

SOFTWARE AS A SERVICE TERMS AND CONDITIONS

These **SOFTWARE AS A SERVICE TERMS AND CONDITIONS** (these “**Terms and Conditions**”) are provided by and between **BESPOKEN HOLDINGS, INC.**, a Delaware Corporation (“**Company**”), and the licensee end-user (“**Customer**”). These Terms and Conditions refer to the Company and the Customer as the “**Parties**” and may refer separately to any one of the Parties as a “**Party**.” These Terms and Conditions shall apply to the commercially available version of the Bespoken SaaS Applications and the services related thereto. By downloading and installing, copying or otherwise using the Software, and/or otherwise accepting these Terms and Conditions, Customer agrees to be bound by this agreement. If Customer does not agree to or accept the Terms and Conditions, Customer may not access or use the Software.

1. DEFINITIONS.

- 1.1. “**Agreement**” means these Terms and Conditions.
- 1.2. “**Application(s)**” and/or “**SaaS Application(s)**” means the Bespoken software application programs which are made accessible for Customer to use under the terms of this Agreement.
- 1.3. “**Billing Start Date**” means the date the billing of the Monthly Service Fees commences as indicated on the applicable Order Form. The Billing Start Date of the Monthly Service Fees for any Services ordered by Customer after the date of this Agreement which are incremental to Customer’s then-existing Services shall be the date the applicable Order Form is executed by Company and Customer.
- 1.4. “**Confidential Information**” means any non-public information of a Party relating to such entity’s business activities, financial affairs, technology, marketing or sales plans that is disclosed pursuant to this Agreement and reasonably should have been understood by the receiving party, because of (i) legends or other markings, (ii) the circumstances of disclosure or (iii) the nature of the information itself, to be proprietary and confidential to the disclosing party.
- 1.5. “**Customer Content**” means all content Customer, or others acting on behalf of or through Customer, posts or otherwise inputs into the Services.
- 1.6. “**Documentation**” means technical publications published by Company relating to the use of the Services.
- 1.7. “**Initial Term**” means the initial term of the Services as indicated on the Order Form.
- 1.8. “**Minimum Contract Value**” means the total of all Monthly Service Fees to be invoiced during the Initial Term or a Renewal Term, as applicable.
- 1.9. “**Monthly Service Fee(s)**” means the monthly fees described in an Order Form. Billing of the Monthly Service Fee(s) commences on the Billing Start Date.
- 1.10. “**Order Form**” means an order form mutually executed by Company and Customer setting forth the items ordered by Customer and to be provided by Company and the fees to be paid by Customer. The Order Form can be either a signed document or an online subscription via the Bespoken website or other authorized billing agent of Bespoken.
- 1.11. “**Personally Identifiable Data**” means information concerning individually identifiable employees of Customer that is protected against disclosure under applicable law or regulation.
- 1.12. “**Renewal Term**” means the renewal term of the Services as indicated on the Order Form.
- 1.13. “**Services**” means accessibility to the commercially available version of the Applications by means of access to the password protected customer area of a Company website, and all such services, items and offerings accessed by Customer therein.
- 1.14. “**Term**” means the Initial Term and any Renewal Terms thereafter.

2. TERM.

- 2.1. The Services shall commence on the Billing Start Date, and shall continue for the Initial Term or

until terminated in accordance with the provisions hereof. At the expiration of the Initial Term and each Renewal Term as applicable, the Services shall automatically renew for additional Renewal Terms until terminated in accordance with the provisions hereof.

- 2.2. Customer may terminate the Services and this Agreement for convenience upon thirty (30) days prior written notice subject to Customer's payment of the Minimum Contract Value. Company may terminate the Services and this Agreement to be effective at the expiration of the then current Term upon no less than sixty (60) days prior written notice.
- 2.3. Either Party may terminate the Services and the Agreement upon a material breach of the Agreement by the other Party if such breach is not cured within fifteen (15) days after receipt of written notice. Notwithstanding the foregoing, Company may suspend the Services immediately upon notice in the event of any Customer breach of Sections 4 (Rights to Use), 5 (Acceptable Use), or 11 (Confidentiality).
- 2.4. In the event that either Party becomes insolvent, makes a general assignment for the benefit of creditors, is adjudicated a bankrupt or insolvent, commences a case under applicable bankruptcy laws, or files a petition seeking reorganization, the other Party may request adequate assurances of future performance. Failure to provide adequate assurances, in the requesting Party's reasonable discretion, within ten (10) days of delivery of the request shall entitle the requesting Party to terminate the Agreement immediately upon written notice to the other Party.
- 2.5. If the Agreement is terminated for any reason:
 - (a) Customer shall pay Company within thirty (30) days of such termination, all fees accrued under this Agreement prior to the effective date of such termination, provided however, if Customer terminates for material breach of the Agreement by Company, Company shall refund Customer any pre-paid fees for services not delivered by Company;
 - (b) Customer's right to access and use the Applications shall be revoked and be of no further force or effect;
 - (c) Customer agrees to timely return all Company-provided materials related to the Services to Company at Customer's expense or, alternatively, destroy such materials and provide Company with an officer's certification of the destruction thereof; and
 - (d) All provisions in the Agreement, which by their nature are intended to survive termination, shall so survive.

3. FEES AND PAYMENT.

- 3.1. Customer shall pay Company the Monthly Service Fees and any additional one time, set-up or recurring fees, all as more particularly set forth in the Order Form. Billing will commence on the Billing Start Date with the Monthly Service Fees to be billed on the frequency set forth on the Order Form ("**Billing Frequency**"). Unless otherwise indicated, Company will bill Customer for all implementation services in advance.
- 3.2. Customer authorizes Company to charge the debit card or credit card on file with Company in an amount equal to the Monthly Service Fees as all such fees become due under this Agreement. For all other payments and fees due under this Agreement, payment shall be due 30 days following date of invoice unless otherwise indicated on an Order Form or Online Subscription. Except as expressly set forth in the Agreement, all amounts paid to Company are non-refundable.
- 3.3. Monthly Service fees shall be based on monthly periods that begin on the Billing Start Date. Monthly Service Fees for Services added on or before the 15th day of a given month will be charged for that full monthly period and each monthly period of the Term thereafter; Monthly Service Fees for Services added after the 15th day of a given month will begin to accrue as of the 1st day of the following month and will be charged for each monthly period of the Term

Company: _____

Customer: _____

thereafter. Monthly Service Fees shall be invoiced promptly following the end of the calendar month in which the Monthly Service Fees were accrued.

- 3.4. If any amount owing under this or any other agreement between the parties is thirty (30) or more days overdue, Company may, without limiting Company's rights or remedies, suspend Services until such amounts are paid in full. Company will provide at least seven (7) days' prior written notice that Customer's account is overdue before suspending Services.
- 3.5. At the later of (i) one (1) year after the effective date of this Agreement, or (ii) expiration of the Initial Term, and at each annual anniversary of that date thereafter, Company may increase the Monthly Service Fee rates in an amount not to exceed four percent (4%). The increased Monthly Service Fees will be reflected in the monthly invoice following the effective date of such increase without additional notice.
- 3.6. Customer agrees that except if Customer terminates for material breach of the Agreement by Company, if Customer has not paid the Minimum Contract Value to Company prior to the expiration or termination of the Initial Term or a Renewal Term, as applicable, Customer shall pay within thirty (30) days of the date of such expiration or termination, the difference between the total Monthly Service Fees then paid by Customer for the Initial Term or Renewal Term, as applicable, and the Minimum Contract Value.

4. RIGHTS TO USE.

- 4.1. Subject to the terms and conditions of the Agreement, Company hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-assignable right to use during the Term and for internal business purposes only: a) the Applications and related services, including the Documentation and training materials; and, b) any embedded third Party software, libraries, or other components, which form a part of the Services.
- 4.2. The Services contain proprietary trade secret technology of Company. Unauthorized use and/or copying of such technology are prohibited by law, including United States and foreign copyright law. Customer shall not reverse compile, disassemble or otherwise convert the Applications or other software comprising the Services into uncompiled or unassembled code. Customer acknowledges and agrees that the right to use the Services is limited based upon the amount of the Monthly Service Fees to be paid by Customer. Customer agrees to use only the modules and/or features described on the Order Form. Customer agrees not to use any other modules or features unless Customer has licensed such additional modules or features. Customer may not relicense or sublicense the Services, or otherwise permit use of the Services (including timesharing or networking use) by any third Party. Customer may not provide service bureau or other data processing services that make use of the Services without the prior written consent of Company.
- 4.3. No license, right, or interest in any Company trademark, trade name, or service mark is granted hereunder. When using and applying the information generated by the Services, Customer is responsible for ensuring that Customer complies with applicable laws and regulations.
- 4.4. Customer may authorize its third Party contractors and consultants to access the Services through Customer's administrative access privileges on an as needed basis, provided Customer: a) abides by its obligations to protect Confidential Information as set forth in this Agreement; b) remains responsible for all such third Party usage and compliance with the Agreement; and c) does not provide such access to a competitor of Company who provides voice application monitoring and testing services.
- 4.5. Customer acknowledges and agrees that, as between Customer and Company, Company retains ownership of all right, title and interest to the Services, all of which are protected by copyright and other intellectual property rights, and that, other than the express rights granted herein and under any other agreement in writing with Customer, Customer shall not obtain or claim any rights in or ownership interest to the Services or any associated intellectual property rights in any

Company: _____

Customer: _____

of the foregoing. Customer will comply with all copyright and other intellectual property rights notices contained on or in any information obtained or accessed by Customer through the Services.

- 4.6. Company will make updates and upgrades to the Services (tools, utilities, improvements, third Party applications, general enhancements) available to Customer at no charge as they are released generally to its customers as part of the Services. Customer agrees to receive those updates automatically as part of the Services. Company also may offer new products and/or services to Customer at an additional charge. Customer may purchase such new products and/or services under a separate Order Form.
- 4.7. Company reserves the right to change the Services, in whole or in part, including but not limited to, the Internet based services, technical support options, and other Services-related policies. Customer's continued use of the Services after Company posts or otherwise notifies Customer of any changes indicates Customer's agreement to those changes.

5. ACCEPTABLE USE.

- 5.1. Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Services, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this Agreement.
- 5.2. Customer represents and warrants to Company that Customer has the right to publish and disclose the Customer Content in connection with the Services. Customer represents and warrants to Company that the Customer Content: (a) does not infringe or violate any third-Party right, including but not limited to intellectual property, privacy, or publicity rights, (b) is not abusive, profane, or offensive to a reasonable person, or, (c) is not hateful or threatening.
- 5.3. Customer will not (a) use, or allow the use of, the Services in contravention of any federal, state, local, foreign or other law, or rules or regulations of regulatory or administrative organizations; (b) introduce into the Services any virus or other code or routine intended to disrupt or damage the Services, or alter, damage, delete, retrieve or record information about the Services or its users; (c) excessively overload the Company systems used to provide the Services; (d) perform any security integrity review, penetration test, load test, denial of service simulation or vulnerability scan; (e) use any tool designed to automatically emulate the actions of a human user (e.g., robots); or, (f) otherwise act in a fraudulent, malicious or negligent manner when using the Services.

6. CUSTOMER CONTENT. Customer shall own all Customer Content, which is deemed to be the Confidential Information of Customer. Notwithstanding the foregoing, Customer grants Company permission to combine Customer's business data with that of other customers in a manner that does not identify the Customer or any individual in order to evaluate and improve the services Company offers to customers. In addition, Company may, but shall have no obligation to, monitor Customer Content from time to time to ensure compliance with the Agreement and applicable law.

7. SERVICE LEVEL AGREEMENT. Company shall: (a) provide basic support for the Services as set forth in the Order Form(s), (b) use commercially reasonable efforts to make the Services available as set forth in the Order Form(s), except for: (i) planned downtime (when it shall give at least 8 hours notice via the Services and shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday, Eastern Time), or (ii) any unavailability caused by circumstances beyond Company's reasonable control, including without limitation, acts of nature, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Company employees), internet service provider failures or delays, or denial of service attacks, and (iii) provide Services in accordance with applicable laws and government regulations.

8. DATA SECURITY.

- 8.1. As part of the Services, Company shall provide administrative, physical, and technical

Company: _____
Customer: _____

safeguards for the protection of the security, confidentiality and integrity of Customer data. Customer acknowledges that such safeguards endeavor to mitigate security incidents, but such incidents may not be mitigated entirely or rendered harmless. Customer should consider any particular Company supplied security-related safeguard as just one tool to be used as part of Customer's overall security strategy and not a guarantee of security. Both Parties agree to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under the Agreement.

- 8.2. As between Customer and Company, all Personally Identifiable Data is Customer's Confidential Information and will remain the property of Customer. Customer represents that to the best of Customer's knowledge such Personally Identifiable Data supplied to Company is accurate. Customer hereby consents to the use, processing or disclosure of Personally Identifiable Data by Company only for the purposes described herein and only to the extent such use or processing is necessary for Company to carry out Company's duties and responsibilities under the Agreement or as required by law.
- 8.3. Prior to initiation of the Services under the Agreement and on an ongoing basis thereafter, Customer agrees to provide notice to Company of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to Customer's industry and which could be imposed on Company as a result of provision of the Services. Customer will ensure that: (a) the transfer to Company and storage of any Personally Identifiable Data by Company is permitted under applicable data protection laws and regulations; and, (b) Customer will obtain consents from individuals for such transfer and storage to the extent required under applicable laws and regulations.

9. CONFIDENTIALITY.

- 1.1. Each Party shall protect the Confidential Information of the other Party with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which such Party utilizes for its own information of similar character that it does not wish disclosed to the public. Neither Party shall disclose to third parties the other Party's Confidential Information, or use it for any purpose not explicitly authorized herein, without the prior written consent of the other Party. The obligation of confidentiality shall survive for five (5) years after the return of such Confidential Information to the disclosing party or five (5) years after the expiration or termination of the Agreement, whichever is later, as applicable.
- 1.2. Notwithstanding the foregoing, a Party may disclose Confidential Information to the extent required: (a) to any consultants, contractors, and counsel who have a need to know in connection with the Agreement and have executed a non-disclosure agreement with obligations at least as stringent as this section, or (c) by law, or by a court or governmental agency, if necessary in any proceeding to establish rights or obligations under the Agreement; provided, the receiving party shall, unless legally prohibited, provide the disclosing party with reasonable prior written notice sufficient to permit the disclosing party an opportunity to contest such disclosure. If a Party commits, or threatens to commit, a breach of this section, then the other Party shall have the right to seek injunctive relief from a court of competent jurisdiction.
- 1.3. This Agreement imposes no obligation upon either Party with respect to the other Party's Confidential Information which the receiving Party can establish: (a) is or becomes generally known through no breach of the Agreement by the receiving party, or (b) is already known or is independently developed by the receiving party without use of or reference to the Confidential Information

10. INDEMNIFICATION.

- 10.1. Customer will indemnify and hold harmless Company, its officers, directors, shareholders, employees, and agents, from and against any claims, actions or demands, including, without limitation, all reasonable attorney's fees, due to or resulting from Customer's breach of this

Company: _____
Customer: _____

Agreement or Customer's negligence or gross negligence.

- 10.2. Company will indemnify, and hold harmless Customer, its officers, employees, and agents, from and against any claims, actions or demands, including, without limitation, all reasonable attorney's fees, due to or resulting from Company's breach of this Agreement or Company's negligence or gross negligence.

11. LIMITATION OF LIABILITY.

11.1. **NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY SPECULATIVE SPECIAL, INCIDENTAL, INDIRECT, REMOTE, OR CONSEQUENTIAL DAMAGES ARISING FROM SUCH PARTY'S PERFORMANCE OR FAILURE TO PERFORM.**

11.2. **NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS, THE COMPANY'S ENTIRE LIABILITY TO CUSTOMER WILL NOT EXCEED THE AMOUNT PAID TO COMPANY BY CUSTOMER PURSUANT TO THESE TERMS AND CONDITIONS DURING THE SIX MONTHS PRECEDING THE EVENT(S) WHICH GAVE RISE TO SUCH LIABILITY.**

12. **ORDER OF PRECEDENCE.** If there is a conflict between any provision of these Terms and Conditions and any provision of any applicable Order Form, then these Terms and Conditions will govern in all respects except to the extent any provision of an Order Form expressly or explicitly modifies a provision in these Terms and Conditions.

13. **REPRESENTATIONS.** Each Party represents and warrants that it is accepting this Agreement without reliance upon any agreement, promise, statement or representation by or on behalf of any Party except as set forth in this Agreement, and each Party acknowledges that no other Party nor any agent of such Party has made any promises, representations or warranties whatsoever, whether expressed or implied, which are not contained in this Agreement, concerning the matters set forth in this. Each Party represents that this Agreement constitutes a legal, valid and binding obligation of such Party. Except as otherwise expressly provided in this Agreement, no other representations or warranties will apply, whether express or implied, and Company specifically disclaims all such representations or warranties including, but not limited to, any warranties of title, non-infringement, merchantability, fitness for a particular purpose or arising from any course of performance, course of dealing, or usage of trade. Company does not represent or warrant that the Services provided will be error-free.

14. **TAXES.** Customer acknowledges that the charges and rates specified in any Order Form do not include any amounts for taxes including without limitation, any and all municipal, county, state, federal or foreign sales, excise, personal property, consumption, value-added or other taxes, but excluding any taxes upon the income of Company. If any such taxes are or may become due in connection with the Services or any payments under any Order Form then Customer agrees to pay such taxes. Customer shall reimburse Company for any and all such taxes Company is required to pay to applicable taxing authorities.

15. **STATUS OF COMPANY.** Company is an independent contractor and not an employee of Customer. Nothing contained in this Agreement should be construed as creating an employment relationship, partnership, or joint venture between Customer and Company.

16. **NOTICES.** Each notice, demand, request, request for approval, consent, or other communication required or desired to be given or made under this Agreement must be in writing and will be effective and deemed to have been received (a) when delivered in person, (b) five (5) days after having been mailed by certified or registered United States mail, postage prepaid, return receipt requested, or (c) the next business day after having been sent by a nationally recognized overnight mail or courier service, receipt requested, in each case to the address of the Party set forth in the Order Form.

17. **ENTIRE TERMS AND CONDITIONS.** This Agreement contain the entire understanding and agreement between the Parties and will not be modified, amended, or assigned except upon written consent of the Parties. Any attempted modification, amendment, or assignment in violation of this section is void.

18. **TIME IS OF THE ESSENCE.** Time is of the essence in each Party's performance of all obligations under this

Company: _____

Customer: _____

Agreement.

19. **FORCE MAJEURE.** Either Party's performance of any part of this Agreement shall be excused to the extent that such performance is hindered, delayed, or made impractical by: (a) the acts or omissions of the other Party; (b) flood, fire, strike, war, or riot; (c) any other cause (whether similar or dissimilar to those listed) beyond the reasonable control of that Party. Upon the occurrence of any such event(s), the Party whose performance is so affected shall notify the other Party of the nature and extent of the event(s) so that decisions to mitigate the negative effect(s) of such event(s) may be promptly made.
20. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to, or giving effect to, Virginia choice of law rules.
21. **CHOICE OF FORUM; JURY WAIVER.** The Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the Circuit Court of Fairfax County, Virginia, or the United States District Court for the Eastern District of Virginia, Alexandria Division (the "*Virginia Forum*"), as applicable, for any actions, suits or proceedings arising out of or relating to this Agreement or the relationship between the Parties, to the exclusion of the courts of any state, territory or country other than the Virginia Forum. THE PARTIES KNOWINGLY, WILLINGLY, AND VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO ANY CHANGE OF VENUE OTHER THAN TO ONE OF THE COURTS CONSTITUTING THE VIRGINIA FORUM AND FURTHER AGREE NEVER TO EFFECTUATE OR MOVE FOR A CHANGE OF VENUE TO ANY OTHER JURISDICTION OR FORUM, OTHER THAN ONE OF THE TWO COURTS CONSTITUTING THE VIRGINIA FORUM, ON ANY GROUNDS WHATSOEVER.
22. **ATTORNEY'S FEES AND COSTS.** Should any Party breach this Agreement, the non-breaching Party will be entitled to an award of its costs and reasonable attorneys' fees expended in any action to seek injunctive or other relief from a court of competent jurisdiction based upon the terms of this Agreement in any case in which it is the substantially prevailing Party.
23. **SEVERABILITY.** If any provision of this Agreement is invalidated by a court of competent jurisdiction, then all of the remaining provisions of this Agreement will continue unabated and in full force and effect.
24. **NO THIRD-PARTY BENEFICIARIES; NO WAIVER.** This Agreement does not confer upon any person other than the Parties any rights or remedies whatsoever. No delay on the part of either Party or failure by a Party to exercise any power, right or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any power, right or remedy preclude other or further exercises thereof, or the exercise of any other power, right or remedy. The rights and remedies in this Agreement are cumulative and not exclusive of any rights or remedies which either Party would otherwise have.
25. **OPPORTUNITY TO CONSIDER AND CONFER.** Each Party has had the opportunity to read, study, consider and deliberate upon this Agreement, has had the opportunity to consult with counsel, and fully understands this Agreement. Each Party will bear its own costs with respect to the preparation, revision, and execution of this Agreement.

Company: _____
Customer: _____