1 Talkdesk Services.** Subject to the terms and conditions of this Agreement and the applicable Order Form, Talkdesk hereby grants Customer a revocable, limited, non-exclusive, non-sublicensable, and non-transferable right to access and use (and to permit the Authorized Users to access and use) the Talkdesk Services during the Service Term, solely to support the internal business operations of Customer and its Affiliates. All rights in the Talkdesk Services not expressly granted in this Agreement are reserved to Talkdesk. Customer will not provide access to the Talkdesk Services to any third party without Talkdesk's prior written consent.
- 2.2 Authorized User Credentials.** Customer shall be responsible for and liable for its Authorized Users' compliance with this Agreement. Each Authorized User must create and use unique access credentials, and Customer shall ensure user IDs and passwords are not shared or used by more than one Authorized User. Customer shall take all reasonable precautions to prevent unauthorized access to or use of the Talkdesk Services and shall notify Talkdesk promptly of any unauthorized access or use. Customer shall be responsible for any unauthorized usage that occurs due to misuse of its log-in credentials. Customer will be solely responsible, at Customer's expense, for acquiring, installing and maintaining all hardware, software and other equipment as may be necessary for Customer and each Authorized User to connect to, access, and use the Talkdesk Services.
- 2.3 Provision of Support; Support Requirements.** Talkdesk will provide applicable Talkdesk standard support for purchased Talkdesk Services to Customer at no additional charge, and/or upgraded support if purchased, as set forth at <https://www.talkdesk.com/legal/support-policy> (the "Talkdesk Support Services Policy") as may be updated by Talkdesk from time to time. Any updates to the Talkdesk Support Services Policy made during any then-current Service Term will not apply until the start date of the next Service Term. A support ticket may only be opened by Customer's administrators. Before the established go-live date, each Customer administrator must complete the Talkdesk Admin and Advanced Admin certification track and ensure that all Authorized Users complete the applicable certification track based on their role (Agent, Supervisor, Admin and/or Advanced Admin). All Talkdesk Academy users must use their corporate email for registration. Customer may port numbers out of the Talkdesk system pursuant to the terms of the Porting Guide set out in the Documentation.
- 2.4 Communications Services.** The terms at <https://www.talkdesk.com/legal/tax/terms-for-communication-services/>, as updated by Talkdesk from time to time, shall apply to the Communication Services in addition to these Master Subscription Agreement Terms.

### **3 USE OF SERVICES AND CUSTOMER DATA**

- 3.1 Subscriptions.** Unless otherwise provided in the applicable Order Form or Documentation: (a) Services are purchased as subscriptions for each Authorized User for the Service Term, (b) subscriptions for Services for additional Authorized Users may be added during the Service Term (and shall be subject to the terms of this Agreement) through an Order Form or by placing an order at Talkdesk's online portal, prorated for the portion of that Service Term remaining at the time the subscriptions are added, (c) any added subscriptions will be co-terminus with the existing subscriptions, and (d) any automatic renewal pursuant to **Section 13.2.** will include all Authorized Users added prior to the end of the Initial Term or Renewal Term (as applicable).
- 3.2 Customer Responsibilities.** Customer will: (a) comply (and be responsible for its Authorized Users' compliance) with this Agreement, the Documentation, and the Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Third-Party Product with which Customer uses the Services or Third-Party Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and Third-Party Content, and notify Talkdesk promptly of any such unauthorized access or use, (d) use the Services and Third-Party Content only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations, and (e) comply with the terms of service of any Third-Party Product with which Customer uses the Services or Third-Party Content. If Customer uses the Talkdesk Services and elects not to use the encryption settings, Customer

acknowledges that unencrypted communications sent to or from Customer, through the Talkdesk network, do not meet Talkdesk's security requirements. Customer assumes all risk and responsibility for any unauthorized disclosure or other breach of Customer Data due to Customer's election to not use encryption.

- 3.3 Removal of Third-Party Content and Third-Party Product.** If Customer receives notice that Third-Party Content or a Third-Party Product must be removed, modified and/or disabled to avoid violating applicable law or third-party rights, Customer will promptly do so. If Customer does not take required action in accordance with the above, or if in Talkdesk's judgment continued violation is likely to reoccur, Talkdesk may disable the applicable Third-Party Content, Services and/or Third-Party Product. If requested by Talkdesk, Customer shall confirm such deletion and discontinuance of use in writing, and Talkdesk shall be authorized to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable. In addition, if Talkdesk is required by any third-party rights holder to remove Third-Party Content, or receives information that Third-Party Content provided to Customer may violate applicable law or third-party rights, Talkdesk may discontinue Customer's access to Third-Party Content through the Services.
- 3.4 Use Restrictions.** Customer and all Authorized Users must comply with Talkdesk's Acceptable Use Policy located at <https://www.talkdesk.com/es-es/legal/acceptable-use-policy/> (the "Acceptable Use Policy") and any applicable acceptable use or similar policies imposed by the applicable telco carrier.
- 3.5 Customer Data.** Customer acknowledges that Talkdesk is not responsible for the creation, content, or use of the Customer Data by Customer or any third party. Customer represents that it owns or has acquired the necessary licenses to grant Talkdesk the below license to use Customer Data. During the Service Term and for thirty (30) days thereafter, Customer may export its Customer Data from the Talkdesk Service (the "Export Period"). After the Export Period, Talkdesk may delete Customer Data in accordance with its standard schedule and procedures.
- 3.6 Protection of Customer Data.** Talkdesk will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Authorized Users).
- 3.7 License by Customer to Talkdesk.** Customer grants Talkdesk, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Third-Party Product and program code created by or for Customer using any Services or for use by Customer with the Services, and Customer Data, each as appropriate for Talkdesk to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement. If Customer chooses to use a Third-Party Product with the Services, Customer grants Talkdesk permission to allow the Third-Party Product and its provider to access Customer Data and information about Customer's usage of the Third-Party Product as appropriate for the interoperation of that Third-Party Product with the Services. Subject to the limited licenses granted herein, Talkdesk acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data, Third-Party Product or such program code.
- 3.8 License by Customer to Use Feedback.** Customer grants to Talkdesk and its Affiliates a worldwide, perpetual, irrevocable, royalty free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Authorized Users relating to the operation of Talkdesk's or its Affiliates' business, including but not limited to its Services, implementation of the Services, Third-Party Content, and Marketplace. Talkdesk may use de-identified, aggregated Customer Data for the purpose of maintaining or improving the Services or Marketplace.

#### **4 PROFESSIONAL SERVICES AND EARLY ACCESS SERVICES.**

- 4.1 Professional Services.** If Professional Services are purchased from Talkdesk: (i) Talkdesk will perform Professional Services on a time and materials basis unless otherwise stated in a SOW or Order Form, (ii) Talkdesk shall control how the Professional Services are performed, (iii) Talkdesk reserves the right to make all staffing decisions in its sole and reasonable discretion, and (iv) Customer shall make available at no charge all technical data, computer facilities, programs, files, documentation, test data, sample output,

office space, equipment and other assistance as reasonably requested by Talkdesk in the performance of Professional Services. If Professional Services are purchased from an Authorized Partner: (i) Customer will be required to accept the Authorized Partner's terms of service, and such terms constitute a binding agreement between Customer and the relevant Authorized Partner only, (ii) Talkdesk makes no representations, endorsements, guarantees, or warranties, express or implied, with respect to any such Professional Services purchased from an Authorized Partner, and (iii) Talkdesk is not responsible for the provision of any Professional Services purchased from that Authorized Partner or any claims that Customer or any other party may have relating to those Professional Services or the provision thereof.

- 4.2 Early Access Services.** From time to time, Customer may purchase and/or access Early Access Services. Any use of Early Access Services is subject to Talkdesk's Early Access Agreement located at <https://www.talkdesk.com/legal/early-access-agreement/>.

## **5 THIRD-PARTY PRODUCTS AND SERVICES.**

- 5.1 Usage and Implementation of Third-Party Products.** Talkdesk may make Third-Party Products and their related Professional Services available through a Marketplace, such as AppConnect. If Customer, at Customer's discretion, chooses to use a Third-Party Product, then Customer may be required to accept the Third-Party Product provider's terms of service and SOW (collectively, "Third-Party Provider's Terms") as part of the Third-Party Product installation and implementation process. Customer acknowledges for each Third-Party Product Customer purchases through the Marketplace, the Third-Party Provider's Terms constitute a binding agreement between Customer and the relevant Third-Party Product provider only. The Third-Party Product provider of each Third-Party Product is solely responsible for that Third-Party Product, the content therein, and any claims that Customer or any other party may have relating to that Third-Party Product, the provision of Professional Services for the Third-Party Product, or Customer's use of that Third-Party Product. Customer acknowledges that: (a) Talkdesk is acting as agent for the Third-Party Product provider in providing each such Third-Party Product; (b) Talkdesk is not a party to the Third-Party Provider's Terms; and (c) Talkdesk is not responsible for that Third-Party Product, the content therein, the provision of Professional Services for the Third-Party Product, or any claims that Customer or any other party may have relating to that Third-Party Product or Customer's use of that Third-Party Product. Customer acknowledges and agrees that Talkdesk and its Affiliates are third-party beneficiaries of the Third-Party Provider's Terms for each Third-Party Product, and that Talkdesk and its Affiliates have the right (and will be deemed to have accepted the right) to enforce such terms against Customer as a third-party beneficiary thereof. The Third-Party Product Provider's Terms shall not modify or otherwise supersede the terms and conditions of this Agreement. By purchasing a Third-Party Product, Customer grants Talkdesk permission to share Customer Data with the Third-Party Product provider as necessary in order to provide Customer the Third-Party Product.
- 5.2 Disclaimer.** Talkdesk makes no representations, endorsements, guarantees, or warranties, express or implied, with respect to Third-Party Products and any Professional Services performed in relation thereto, including but not limited to the time or schedule by which the Third-Party Products are implemented, continuing availability of such Third-Party Products or the continuing ability to use and integrate the Talkdesk Services with such Third-Party Products. Talkdesk is not responsible for any disclosure, modification or deletion of Customer Data caused by, or resulting from access by, a Third-Party Product or its provider. Talkdesk does not warrant or support Third-Party Products, whether or not they are designated by Talkdesk as "certified" or otherwise, unless expressly provided otherwise in an Order Form. If Customer uses Talkdesk's xConnect services, Customer acknowledges that communications sent over Customer's carrier network may not meet Talkdesk's security requirements, including but not limited to encryption standards. Customer assumes all risk and responsibility for the actions or inactions of Customer's carrier.
- 5.3 Integration with Third-Party Products.** The Services may contain features designed to interoperate with Third-Party Products. Talkdesk cannot guarantee the continued availability of such Services features and may cease providing them without entitling Customer to any refund, credit, or other compensation if, for example and without limitation, the provider of a Third-Party Product ceases to make the Third-Party

Product available for interoperation with the corresponding Services features in a manner acceptable to Talkdesk.

## **6 INVOICE AND PAYMENT.**

- 6.1 License Fees.** Beginning on the Start Date identified on the Order Form, Customer shall pay Talkdesk (or its Authorized Partner, as applicable) all fees identified in an Order Form ("License Fees"). Except as otherwise stated in the Order Form: (i) License Fees are based on the provision of Talkdesk Services and Third-Party Product subscriptions purchased and not actual usage; usage is billed as provided in **Section 6.3**, (ii) payment obligations are non-cancelable and fees paid are non-refundable, (iii) quantities purchased cannot be decreased during the Service Term, (iv) Customer shall pay Talkdesk the License Fees annually in advance, and (v) the License Fees shall increase by the amount specified on the Order Form as the "Renewal Uplift" at the beginning of each Renewal Term.
- 6.2 Professional Services Fees.** Customer shall pay Talkdesk (or its Authorized Partner, if applicable) the fees for the Professional Services identified in a SOW or Order Form ("Professional Services Fees") in the manner provided in the SOW or Order Form, subject to any other terms and conditions contained in this Agreement.
- 6.3 Usage Fees.** In addition to the other fees identified herein, Customer will be charged usage fees based on Customer's use of the Services, as applicable, including but not limited to minutes for calls, phone number line access fees, SMS fees, and transcription fees ("**Usage Fees**"). Customer agrees to pay all Usage Fees billed by Talkdesk. Customer may choose to purchase credits in advance which may be applied toward Usage Fees ("**Prepaid Credits**") or pay the Usage Fees monthly in arrears. Prepaid Credits may not be applied toward License Fees or Professional Services Fees. If Customer does not purchase Prepaid Credits or Customer's Prepaid Credits balance reduces to zero, Talkdesk will deliver monthly invoices to Customer for any Usage Fees incurred by Customer.
- 6.4 Payment Terms.** Unless otherwise provided on an Order Form: (i) Customer shall pay all License Fees and Usage Fees within thirty (30) days of the applicable invoice date; and (ii) all payments will be made via Automated Clearing House (ACH) deposit or by bank wire transfer. If Customer fails to pay any invoice within such period, Talkdesk shall be entitled to interest from the day on which the invoice is due, without limiting Talkdesk's rights or remedies. Both parties agree that the rate of interest on past due invoices shall be up to the maximum amount permitted by applicable law. Customer shall reimburse Talkdesk for all costs incurred by Talkdesk in collecting any late payments, fees or interest, including but not limited to attorneys' fees, court costs, and collection agency fees.
- 6.5 Taxes and Charges.** Unless provided to the contrary in an Order Form, the Services Fees do not include any Taxes and Charges. Customer is responsible for paying or reimbursing Talkdesk for all Taxes and Charges associated with its purchases hereunder. Talkdesk is solely responsible for taxes assessable against it based on its income, property and employees. If Customer is required to pay any withholding tax, charge or levy with respect to payments to Talkdesk ("Withholding Taxes"), Customer agrees to gross up payments actually made to Talkdesk such that Talkdesk receives sums due in full and free of any deduction of any such Withholding Tax, subject to Talkdesk cooperating with Customer to enable Customer to pay the lowest legal withholding rate under the applicable double tax treaty.
- 6.6 Acceleration.** If any charge or fees owed by Customer under this or any other agreement for Services is thirty (30) days or more overdue, Talkdesk may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable.

## **7 CONFIDENTIALITY AND PUBLICITY.**

- 7.1 Protection of Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall: (i) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (ii) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the

same degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and (iii) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **Section 7**. The obligations in this **Section 7** shall not apply to any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received by the Receiving Party from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. For the avoidance of doubt, the non-disclosure obligations set forth in this **Section 7** apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Talkdesk services and expressly supersedes and replaces in its entirety any confidentiality and/or nondisclosure agreement previously entered into between Talkdesk and Customer.

- 7.2 Permitted Disclosure.** Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this **Section 7**. Notwithstanding the foregoing, Talkdesk may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Third-Party Product provider to the extent necessary to perform Talkdesk's obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.
- 7.3 Compelled Disclosures.** If the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (i) promptly, and prior to such disclosure, Notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under this **Section 7**; and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives its rights under this **Section 7.3** or, after providing the Notice and assistance required under this **Section 7.3**, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.
- 7.4 Publicity.** Subject to such other party's prior written approval in each instance, either party may issue publicity or general marketing communications concerning its involvement with the other party. Customer hereby grants a limited, worldwide, royalty-free license to Talkdesk to display Customer's name and logo on its website and in marketing materials during the Service Term; provided, however, that Customer may revoke this license by providing written notice to Talkdesk at [legal@talkdesk.com](mailto:legal@talkdesk.com). Customer shall cooperate with Talkdesk to issue a press release announcing that it has selected Talkdesk as a preferred partner no later than forty-five (45) days after signing this Agreement. Customer shall cooperate with Talkdesk to issue a case study no later than ninety (90) days after implementation is complete, discussing the success metrics, and shall participate in other marketing-related activities related to the Talkdesk implementation.

## **8 INTELLECTUAL PROPERTY RIGHTS.**

- 8.1 Talkdesk Intellectual Property.** Customer acknowledges that it does not have any ownership or other rights in or to the Services or the Documentation except as specifically described in this Agreement, and Talkdesk shall exclusively own and retain all right, title and interest in and to all of its intellectual property of every kind, including in and to all inventions (whether patented or not), copyrights and works of authorship (whether subject to a U.S. copyright registration or not), know-how, software applications, routines, source and object code, algorithms, APIs, processes and workflows, and improvements, enhancements, derivations or modifications of any of the foregoing that were or are developed by Talkdesk in connection with the Services or the Documentation. Nothing herein shall be interpreted as a license, transfer or grant by Talkdesk to Customer of any interest in or to Talkdesk intellectual property of any kind, including without



limitation any subject matter that is patented or patentable, copyrighted (registered or unregistered), constitutes a trade secret or Talkdesk know-how, or any other legally protectible technology, item of information, product, interest or process capable of protection as intellectual property anywhere in the world. To the extent Talkdesk does not retain exclusive ownership of its intellectual property, Talkdesk shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use the intellectual property, including incorporation into Talkdesk Services. Unless otherwise set forth in the SOW or Order Form, Customer is hereby granted a limited license to use such intellectual property solely in connection with the Talkdesk Services.

- 8.2 Customer Intellectual Property.** Talkdesk acknowledges that it does not have any ownership or other rights in or to the Customer Data except as specifically described in this Agreement. All of Customer's rights in the Customer Data that are not specifically granted to Talkdesk in this Agreement shall be reserved to Customer.

## **9 MUTUAL INDEMNIFICATION.**

- 9.1 Indemnification by Customer.** Customer will defend, indemnify, and hold Talkdesk harmless from and against all claims, demands, actions, suits, discovery demands, including, without limitation, third-party subpoenas, government investigations or enforcement actions brought against Talkdesk by a third party and any damages, liabilities, losses, settlements, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) related thereto alleging: (i) Customer's use of any feature of the Talkdesk Services violates Customer's contractual, regulatory, or other legal obligations, including but not limited to the Acceptable Use Policy; (ii) Talkdesk's use of any Customer Data as permitted by this Agreement or any Customer Data infringes or misappropriates a third party's Intellectual Property Rights; (iii) a Third-Party Product provided by Customer or the combination of a Third-Party Product provided by Customer and used with the Services infringes or misappropriates a third party's Intellectual Property Rights; or (iv) Customer's use of the Services or Third-Party Content in an unlawful manner or in violation of the Agreement, the Documentation, or Order Form. Talkdesk shall: (a) promptly give Customer written Notice of the claim against Talkdesk, (b) give Customer sole control of the defense and settlement of the claim against Talkdesk (except that Customer may not settle any claim against Talkdesk unless it releases Talkdesk of all liability), and (c) give Customer all reasonable assistance, at Customer's expense.

- 9.2 Indemnification by Talkdesk.** Talkdesk will pay all Damages and defend Customer from and against all claims brought against Customer by a third party alleging that Customer's use of the Talkdesk Services as permitted by this Agreement infringes or misappropriates a third-party copyright, trade secret, trademark or patent ("**IP Claim**"); provided Customer: (a) promptly notifies Talkdesk of all allegations of any such IP Claim, (b) grants Talkdesk exclusive control over the defense and settlement of any such IP Claim (except that Talkdesk may not settle an IP Claim against Customer unless the settlement releases Customer of all liability related to the IP Claim), and (c) gives Talkdesk any information it reasonably requests in connection with the defense of the allegation. If Talkdesk receives notice or information about the IP Claim, Talkdesk may in its discretion and at no cost to Customer: (i) modify the Talkdesk Services so that they no longer infringe or misappropriate the third-party's IP rights, (ii) obtain a license for Customer's continued use of such Talkdesk Services in accordance with this Agreement, or (iii) terminate Customer's subscriptions for such Talkdesk Services upon 30 days' written Notice and refund Customer any prepaid and unused fees covering the remainder of the Services Term of the terminated subscriptions. The above defense and indemnification obligations do not apply if: (1) the allegation does not state with specificity that the Talkdesk Services are the basis of the IP Claim against Customer; (2) an IP Claim against Customer arises from the use or combination of the Talkdesk Services or any part thereof with software, hardware, data, or processes not provided by Talkdesk, if the Talkdesk Services or use thereof would not infringe without such combination; (3) an IP Claim against Customer arises from Talkdesk Services for which there is no charge; or (4) an IP Claim against Customer arises from Third-Party Content, a Third-Party Product or Customer's breach of this Agreement, the Documentation or applicable Order Forms.

- 9.3 Exclusive Remedy.** Section 9.2 states Talkdesk's sole liability to, and Customer's exclusive remedy against, Talkdesk for any IP Claim.

## **10 REPRESENTATIONS.**

**10.1 Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

## **11 DISCLAIMERS.**

**11.1 GENERAL DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICES (INCLUDING EARLY ACCESS SERVICES), MARKETPLACE, THIRD-PARTY CONTENT, AND THE DOCUMENTATION ARE PROVIDED ON AN “AS IS” AND AS AVAILABLE BASIS, AND TALKDESK DOES NOT MAKE ANY, AND HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS, ENDORSEMENTS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. TALKDESK DOES NOT WARRANT THAT THE SERVICES: (A) WILL BE ERROR-FREE, (B) WILL MEET ANY SPECIFIED SERVICE LEVEL, OR (C) WILL OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME.

**11.2 EMERGENCY SERVICES DISCLAIMER.** UNLESS OTHERWISE PROVIDED IN AN ORDER FORM, THE SERVICES ARE NOT INTENDED TO SUPPORT OR CARRY EMERGENCY CALLS OR SMS MESSAGES TO ANY EMERGENCY SERVICES. NEITHER TALKDESK NOR ITS REPRESENTATIVES WILL BE LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY CLAIM, DAMAGE, OR LOSS (AND CUSTOMER WILL HOLD TALKDESK HARMLESS AGAINST ANY AND ALL SUCH CLAIMS) ARISING FROM OR RELATING TO THE INABILITY TO USE THE SERVICES TO CONTACT EMERGENCY SERVICES.

## **12 LIMITATION OF LIABILITY.**

**12.1** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR: (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, BUSINESS INTERRUPTION, PUNITIVE OR EXEMPLARY DAMAGES; (ii) ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), SAVINGS, GOODWILL, BUSINESS OPPORTUNITY, BUSINESS, OR REVENUES; OR (iii) ANY WASTED EXPENDITURE OR RELIANCE LOSS OR DAMAGES, WHETHER OR NOT CHARACTERIZED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE BY ONE OR BOTH PARTIES AND WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**12.2** EXCEPT WITH RESPECT TO ITS OBLIGATIONS UNDER SECTION 9.2, IN NO EVENT SHALL TALKDESK’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNT PAID BY CUSTOMER TO TALKDESK PURSUANT TO THIS AGREEMENT FOR THE SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT THAT GAVE RISE TO SUCH CLAIM. NOR WILL TALKDESK BE LIABLE FOR CUSTOMER’S INABILITY TO USE THE TALKDESK SERVICES BECAUSE OF A FAILURE OR DEGRADATION OF A THIRD-PARTY PROVIDER’S NETWORK, A FAILURE OR DEGRADATION OF INTERNET SERVICES PROVIDERS OR ANY OTHER THIRD-PARTY CAUSE.

## **13 TERM AND TERMINATION.**

**13.1 Term.** Unless earlier terminated as provided herein, this Agreement shall commence as of the Effective Date and will continue until the Service Term of the last active Order Form has expired or has been terminated.

**13.2 Automatic Renewal.** Unless “Automatic Renewal” is marked as “No” on the applicable Order Form, each Order Form shall automatically renew for successive Renewal Terms of three years in length unless either party gives written Notice to the other party (provided that solely for purposes of this Section 13.2, Customer may give written notice by submitting a ticket through the Talkdesk portal) of its intention not to renew no later than thirty (30) days prior to the end of the then-current Initial Term or Renewal Term, as applicable.

**13.3 Termination.** A party may terminate the Agreement, any Order Form and/or the Service Term in the event that: (a) the other party materially breaches this Agreement and does not cure such breach within thirty (30) days following its receipt of written Notice of such breach; or (b) the other party has become insolvent, does not pay its debts as they become due, makes a general assignment for the benefit of its creditors,

becomes the subject of any domestic or foreign bankruptcy or insolvency law, or applies for or has a receiver, trustee, or similar agent appointed to manage or dispose of any material portion of its property or business.

**13.4 Suspension.** Talkdesk may suspend access to the Services immediately if: (a) Customer fails to timely pay any amounts due under this Agreement; (b) Customer is in material breach of this Agreement; (c) Customer is using the Services in violation of law or applicable regulations; or (d) required by a regulator or as necessary to comply with applicable law. Suspension notices under this Section may be sent to the Customer's billing email address stated on the Order Form.

**13.5 Surviving Provisions.** The sections titled "Invoice and Payment," "Intellectual Property Rights," "Confidentiality and Publicity," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Term and Termination," "Removal of Third-Party Content and Third-Party Product," "Dispute Resolution" and "General Provisions" will survive any termination or expiration of this Agreement, and the section titled "Protection of Customer Data" will survive any termination or expiration of this Agreement for so long as Talkdesk retains possession of Customer Data.

## **14 DISPUTE RESOLUTION.**

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

**14.2 Choice of Law.** This Agreement and any dispute related to this Agreement shall be governed by and interpreted in accordance with the laws of the State of California without regard to its conflict of laws provisions. If any litigation is validly instituted in connection with this Agreement, the parties hereby consent to the exclusive personal jurisdiction of the state and federal courts in California and waive any objection as to venue or inconvenient forum.

**14.3 Jury Trial.** The parties hereby waive any right to a jury trial in connection with a dispute related to this Agreement.

**14.4 Attorneys' Fees.** If any legal proceeding is instituted to enforce the terms of this Agreement, the prevailing party shall be awarded its attorneys' fees and other associated costs incurred in such action.

## **15 GENERAL PROVISIONS.**

**15.1 Compliance with Applicable Law.** Each party shall ensure that in its performance of this Agreement it will comply with applicable laws and regulations. Customer remains solely responsible for the use of the Services in compliance with applicable laws and regulations including, but not limited to, laws and regulations relating to the recording of phone calls or other electronic communications. Customer shall obtain proper consent prior to starting any call recordings, if so required by applicable laws. In no event shall Talkdesk, its partners or suppliers be liable for any claim or action arising from, or related to, the failure to comply with any law or regulation that specifically applies to Customer's business, industry or activity.

**15.1.1** To the extent that Talkdesk processes any personal data (as defined by applicable law), such personal data will be processed in accordance with the terms of the Data Processing Agreement located at <https://www.talkdesk.com/legal/dpa/>, which shall be incorporated by reference into this Agreement in accordance with the terms thereof, or such other Data Processing Agreement as may be entered into between the parties. To the extent Talkdesk processes any personal data from the European Economic Area, the United Kingdom or Switzerland, the Standard Contractual Clauses, as set forth in the Data Processing Agreement ("SCCs"), apply. By executing this Agreement or any applicable Order Form, Customer and its Affiliate are deemed to have executed the applicable SCCs as set forth in the Data Processing Agreement. For the purposes of the SCCs, Customer and its applicable Affiliates are each the data exporter, and Talkdesk and its applicable Affiliates are each the data importer.

- 15.1.2** If Customer is subject to HIPAA, Customer and Talkdesk shall enter into a business associate agreement (the “BAA”) before Customer transfers any electronic personal health information (as defined by HIPAA) to Talkdesk, and such BAA shall be deemed to be incorporated into this Agreement by reference.
- 15.1.3** Talkdesk maintains a formal security program and the Talkdesk Services are compatible with the requirements of the Payment Card Industry Data Security Standard (“PCI DSS”). If Customer receives or processes credit card information, it shall comply with PCI DSS requirements and shall ensure that its employees and other representatives do not store cardholder data within the Talkdesk Services.
- 15.1.4** If the California Consumer Privacy Act (“CCPA”), as amended by the California Privacy Rights Act, applies to the Customer Data, the parties agree that Talkdesk:
- a) is receiving the personal information from the Customer pursuant to a business purpose;
  - b) will not sell the personal information (as the term “sell” is defined by the CCPA);
  - c) will retain, use or disclose such personal information only for the specific purpose of performing the Services; and
  - d) shall comply with the restrictions of the CCPA.
- 15.2 Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the restriction contained in this **Section 15.2**.
- 15.3 Export Compliance.** The Services and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Talkdesk and Customer each represent that it is not named on any U.S. government denied-party list. Customer will not permit any Authorized User to access or use the Services or Documentation in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation.
- 15.4 Force Majeure.** Talkdesk will not be liable for any failure or delay in its performance under the Agreement due to any cause beyond its 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 Talkdesk employees), Internet service provider failure or delay, Third-Party Product, or denial of service attack.
- 15.5 Assignment.** Customer may not assign its rights or obligations under this Agreement (including all Order Forms) to a third party without the prior written consent of Talkdesk; provided, however, that Customer shall have the right to assign, without any consent of Talkdesk, its rights and obligations under this Agreement to any other entity pursuant to a merger, consolidation or reorganization or sale of substantially all of its assets or equity. Talkdesk may freely transfer, assign or delegate this Agreement and/or any Order Form(s) or SOW(s) or its rights and duties under this Agreement and any Order Form(s) or SOW(s). Any purported assignment contrary to this **Section 15.5** shall be void.
- 15.6 Notice.** Talkdesk shall deliver Notices to the Customer’s billing address or billing email address stated on the Order Form. Except as otherwise provided herein, Customer shall deliver Notices to:

Talkdesk, Inc.  
Attn: General Counsel, Legal Department  
440 N Barranca Avenue #4375  
Covina, CA 91723  
[legal@talkdesk.com](mailto:legal@talkdesk.com)

All notices required under this Agreement (“Notices”) must be in writing and must be delivered by hand, by email, by registered or certified mail (postage prepaid), or by commercial overnight delivery service. Notice will be deemed to have been duly given: (1) upon delivery, if delivered by hand to an officer of the

receiving party; (2) when sent to the appropriate confirmed email address, if delivered by email; (3) three business days after being mailed by registered or certified mail, postage prepaid, or on the day tracking information indicates delivery, if applicable; or (4) the next business day, if sent by commercial overnight delivery service, or on the day tracking information indicates delivery, if applicable.

- 15.7 Independent Contractor.** The parties are independent contractors and have no right to assume or create any obligation or responsibility on behalf of the other party. Neither party shall hold itself out as an agent of the other party. This Agreement does not create or imply any partnership, agency, joint venture or formal business entity of any kind.
- 15.8 Government Usage.** This is a commercial item agreement. If the Services are to be acquired by or on behalf of the U.S. Government, a state or local government, or a prime contractor or subcontractor (of any tier) of the foregoing, Customer must provide Talkdesk with advance written Notice, and such government customers and users shall obtain only those commercial license rights set forth in the Agreement.
- 15.9 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such holding shall not affect any other provision hereof, and the Agreement shall be construed as if the invalidated or unenforceable provision had not been contained herein, and in a manner to fulfill the original intent of the parties, insofar as possible.
- 15.10 Waiver; Modification.** Except as expressly provided for, no waiver shall be deemed to have been made by either party unless expressed in writing and signed by the waiving party. The failure of either party to insist in any one or more instances upon strict performance of any of the terms or provisions of this Agreement, or to exercise any option or election herein contained, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue and remain in full force and effect, and no waiver by any party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy hereunder or at law. Except as otherwise expressly set forth herein, all remedies agreed upon and/or available under applicable law are cumulative, and the exercise of one will not preclude the right to pursue other available remedies. No modification or amendment of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification or amendment is to be asserted.
- 15.11 Entire Agreement.** This Agreement constitutes the entire and sole agreement among the parties with respect to the subject matter hereof and supersedes any previous or contemporaneous agreements, negotiations, understandings, or other matters, whether oral or written, with respect to the subject matter hereof. This Agreement will prevail over any additional, conflicting or inconsistent terms and conditions which may appear on any purchase order furnished by Customer, and such purchase order terms and conditions will have no force or effect, notwithstanding Talkdesk's acceptance or execution of such purchase order. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Talkdesk regarding future functionality or features. Customer agrees that the functions of the Talkdesk Services are defined exclusively in the Documentation. Each party acknowledges that, in entering into this Agreement, it has not relied on any representation, warranty, or statement, whether oral or written, except as expressly set forth in this Agreement.
- 15.12 No Third-Party Beneficiaries.** Except as otherwise explicitly stated in this Agreement, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 15.13 Execution, Digitized Copies and Counterparts.** This Agreement may be executed in two or more identical counterparts (whether by electronic signature, in facsimile, email, in PDF or original, or acknowledgement through a webpage), each of which shall constitute an original as against the party whose signature appears thereon, and all of which together shall constitute one and the same instrument.