



Contract Number

24-1047

SAP Number

Auditor-Controller/Treasurer/Tax Collector

Department Contract Representative	Don Le
Telephone Number	909-382-3001
Contractor	Zendesk, Inc.
Contractor Representative	Loana Tietjen
Telephone Number	832-689-1735
Contract Term	November 5, 2024, and remaining in effect so long as there is a valid service or statement of work, or until terminated by either party
Original Contract Amount	Non-financial
Amendment Amount	N/A
Total Contract Amount	Non-financial
Cost Center	3400001000
Grant Number (if applicable)	N/A

Briefly describe the general nature of the contract: Approve non-financial Main Services Agreement, with Zendesk Inc., including non-standard terms, for a subscription to use software used to manage customer inquiries, issues, and support requests, for the contract term beginning on November 5, 2024, and remaining in effect so long as there is a valid service or statement of work, or until terminated by either party.

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*
Bonnie Uphold, Supervising Deputy County Counsel

Date *10/25/2024*

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► *[Signature]*
Ensen Mason, Auditor-Controller/Treasurer/Tax Collector

Date *10/28/2024*

MAIN SERVICES AGREEMENT

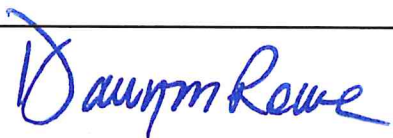
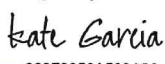
This Agreement is made and entered into by and between the party specified below with the address as set forth on the Service Order ("Subscriber") and Zendesk (as defined below). Subscriber and Zendesk are sometimes referred to herein individually as a "Party" and together as the "Parties." Defined terms 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 Subscriber.

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.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The Parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding. Each Party providing an electronic signature agrees to promptly execute and deliver to the other Party an original signed Agreement upon request.

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"):

SUBSCRIBER: SAN BERNARDINO COUNTY		ZENDESK, INC.	
BY		BY	<div style="border: 1px solid black; padding: 2px;"> Signed by:  962F3256A5884C3... </div>
NAME	Dawn Rowe	NAME	Kate Garcia
TITLE	Chair, Board of Supervisors	TITLE	SVP Sales
DATE	NOV 05 2024	DATE	9/4/2024



DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the San Bernardino County

Title _____
(Print or Type)

By _____
Deputy

Dated: _____

Address _____

FOR COUNTY USE ONLY




Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
 County Counsel		
Date _____	Date _____	Date _____



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GENERAL TERMS AND CONDITIONS

SECTION 1. ACCESS TO THE SERVICES

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

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

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

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

1.6 Extension of Rights to Affiliates. Subscriber may extend its rights, benefits and protections provided herein to its Affiliates and to contractors or service providers acting on Subscriber's or Subscriber's Affiliates' behalf, provided that Subscriber remains responsible for their compliance hereunder. An Affiliate may also directly purchase Services or Professional Services pursuant to the terms of this Agreement provided that such Affiliate (i) executes a Service Order or Statement of Work for such Services or Professional Services; and (ii) agrees to be bound by the terms of this Agreement as if it were an original party hereto. Subscriber also agrees that it will be responsible for its Affiliates' compliance with this Agreement. Subscriber hereby authorizes Zendesk to share the content of this Agreement with Subscriber's Affiliates.

SECTION 2. USE OF THE SERVICES

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

ZENDESK CONFIDENTIAL INFORMATION
DECEMBER 2023



enforced in the Service user interface. Zendesk reserves the right to charge Subscriber, and Subscriber hereby agrees to pay, for any overuse of a Service in violation of this Agreement or the Service Plan features and limitations on the Site or Documentation, in addition to other remedies available to Zendesk.

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

2.3 Content and Conduct. Subscriber agrees to comply with the Zendesk User Content and Conduct Policy (as defined below) which is hereby incorporated into this Agreement. Further, in Subscriber's use of the Services Subscriber agrees 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; or (d) to the extent Subscriber is subject to the US Health Insurance Portability and Accountability Act of 1996, and its implementing regulations (HIPAA), use the Services to store or transmit any "protected health information" as defined by HIPAA, unless expressly agreed to otherwise in writing by Zendesk.

2.4 System Requirements. A high-speed Internet connection is required for proper transmission of the Services. Subscriber is responsible for procuring and maintaining the network connections that connect Subscriber's network to the Services including, but not limited to, browser software that supports protocols used by Zendesk, including the Transport Layer Security (TLS) protocol or other protocols accepted by Zendesk, and to follow procedures for accessing services that support such protocols. Zendesk is not responsible for notifying Subscriber, Agents or End-Users of any upgrades, fixes or enhancements to any such software or for any compromise of data, including Service Data, transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned, operated or controlled by Zendesk. Zendesk assumes no responsibility for the reliability or performance of any connections as described in this Section.

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

2.6 No Competitive Access. Subscriber may not access the Services for competitive purposes or if Subscriber is 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.



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

SECTION 3. TERM, CANCELLATION AND TERMINATION

3.1 Term. The term of this Main Services Agreement begins on the Effective Date and will remain in effect as long as the Subscriber has a valid Service Order/Statement of Work or until this Main Services Agreement is otherwise terminated in accordance with the terms hereof, whichever occurs first. The Subscription Term will be defined in each individual Service Order. Unless an Account and subscription to a Service are terminated in accordance with this Agreement or the applicable Service Order, or unless otherwise stated in the applicable Service Order, (a) Subscriber's 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 Zendesk's 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 an Account and subscription to a Service at the end of the then-current Subscription Term by providing notice in accordance with Section 18 of this Agreement to revops@zendesk.com no less than thirty (30) days prior to the end of such Subscription Term.

3.2.1 Subscriber's financial obligations, if any, under this Agreement are contingent upon sufficient appropriations and authorization being made by the Subscriber for the performance of this Agreement. Subscriber's good faith decision as to whether sufficient appropriations are available shall be accepted by the other Party to this Agreement and shall be final. In the event of termination due to a lack of appropriations, Subscriber (i) shall notify Zendesk by providing notice in accordance with Section 18 of this Agreement to revops@zendesk.com no less than thirty (30) days prior to termination and (ii) will pay Zendesk for any and all undisputed, unpaid Subscription Charges in accordance with Section 3.4 below.

3.3 Termination for Cause. A Party may terminate this Agreement for cause (a) upon written notice to the other Party of a material breach by the other Party if such breach remains uncured after thirty (30) days from the date of receipt of such notice; or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors. However, Zendesk may immediately terminate this Agreement for cause without notice if Subscriber violates the Zendesk User Content and Conduct Policy or if provision of the Service violates applicable law, regulation or court order.

Zendesk 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 Subscriber in accordance with this Section for Zendesk's uncured material breach.

Subscriber must pay any unpaid fees covering the remainder of the Subscription Term pursuant to all applicable Service Order if Zendesk terminates this Agreement for Subscriber's material breach in accordance with this Section. In no event will Zendesk's termination for cause relieve Subscriber of its obligation to pay any fees payable to Zendesk for the period prior to termination.

3.4 Payment Upon Termination. Except for Subscriber's termination under Section 3.2.1 or Section 3.3, if Subscriber terminates its subscription to a Service or cancels its Account prior to the end of the then-effective Subscription Term, or if Zendesk terminates or cancels Subscriber's Account pursuant to Section 3.3, in addition to any other amounts Subscriber may owe Zendesk, Subscriber must immediately pay any and all undisputed, unpaid Subscription Charges associated with the remainder of such Subscription Term.



3.5 No Refunds. Except for Subscriber's termination rights under Section 3.3, no refunds or credits for Subscription Charges or other fees or payments will be provided if Subscriber terminates a subscription to a Service or cancels its Account prior to the end of a Subscription Term.

3.6 Export of Service Data. Upon Subscriber's written request, Zendesk will make Service Data available to Subscriber for export or download as provided in the Documentation for thirty (30) days after the effective date of termination, expiration or migration of the Account, except for Service Data which (i) has been deleted in accordance with the Documentation, (ii) was created and/or used in violation of this Agreement, or (iii) unless prohibited by law or legal order. Thereafter, Zendesk will have no obligation to maintain or provide any Service Data and Zendesk will delete Service Data in accordance with Zendesk's Service Data Deletion Policy available on Zendesk's 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 the Subscription Term, or with respect to a Deployed Associated Service, at the time such Deployed Associated Service is purchased, subscribed to or otherwise deployed. Subscriber is responsible for providing valid and current payment information and Subscriber agrees to promptly update the Account information, including payment information, with any changes that may occur (for example, a change in Subscriber's billing address or credit card expiration date). If Subscriber fails to pay Subscription Charges or any other charges indicated on any Service Order or Statement of Work, or in any Supplemental Terms, within five (5) days of Zendesk's notice to Subscriber that payment is delinquent, or if Subscriber does not update payment information upon Zendesk's request, in addition to other remedies, Zendesk may suspend access to and use of the Services by Subscriber, Agents and End-Users. As permitted by applicable law, Zendesk reserves the right to charge the Subscriber late payment penalties or interest charges on any past-due invoices that are not subject to a previously-noticed good faith dispute as to amount owed.

4.2 Upgrades. If Subscriber chooses to upgrade the Service Plan or increase the number of Agents authorized to access and use a Service during the 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, the Subscription Charges will reflect any such upgrades.

4.3 Downgrades. Subscriber may not downgrade its Service Plan or reduce the number of Agents during any Subscription Term. Subscriber may only downgrade its Service Plan or reduce the number of Agents under any Service Plan for a subsequent Subscription Term at the end of the then-current Subscription Term by providing Zendesk with thirty (30) days prior written notice indicating which instances will be affected and the details of the downgrade requested. In the event of a downgrade, Subscriber must demote any downgraded Agents prior to the beginning of the subsequent Subscription Term. Downgrading the Service Plan may generate additional costs (e.g., storage costs) and cause loss of content, features, or capacity of the Service as available to Subscriber under an Account, and Zendesk is not responsible for such loss. If a new Service Order is not signed by the Subscriber before the end of the then-current Subscription Term, the Services will renew as defined in Section 3.1.

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



4.4 Taxes. Unless otherwise stated, Zendesk's Subscription Charges do not include any Taxes. Subscriber is responsible for paying Taxes assessed in connection with the subscription to the Services except those assessable against the Zendesk Group measured by its net income. Zendesk will invoice the Subscriber for such Taxes if Zendesk believes it has a legal obligation to do so and Subscriber agrees to pay such Taxes if so invoiced. Zendesk agrees to exempt Subscriber from any taxes for which Subscriber provides to Zendesk a tax exemption certificate prior to the issuance of an invoice; provided, however, that no such exemption shall be extended to Subscriber following written notice to Zendesk from a taxing authority of appropriate jurisdiction that Subscriber does not qualify for the claimed exemption.

4.4.1 If the Subscriber is required to withhold Taxes from payments to Zendesk, Subscriber shall pay Zendesk the amount owing on the invoice, less a deduction for such Taxes withheld to be remitted directly by the Subscriber to the relevant tax authority. Subscriber will provide Zendesk with a valid receipt for such Taxes remitted to the relevant tax authority within 75 (seventy-five) days of Subscriber's payment to Zendesk from which the withholding was made. If Subscriber does not provide the valid receipt for such Taxes remitted within 75 days, Subscriber agrees and acknowledges that it will be charged and will have to pay for the full amount of the invoice.

4.4.2 If the Subscriber is legally required to withhold Taxes from payments to Zendesk but fails to do so and pay an invoice in full, Subscriber may be entitled to reimbursement of the Taxes which should have been withheld. Such reimbursement can only be made in the first year following payment of the relevant invoice to Zendesk, once the Subscriber provides Zendesk with a valid receipt for the Taxes remitted to the relevant tax authority in respect of that invoice.

4.5 Payment Agent. If Subscriber pays 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. Subscriber hereby authorizes the Payment Agent to bill Subscriber's 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 Subscriber subscribes until the subscription to the Services terminates, and Subscriber further agrees to pay any Subscription Charges so incurred. If applicable, Subscriber hereby authorizes Zendesk and the Payment Agent to charge Subscriber's 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 Subscriber's billing information except to process Subscriber's credit card information for the Payment Agent.

4.6 Payment Portals. If Subscriber mandates Zendesk to 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, Subscriber shall be invoiced by Zendesk for, and Subscriber is 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

5.1 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 Subscriber), 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. Given the unique nature of Confidential Information, the Parties agree that any violation or threatened violation by a Party to this Agreement with respect to Confidential Information may cause irreparable injury to the other Party. Therefore, the Parties agree such violation or threatened violation shall entitle the other Party to seek injunctive or other equitable relief in addition to all legal remedies.

5.2 In the event the Agreement or any information provided by Zendesk becomes subject to an open records request, such as a Freedom of Information Act or equivalent request (a "Request"), Subscriber will contest such Request and notify Zendesk immediately so We can seek protection from disclosure. Subscriber acknowledges and agrees that it will seek to obtain any available statutory exemption to the Request, including any exemptions for confidential or security information. Subscriber acknowledges and agrees that Zendesk's security information, including its independent third party audit reports (e.g. SOC 2 Type II), constitutes Zendesk's Confidential Business Information (as defined in the MSA) which is highly sensitive and which would cause irreparable harm to Zendesk if disclosed.

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 the Subscriber. Subscriber hereby confirms and provides general authorization for Zendesk's use of the Sub-processors listed within Zendesk's Sub-processor Policy. Zendesk shall be responsible for the acts and omissions of members of Zendesk Personnel and Sub-processors to the same extent that Zendesk would be responsible if Zendesk was performing the services of each Zendesk Personnel or Sub-processor directly under the terms of this Agreement. Subscriber may sign up to receive notifications of any changes to the 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 Subscriber, 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 substantially similar to the confidentiality terms herein. Zendesk shall be responsible for the acts and omissions of members of Zendesk's third-party service providers to the same extent that Zendesk would be responsible if Zendesk was performing the services of each third-party service provider directly under the terms of this Agreement.

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



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

6.5 Agent Contact Information. Zendesk shall be the Data Controller of Agent Contact Information, and shall process such Agent Contact Information in accordance with Zendesk's Privacy Notice and Zendesk's Controller Global Binding Corporate Rules located at <https://www.zendesk.com/privacy> and <https://www.zendesk.com/trust-center>. Subscriber is responsible for informing its Agents of their rights set forth in Zendesk's Privacy Notice. Subscriber represents and warrants that Subscriber has 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.

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

SECTION 7. TEMPORARY SUSPENSION

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

SECTION 8. NON-ZENDESK SERVICES

If Subscriber decides to enable, access or use Non-Zendesk Services, Subscriber's access and use of such Non-Zendesk Services shall be governed solely by the terms and conditions of such Non-Zendesk Services. Zendesk does not endorse, is not responsible or liable for, and makes no representations as to any aspect of such Non-Zendesk Services, including, without limitation, their content or the manner in which they handle, protect, manage or process data (including Service Data), or any interaction between Subscriber and the provider of such Non-Zendesk Services. Zendesk cannot guarantee the continued availability of such Non-Zendesk Service features, and may cease enabling access to them without entitling Subscriber 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 Zendesk. Subscriber irrevocably waives any claim against Zendesk with respect to such Non-Zendesk Services. Zendesk is not liable for any damage or loss caused or alleged to be caused by or in connection with Subscriber's enablement, access or use of any such Non-Zendesk Services, or Subscriber's reliance on the privacy practices, data security processes or other policies of such Non-Zendesk Services. Subscriber may be required to register for or log into such Non-Zendesk Services on their respective



websites. By enabling any Non-Zendesk Services, Subscriber is expressly permitting Zendesk to disclose Subscriber's login and Service Data to the provider of the Non-Zendesk Service as necessary to facilitate the use or enablement of such Non-Zendesk Services.

SECTION 9. FREE TRIALS

If Subscriber registers for a free trial for any of the Services, Zendesk will make such Services available to Subscriber pursuant to this Agreement as well as 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, title and interest in any of its respective Intellectual Property Rights. The rights granted to Subscriber, 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 and Zendesk's machine learning algorithms, 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 Zendesk receives from Subscriber, Agents, End-Users, or other third parties acting on Subscriber's behalf. The Zendesk Group also reserves the right to seek intellectual property protection for any features, functionality or components that may be based on or that were initiated by suggestions, enhancement requests, recommendations or other feedback regarding the Services that Zendesk receives from Subscriber, Agents, End-Users, or other third parties acting on Subscriber's behalf.

10.3 Use of Zendesk Marks. Subscriber may only use the Zendesk Marks in a manner permitted by Zendesk's Trademark Usage Guidelines available on Zendesk's Intellectual Property Website, provided Subscriber does 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 Zendesk Services. Zendesk's ability to use Subscriber Marks will be set forth in a Service Order or by mutual agreement of the Parties.

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

SECTION 11. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

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. Zendesk warrants that during an applicable Subscription Term (a) this Agreement and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Service Data; and (b) the Services will perform materially in accordance with the applicable Documentation. For any breach of a warranty in this section, Subscriber's exclusive



remedies are those described in Section 3.3 herein. The warranties herein do not apply to any misuse or unauthorized modification of the Services made by Subscriber, its Agents or its End-Users.

11.3 Disclaimers. EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 11.2, THE SITES AND THE SERVICES, INCLUDING ALL SERVER AND NETWORK COMPONENTS, ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW, AND ZENDESK EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SUBSCRIBER ACKNOWLEDGES THAT ZENDESK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE, AND NO INFORMATION OR ADVICE OBTAINED BY SUBSCRIBER FROM ZENDESK OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

SECTION 12. INDEMNIFICATION

12.1 Indemnification by Zendesk. Zendesk will indemnify and defend the Subscriber from and against any claim brought by a third party against Subscriber alleging that Subscriber’s use of a Service as permitted hereunder infringes or misappropriates a third party’s valid patent, copyright, trademark or trade secret (an “IP Claim”). Zendesk shall, at Zendesk’s expense, defend such IP Claim and pay damages finally awarded against Subscriber in connection therewith, including reasonable fees and expenses of attorneys engaged by Zendesk for such defense, provided that (a) Subscriber promptly notifies Zendesk of the threat or notice of such IP Claim, provided the delay or failure of such notice shall not reduce or eliminate Zendesk’s obligations hereunder except to the extent Zendesk is materially prejudiced by such delay or failure; (b) Zendesk will have sole, exclusive control and authority to select defense attorneys, defend and/or settle any such IP Claim (however, Zendesk shall not settle or compromise any claim that results in liability or admission of any liability by Subscriber without Subscriber’s prior written consent); and (c) Subscriber reasonably cooperates with Zendesk in connection therewith, provided that Subscriber’s cooperation is sufficient to allow Zendesk to properly defend the IP Claim. If use of a Service by Subscriber, Agents or End-Users has become, or, in Zendesk’s opinion, is likely to become, the subject of any such IP Claim, Zendesk may, at Zendesk’s option and expense (i) procure for Subscriber the right to continue using the Service(s) as set forth hereunder; (ii) replace or modify a Service to make it non-infringing; or (iii) if options (i) or (ii) are not commercially reasonable or practicable as determined by Zendesk, terminate Subscriber’s subscription to the Service(s) and repay Subscriber, on a pro-rata basis, any Subscription Charges paid to Zendesk for the unused portion of Subscriber’s Subscription Term for such Service(s). Zendesk will have no liability or obligation under this Section 12.1 with respect to any IP Claim if such claim is caused in whole or in part by (x) compliance with designs, data, instructions or specifications provided by Subscriber; (y) modification of the Service(s) by anyone other than Zendesk or Zendesk Personnel; or (z) the combination, operation or use of the Service(s) with other hardware or software where a Service would not by itself be infringing. The provisions of this Section 12.1 state the sole, exclusive and entire liability of Zendesk to Subscriber and Subscriber’s sole remedy with respect to an IP Claim brought by reason of access to or use of a Service by Subscriber, Agents or End-Users.

12.2 Notwithstanding any other term in the Agreement, Subscriber’s indemnification obligations are only applicable to the extent permitted by law.

SECTION 13. LIMITATION OF LIABILITY

13.1 EXCLUSION OF DAMAGES. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) SHALL EITHER PARTY TO THIS AGREEMENT, OR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS,

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SERVICE PROVIDERS, SUPPLIERS OR LICENSORS, BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA (WHERE SUCH DATA IS LOST IN THE COURSE OF TRANSMISSION VIA SUBSCRIBER'S SYSTEMS OR OVER THE INTERNET THROUGH NO FAULT OF ZENDESK), BUSINESS INTERRUPTION, LOSS OF GOODWILL, COSTS OF COVER OR REPLACEMENT, OR FOR ANY OTHER TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR FOR ANY OTHER INDIRECT LOSS OR DAMAGES INCURRED BY THE OTHER PARTY OR ITS AFFILIATES IN CONNECTION WITH THIS AGREEMENT, THE SERVICES OR PROFESSIONAL SERVICES, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

13.2 LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY, THEIR AFFILIATES, OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT, THE SERVICES OR PROFESSIONAL SERVICES, SHALL IN NO EVENT EXCEED \$100,000. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE ESSENTIAL PURPOSE OF THIS SECTION 13.2 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE SUBSCRIPTION CHARGES AND PROFESSIONAL SERVICES FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF ZENDESK WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. ZENDESK HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE SUBSCRIBER WITH THE RIGHTS TO ACCESS AND USE THE SERVICES AND/OR THE PROFESSIONAL SERVICES PROVIDED FOR IN THIS AGREEMENT. THE LIMITATIONS SET FORTH IN SECTION 13.2 SHALL NOT APPLY TO CLAIMS OR DAMAGES RESULTING FROM (I) EACH PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 12; (II) SUBSCRIBER'S BREACH OF SECTION 2.2; (III) A PARTY'S MISUSE OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; AND (IV) SUBSCRIBER'S OBLIGATION TO PAY SUBSCRIPTION CHARGES.

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

13.4 Jurisdiction-specific exclusions. Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages or for a party's own fraud, willful injury to the person or property of another, or violation of law, which means that some of the above limitations may not apply to Subscriber. IN THESE JURISDICTIONS, THE ZENDESK GROUP'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

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

SECTION 14. ASSIGNMENT, ENTIRE AGREEMENT AND AMENDMENT

14.1 Assignment. Except as permitted herein, neither Party may, directly or indirectly, by operation of law or otherwise, assign all or any part of this Agreement or rights under this Agreement, or delegate performance of its duties under this Agreement, without written prior consent of the other Party, which consent will not be unreasonably withheld. Notwithstanding the foregoing subject to Section 2.6 herein, Subscriber may, without Zendesk's consent, assign this Agreement to an Affiliate or in connection with any merger or change of control of Subscriber or the sale of all or substantially all of Subscriber's assets, provided that (i) any such successor agrees to fulfill its obligations pursuant to this Agreement, and (ii) Subscriber and the assignee execute Zendesk's assignment form. If requested by Zendesk, Subscriber must execute an assignment to give effect to Zendesk's assignment. Zendesk may assign this

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Agreement without Subscriber's consent 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 Zendesk's assets provided that any such successor (i) agrees to fulfill its obligations pursuant to this Agreement, and (ii) provides written notice to Subscriber (notice via the Site being sufficient); provided, however, if Zendesk assigns this Agreement in accordance with this Section 14.1 to an entity named on any U.S. government or other applicable restricted-party list, then Subscriber shall have the right to immediately terminate this Agreement. In the event Subscriber terminates this Agreement in accordance with the foregoing provision, Subscriber (i) shall have no right to any refund of any prepaid fees (including any undelivered prepaid fees), and (ii) shall remain responsible to render payment for any Services delivered through the effective date of termination that have not yet been invoiced or paid. Subject to the foregoing restrictions, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

14.2 Entire Agreement. This Agreement constitutes the entire agreement and supersedes any and all prior agreements between Subscriber and Zendesk, with regard to the subject matter hereof. This Agreement shall apply in lieu of the terms or conditions in any purchase order, request for information, request for proposal, or other order documentation Subscriber or any entity which Subscriber represents provide(s) and all such terms or conditions in such purchase order, request for information, request for proposal, or other order documentation are null and void. Except as expressly stated herein, there are no other agreements, representations, warranties or commitments which may be relied upon by either Party with respect to the subject matter hereof. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind between the Parties, except as may otherwise be expressly provided herein. The headings used herein are for convenience only and shall not affect the interpretation of the terms of this Agreement.

14.3 Amendment. This Agreement may only be amended upon the written agreement of both Parties. The failure of a Party to enforce at any time any provision of this Agreement does not constitute a waiver of that provision or of any other provision of this Agreement.

SECTION 15. SEVERABILITY

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

SECTION 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 (nor directly or indirectly owned 50% or greater, in the aggregate, or otherwise controlled by, a person or persons named on) any U.S. government or other applicable restricted-party list, and Subscriber will not, and will not permit any Agent or End-User to: (a) access or use any Service in a U.S.-embargoed or U.S.-sanctioned country or region, (e.g., Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People's Republic and Luhansk People's Republic regions of Ukraine, or any other country or region embargoed or sanctioned during the Subscription Term); (b) access or use any Service if Subscriber, Agent, or End-User is named on (or directly or indirectly owned 50% or greater, in the aggregate, or otherwise controlled by, a person or persons named on) any U.S. government or other applicable restricted-party list; (c) place any information in the Services that is controlled under the U.S. International Traffic in Arms Regulations or other similar laws; or (d) access or use any Service for any purpose prohibited by the United States or applicable international import and export laws and regulations. Zendesk shall have no obligation or liability to Subscriber if a governmental or regulatory action restricts access to the Services, and Subscriber agrees that this

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Agreement and any Service Order expressly exclude any right to access the Services from a jurisdiction where such governmental or regulatory restriction is in effect. Zendesk reserves the unconditional right to refuse to enter into or to terminate 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. Subscriber is solely responsible for determining whether the Services meet Subscriber's technical, business, or regulatory requirements. Zendesk's business partners and other third parties, including any third parties with which the Services have integrations or that are retained by Subscriber to provide consulting services, implementation services or applications that interact with the Services, are independent of Zendesk.

SECTION 18. NOTICE

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

18.2 Notices to Zendesk. All Legal Notices provided by Subscriber to Zendesk under this Agreement must be delivered in English and in writing by (a) Courier or U.S. mail 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 Subscriber to Zendesk under this Agreement must be delivered in English and in writing by electronic mail to revops@zendesk.com.

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

SECTION 19. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California, without reference to conflict of laws principles. Any disputes under this Agreement shall be resolved in a court of general jurisdiction in San Francisco County, California. Subscriber hereby expressly agrees to submit to the exclusive personal jurisdiction of this jurisdiction for the purpose of resolving any dispute relating to this Agreement or relating to access to or use of the Services by Subscriber, Agents or End-Users.

SECTION 20. FEDERAL GOVERNMENT END USE PROVISIONS

If Subscriber is 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 the Subscriber with only those rights as provided under the terms and conditions of this Agreement.



SECTION 21. ETHICAL CONDUCT AND COMPLIANCE

21.1 Neither Party, nor any of its employees or agents, has offered, received or been offered, directly or indirectly, any illegal or improper bribe or kickback (whether in the form of a payment, gift, undue advantage, or thing of value), or will offer or accept the same in connection with this Agreement. All Parties agree to comply with the US Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010, and any reasonably equivalent anti-corruption requirements in other jurisdictions that are reasonably applicable to this Agreement. Modest and reasonable gifts, meals, entertainment, and other hospitality, provided in the ordinary course of business and without any corrupt intent to obtain or retain business, or influence a government decision, will not violate the above restriction. Zendesk will abide by its [Code of Conduct](https://www.zendesk.com/company/policies-and-guidelines/) in the provision of the Services as available here: <https://www.zendesk.com/company/policies-and-guidelines/>. If Subscriber learns of any violation of the above restrictions by Zendesk, Subscriber will use reasonable efforts to promptly notify Zendesk at legalnotice@zendesk.com.

21.2 Campaign Contribution Disclosure (California SB 1439). Zendesk has disclosed to Subscriber using Attachment B - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the San Bernardino County (County) Board of Supervisors or other County elected officer, including Sheriff, Assessor-Recorder-Clerk, and Auditor-Controller/Treasurer/Tax Collector and the District Attorney, within the earlier of: (1) the date of the submission of Zendesk's proposal to Subscriber, or (2) 12 months before the date this Agreement was approved by the County Board of Supervisors. Zendesk acknowledges that under Government Code section 84308, Zendesk is prohibited from making campaign contributions of more than \$250 to any member of the County Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Agreement. In the event of a proposed amendment to this Agreement, Zendesk will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the County Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment. Campaign contributions include those made by any agent/person/entity on behalf of Zendesk or by a parent, subsidiary or otherwise related business entity of Zendesk.

SECTION 22. SURVIVAL

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

SECTION 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 Subscriber's 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 Subscriber’s Affiliates) authorized to use the Service(s) through Subscriber’s Account as an agent, account owner and/or administrator, each as identified through an individual Agent Login.

“Agent Contact Information” means personal data about Subscriber’s Agents, such as their name and email address, that Zendesk stores separate from the Services in order to, among other things, communicate with Subscriber’s 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 Main Services Agreement together with any and all Supplemental Terms, Service Order and other mutually executed documents. The Main Services Agreement may also be referred to as “Master Subscription Agreement” or “MSA.”

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

“Associated Services” means products, services, features and functionality designed to be used in conjunction with the Services that are not included in Subscriber’s subscribed Service Plan. For the avoidance of doubt, Additional Features that are expressly stated to be governed by separate Supplemental Terms shall not be deemed an Associated Service. Where Subscriber has 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 Subscriber at the time of deployment of or access to the integration or application.

“Confidential Information” means all information disclosed by one Party to the other Party which is in tangible form and designated as confidential or is information, regardless of form, which a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure, including but not limited to the product plans and designs, business processes, security notifications, and customer advocacy communications. 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 Subscriber 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 or its Agents interact while using a Service.

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

“Force Majeure Event” means any circumstances beyond Zendesk’s 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 labor problem (other than one involving Zendesk employees), Internet service provider failure or delay, Non-Zendesk Services, or acts undertaken by third parties, including without limitation, denial of service attack.

“How We Protect Your Service Data (Enterprise Services)” means the website located at: <https://www.zendesk.com/company/customers-partners/protect-service-data-enterprise-services/>

“How We Protect Your Service Data (Innovation Services)” means the website located at: <https://www.zendesk.com/company/customers-partners/protect-service-data-innovation-services/>

“Innovation Services” means any Service or feature described on Zendesk’s Innovation Services List available on Zendesk’s 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 Subscriber may connect to or enable in conjunction with a Service, including, without limitation, Non-Zendesk Services which may be integrated directly into an Account by Subscriber or at Subscriber’s direction.

“Payment Agent(s)” means Zendesk, Inc. or a payment agent designated by Zendesk. For example, if Subscriber chooses 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.

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

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

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

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

“Service(s)” means the products and services that are used or ordered by Subscriber 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 Zendesk, via the applicable subscriber login link and other web pages designated by Zendesk, 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 Subscriber’s 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 Subscriber, Agents and End-Users in connection with Subscriber’s use of such Service, excluding Agent Contact Information.

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

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

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

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

“**Standard Subscription Charges**” means Zendesk’s undiscounted list price for the applicable Services related to Subscriber’s access to and use of an Account.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



ATTACHMENT A INSURANCE REQUIREMENTS

Zendesk agrees to provide insurance set forth in accordance with the requirements herein. If Zendesk uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Zendesk agrees to amend, supplement or endorse the existing coverage if reasonably acceptable to Zendesk and agreed to by Underwriter.

1. Without in anyway affecting the indemnity herein provided and in addition thereto, Zendesk shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Zendesk and all risks to such persons under this Agreement. If Zendesk has no employees, it may certify or warrant to the Subscriber that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the Subscriber's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

b. Commercial/General Liability Insurance – Zendesk shall carry General Liability Insurance covering all operations performed by or on behalf of Zendesk providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- i. Premises operations and mobile equipment.
- ii. Products and completed operations.
- iii. Broad form property damage (including completed operations).
- iv. Explosion, collapse and underground hazards.
- v. Personal injury.
- vi. Contractual liability.
- vii. \$2,000,000 general aggregate limit.

c. Automobile Liability Insurance – Primary insurance coverage shall be written on Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If Zendesk is transporting one or more non-employee passengers in performance of Agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Zendesk owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella or excess policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary excess coverage for any underlying liability policies whose limits are depleted or primary coverage if the Umbrella provides coverage not covered by the primary policy. The coverage shall also apply to automobile liability.

e. Professional Liability –Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits



f. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after Agreement completion.

g. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved Subscriber entities and cover breach response cost as well as regulatory fines and penalties.

2. **Additional Insured.** All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability and Cyber policies shall name the Subscriber and its officers, employees, Agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall extend coverage for the Subscriber to the vicarious liability caused, in whole or in part, by Zendesk’s acts or omissions or the acts or omissions of those acting on behalf of Zendesk.

3. **Waiver of Subrogation Rights.** Zendesk shall require the carriers of required coverages General Liability, Auto, and Workers Compensation to waive all rights of subrogation against the Subscriber, its officers, employees, Agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Zendesk from waiving the right of subrogation prior to a loss or claim.

4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Subscriber.

5. **Severability of Interests.** Zendesk agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Zendesk and the Subscriber or between the Subscriber and any other insured or additional insured under the policy.

6. **Proof of Coverage.** Zendesk shall furnish Certificates of Insurance to the Subscriber Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, and Zendesk shall maintain such insurance from the time Zendesk commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, Zendesk shall furnish a certificate of insurance evidencing all applicable policies.

7. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A- VII”.

8. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the Subscriber has the right but not the obligation or duty to cancel the Agreement.

9. **Insurance Review.** Insurance requirements are subject to periodic review by the Subscriber. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the Subscriber. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the Subscriber, inflation, or any other item reasonably related to the Subscriber’s risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. After agreement to such amendment, Zendesk agrees to execute any such



amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the Subscriber to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the Subscriber.



ATTACHMENT B

Campaign Contribution Disclosure (Senate Bill 1439)

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other

County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources, or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor: Zendesk

2. Is the entity listed in Question No. 1 a non-profit organization under Internal Revenue Code section 501(c)(3)?

Yes ☐ If yes, skip Question Nos. 3 - 4 and go to Question No. 5.

No ☒



3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: N/A

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s): N/A

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

<u>Company Name</u>	<u>Relationship</u>
-	-
-	-

6. Name of agent(s) of Contractor:

<u>Company Name</u>	<u>Agent(s)</u>	<u>Date Agent Retained (if less than 12 months prior)</u>
-	-	-
-	-	-

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district:

<u>Company Name</u>	<u>Subcontractor(s):</u>	<u>Principal and/or Agent(s):</u>
-	-	-
-	-	-

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

<u>Company Name</u>	<u>Individual(s) Name</u>
-	-
-	-



9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the entities or individuals on behalf of the entities listed in Question Nos. 1-8?

No ☒ If **no**, please skip Question No. 10.

Yes ☐ If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer:

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing below, Contractor certifies that the statements made herein are true and correct to the best of its knowledge. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while this matter is pending and for 12 months after a final decision is made by the County.

Signed by:

Kate Garcia

062F3256A5884C3

Signature

Kate Garcia

Print Name

9/4/2024

Date

Zendesk

Print Entity Name, if applicable

