

## Introduction

- 1.1 **About us.** We're PolyAI [Limited / Technologies Inc.], a limited company incorporated in [England and Wales / Delaware]. Our office is at [10 York Road, London, SE1 7ND, United Kingdom / 228 East 45th St, Suite 9E, New York, NY 10017]. Under this Agreement, "**PolyAI**", "**we**", "**us**" and "**our**" refers to PolyAI [Limited / Technologies].
- 1.2 **About you.** You are [Legal name], a company incorporated and registered in [Country] under company number [Number], with offices at [Address]. You will be referred to as "**insert abbreviation**", "**you**" and "**your**" under this Agreement.

Together, we will be the "parties", and individually, a "party".

All references to "days" refers to "business days" in our main jurisdiction of operation unless indicated otherwise.

- 1.3 **Our services.** We provide different services to our clients which include:
- (a) "**Communication Services**", which is a multi-channel conversational transaction service including voice, chat, website or SMS text automation; and,
  - (b) "**Professional Services**", which means all other services we may provide in relation to deliverables. This includes the implementation, testing, integration and configuration of the Platform, as well as any other discovery, preparatory or exploratory work. If we mutually agree to provide you with Professional Services, they will be specifically described in the relevant SOW,
- (together, the "**Services**").

We may also provide you with support for your use of the Services. The Services are provided to you through our proprietary communications handling platform ("**Platform**"), which is made up of our software and any third-party software that may be necessary for its functionality.

- 1.4 **Term.** This Agreement shall commence on the date it is signed by both parties (the "**Effective Date**") and will continue until terminated in accordance with this Agreement ("**Term**"). Your right to use the Services will begin on the date set out in the relevant SOW and, unless this Agreement is terminated earlier, shall continue for the duration described in the SOW ("**SOW Term**").
- 1.5 **Entire Agreement.** This Agreement, together with any Statement of Work ("**SOW**") and the Data Processing Agreement dated [-] ("**DPA**"), forms the entire agreement between us ("**Agreement**"). In the event of any conflict, the terms of the SOW will prevail.
- 1.6 **What else you should read.** We may provide you with additional documentation, such as usage instructions, documentary deliverables or any specifications of the Services from time to time ("**Documentation**").

**By signing below, you agree to the terms set out in this Agreement.**

## Our obligations

- 2.1 **Provision of services.** We will make the Services available to you as described in the SOW and the terms of this Agreement.
- 2.2 **Maintenance.** We will use reasonable efforts to notify you in advance of any scheduled maintenance to the Services or the Platform, or for any emergency maintenance to maintain security which may be required from time to time.
- 2.3 **Limitations.** We will not be responsible for any delays, delivery failures, corruption or loss of data, or any other loss or damage that may happen when your data is transferred across communications networks (such as the internet). You acknowledge that Services may be subject to other limitations, delays and other problems inherent in the use of these types of networks.
- 2.4 **Professional services.** Where we agree to provide Professional Services:
- (a) we will perform the Professional Services with reasonable skill and care, and in accordance with all applicable regulations;
  - (b) we will use reasonable endeavours to meet any timetable detailed in a SOW;
  - (c) if we employ any third-party subcontractors to perform the Professional Services, they will be informed of any relevant procedures or policies you have previously notified us of in advance; and
  - (d) you agree to follow any approval and feedback process for Professional Services, which will be detailed in the SOW.
- 2.5 **Audits.** We reserve the right to access, inspect and make copies of your relevant records to verify your compliance with your obligations under this Agreement. We will not audit you more than once in a 12-month period, and we will notify you at least 30 days' in advance. Any such audit will be completed during normal business hours and we will use reasonable endeavours to make sure we do not unreasonably disrupt your business activities. All audits will be conducted at our own expense, unless we discover any material non-compliance by you, in which case you will reimburse us for all reasonable expenses incurred.

## Your obligations

- 3.1 **Your obligations.** You agree to:
- (a) comply with all applicable laws relevant to this Agreement;
  - (b) make sure that you and your customers use the Services and Platform in accordance with the terms of this Agreement and any Documentation;
  - (c) use reasonable endeavours to prevent any unauthorised access to, or use of, the Services or the Platform, and notify us as soon as reasonably practicable if you become aware of this happening;
  - (d) be responsible for procuring, maintaining and securing your network connections and telecommunications links from your website, telephonic systems, IT systems or any other systems required for us to provide the Services ("**Client Systems**");
  - (e) promptly notify us of any errors you become aware of relating to the Services or Platform; and
  - (f) appoint a project manager to work directly with us when we deliver the Services.

You are responsible for making sure the Platform is compatible with your Client Systems. You accept that the Services (excluding any bespoke configurations) were not designed to your individual requirements.

3.2 **Restrictions on use.** You agree not to, and will procure that your customers do not:

- (a) access, store distribute or transmit viruses or materials while using the Services and Platform;
- (b) copy the Platform in any way or create derivative works based on it;
- (c) build a product or service which competes with or replicates the Platform; or
- (d) do anything unlawful, harmful, threatening, defamatory, discriminatory or offensive while using the Services.

Your breach of these restrictions will be considered a material breach for which we may suspend your use of the Services and/or Platform or terminate this Agreement in accordance with clause 5.

## Fees

4.1 **Fees.** You agree to pay the fees set out in the SOW ("**Fees**"). Fees will be in [Great British Pounds/United States Dollars], exclusive of any applicable taxes and, unless otherwise specified, are non-cancellable and non-refundable. You agree to pay the Fees via ACH, bank/wire transfer or electronic means. PolyAI cannot accept cheques. Depending on your customer's minute usage, we will charge you in accordance with our standard usage pricing framework set out in Schedule 1 ("**Usage Fee**"). We reserve the right to amend Schedule 1 at any time. As the prices you agree on with your customers may vary from customer to customer, you agree to submit to us the pricing and/or statement of work you have agreed with each customer for our review and discussion.

4.2 **Additional fees.** If we incur additional expenses when providing you with the services, you agree to reimburse us for reasonable expenses. We will use reasonable commercial efforts to notify you in advance of any additional fees before such fees are incurred.

4.3 **Invoices.** Unless we otherwise agree in the relevant SOW, invoices shall be payable within 30 days. If you disagree with any invoices, you agree to notify us within 14 days of receiving it, and shall pay any undisputed portion when it's due.

4.4 **Late payments.** We may charge a daily interest rate at 3% above the current Federal Reserve base rate on any undisputed, unpaid invoices that remain unpaid for more than 30 days following the invoice due date, until the invoice has been paid in full. In addition, we may suspend your access to and use of the Services and Platform.

4.5 **Adjustment for Inflation.** The Fees shall be adjusted for inflation during each year of the Term, effective as of each annual anniversary of the Effective Date, with any such adjustments not exceeding the greater of (i) 3% as against the preceding year; or, (ii) the percentage change in the United States Consumer Price Index as reported by the United States Department of Commerce (in either case, as may be amended from time to time).

## Termination

5.1 **Termination for cause.** Either party may terminate this Agreement or a SOW immediately by giving written notice to the other if the other party:

- (a) commits a material breach of this Agreement incapable of remedy, or if it is capable of remedy, fails to remedy it within 30 days of being notified of the breach; or
- (b) the other party becomes subject to, or is reasonably likely to become subject to, an insolvency, bankruptcy, administration, receivership or other similar event.

5.2 **Consequences of termination.** On termination or expiry of this Agreement for any reason:

- (a) all rights and licences granted under this Agreement will immediately terminate;
- (b) you will stop using the Services and Platform immediately and delete any copies of the Platform;
- (c) any outstanding Fees shall become immediately due and payable; and
- (d) each party will, if requested by the other party, delete, destroy or return Confidential Information and any copies of it belonging to the other party.



## Intellectual Property

- 6.2 **Our IP.** We own, and shall continue to own, all of our intellectual property, including any rights related to the Platform, the Services and Documentation and any amended or new versions we may develop. In addition, we will also own any feedback or suggestions you provide us in respect of the Platform or Services.
- 6.3 **Your IP.** You own, and shall continue to own, all of your intellectual property, and do not transfer any rights or licences to us unless otherwise expressly stated.
- 6.4 **Licences.** Subject to you complying with your obligations under this Agreement, we grant you a limited, non-exclusive, fully paid up, non-sublicensable, non-transferable licence to use the Platform and the Communication Services for the Term of this Agreement.



## Indemnities

- 7.1 **IP Claim.** If any third party claims that the Platform or Documentation breaches their intellectual property rights in the UK (“**IP Claim**”), we agree to indemnify you for any and all losses and liabilities which arise from that claim. You agree to notify us as soon as possible upon becoming aware of an IP Claim and provide us with reasonable assistance. We will have sole authority to defend or settle the IP Claim. In addition, you agree not to make any comment or admission or take any action that may adversely affect our ability to defend or settle the IP Claim.
- 7.2 **Limitation of liability.** We will not be liable under clause 7.1 in respect of an IP Claim which arises because of:
  - (a) your misuse of the Platform or Documentation or modification of them without our written approval;
  - (b) integrations with third-party software, hardware or data that have not been supplied or authorised by us; or
  - (c) your breach of this Agreement.
- 7.3 **Our rights.** If an IP Claim is made or likely to be made against you, we may:
  - (a) procure for you the right to continue to use the Communication Services;
  - (b) modify the Platform so it is no longer infringing (without materially diminishing the Platform’s performance or function);

- (c) replace the Platform or infringing part with a substitute (without materially diminishing the Platform's performance or function); or
- (d) terminate this Agreement immediately by giving you written notice and refund you any prepaid Fees on a pro rata basis for the remainder of the Term.

7.4 **Exclusive remedy.** This clause 7 and clause 11.3 will be your exclusive remedy and our entire liability for any IP Claims under this Agreement.

7.5 **Your indemnity.** If you breach your warranties under clause 10 of this Agreement, you agree to defend, indemnify and hold us harmless against any and all losses and liabilities we suffer arising out of that claim.

## **Data Protection**

8.1 **Data protection.** Both parties shall comply with all applicable requirements of the Data Protection Act 2018 as amended from time to time, the General Data Protection Regulation ((EU) 2016/679) ("**GDPR**") (or equivalent applicable regulations if any such party is not operating within a jurisdiction that falls under the scope of the GDPR) and any other applicable data protection legislation, as provided for in the DPA. Furthermore, you agree to provide us with any and all information necessary to enable us to comply with our obligations in respect of the foregoing (including but not limited to any obligations we may have under any applicable laws and regulations in respect of data retention, deletion, storage, encryption and transfer), to the extent not provided for in the DPA. In the event of any conflicts, the terms of the DPA (as may be amended from time to time) will prevail.

8.2 **Communication data.** We may use anonymous audio call recordings, conversation transcripts or other records of communications with your customers to improve the Services and Platform. We will not use such data to identify any of your customers.

8.3 **GDPR Compliance.** We shall both comply with all applicable requirements of the EU General Data Protection Regulation (2016/679/EC), the Data Protection Act 2018 (or equivalent) as may be amended from time to time, and all applicable data protection legislation ("**Data Protection Laws**"), as set out in the DPA.

8.4 **DPA.** To the extent we act as "data processor" and process any of your personal data while providing the Services, the terms of the DPA shall apply to such processing.

8.5 **Special category data.** You agree to not upload, store, transmit or otherwise provide us with any special category personal data, as defined in the Data Protection Laws, in connection with using the Services or Platform.

## **Confidentiality**

9.1 **Definition.** "**Confidential Information**" means all information relating to a party, its businesses, products, finances and affairs, in any media or form, that is marked as confidential or would reasonably be considered to be confidential. This includes information relating to customers and suppliers, employees and officers, products and services, know-how and this Agreement.

9.2 **Obligations.** Each party agrees to:

- (a) maintain the confidentiality of any Confidential Information;
- (b) not disclose, copy or modify the Confidential Information without the owner's prior written consent;

- (c) disclose Confidential Information (i) only if necessary to comply with applicable laws or regulations, provided that the owner of Confidential Information has been notified before any disclosure has been made (if legally permissible) and (ii) only to employees and professional advisers on a 'need-to-know' basis who are bound in writing to confidentiality obligations similar to these; and
- (d) promptly notify the other party upon becoming aware of any unauthorised use, disclosure, theft or loss of the Confidential Information.

9.3 **Exceptions.** Confidential Information does not include information that is:

- (a) in the public domain at the time of its disclosure;
- (b) lawfully received by a party free of any obligation of confidence at the time of its disclosure;
- (c) independently developed by a party without access to or use of Confidential Information; or
- (d) already in the possession of a party.

9.4 **Confidentiality term.** This clause shall continue for 3 years after the expiration or termination of this Agreement.

## Warranties

- 10.1 **Authority.** Each party represents and warrants to the other that it can legally enter into this Agreement, grant the other relevant rights and licences and perform obligations under this Agreement.
- 10.2 **Client systems.** You represent and warrant that you have all necessary rights or approvals for us to be able to use or access Client Systems and any other systems in your control.

## Liability

- 11.1 **Liability.** Neither party's liability is excluded or limited where it would be unlawful to do so (for example, fraud, death or personal injury caused by your or our negligence).
- 11.2 **Exclusions.** Neither of us shall be liable for certain types of losses, including indirect, special or consequential losses; errors with or loss of data; or loss of business, goodwill, revenues or profits. If we do not comply with this Agreement, we are only responsible for loss or damage you suffer that is a foreseeable result of our breach of this Agreement, or for failing to use reasonable care and skill. In particular, we won't be liable for:
  - (a) the Services not meeting your needs, whether or not we know about these needs;
  - (b) minor errors or defects in the Services or Platform; or
  - (c) the compatibility of the Services or Platform with any other software, service, hardware or equipment, or because of any defect in your technical environment or third-party infrastructure.
- 11.3 **Total liability.** Each party's total liability to the other (including in respect of clause 7) will not exceed the amount of Fees paid by you in the 12 months preceding the incident giving rise to any claim.

## Other important terms

- 12.1 **Force majeure.** Neither party shall be liable, or deemed to be in breach of this Agreement, for any delays or failures in their performance resulting from any event beyond their reasonable control. This doesn't apply to any delay or failure to pay Fees. If this type of event happens, the affected party will promptly notify the other, providing details about the event and when it has stopped. If the event continues for more than 30 days, either

party may terminate the affected SOW without liability to the other by giving 10 business days' prior written notice.

- 12.2 **Marketing.** PolyAI may make press releases, case studies and other marketing materials announcing the Services and to identify you as our client in relation to the Services. You agree that we can use your name and company logo for the purposes set out in this clause 12.2 and you hereby grant to PolyAI the express right to use your and the customer's (as set out in the relevant SOW) ("**Customer**") company logo in marketing, sales, financial, and public relations materials and other communications solely to identify you and the Customer as a PolyAI client. PolyAI hereby grants to you and the Customer the express right to use PolyAI's logo solely to identify PolyAI as a provider of Services to you and the Customer. Other than as expressly stated herein, neither party shall use the other party's marks, codes, drawings or specifications without the prior written permission of the other party.
- 12.3 **Non-solicitation.** During the Term and for 18 months after, you agree to not directly or indirectly induce or solicit any of our employees to leave PolyAI, or engage or employ any of our employees in any manner outside of this Agreement. This will not apply to any general and non-specific recruitment campaigns you run in the normal course of your business.
- 12.4 **Variation.** This Agreement may only be varied in writing by authorised representatives of the parties.
- 12.5 **Assignment.** You may not assign, sub-contract or otherwise deal with any right or obligation under this Agreement without our prior written consent. We may assign, novate or otherwise deal with any of our rights and obligations under this Agreement to our affiliates, any successor-in-title to the business and/or undertaking of PolyAI.
- 12.6 **Third-party rights.** No parties outside this Agreement shall have any right to enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.
- 12.7 **Relationship of the parties.** Nothing in this agreement establishes or implies any partnership, agency or joint venture between you and us. Nothing in this Agreement will restrict either party's ability to compete or enter into partnering relationships with other entities.
- 12.8 **Notices.** Notices under this Agreement shall be in writing and sent to the address or email address specified in the relevant SOW.
- 12.9 **Severability.** If any provision of this Agreement is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of the rest of this Agreement shall remain unaffected.
- 12.10 **Non-Waiver.** No delay or failure by either party to exercise any right or remedy available to them under or in connection with this Agreement shall prevent the future exercise of any such right or remedy.
- 12.11 **Governing law and jurisdiction.** This Agreement is governed by the laws of [England and Wales / the State of New York, United States of America] without regard to conflict of law principles, and the courts of [England and Wales / the State of New York, United States of America] shall have exclusive jurisdiction to hear disputes in relation to it.

*(Signature page follows)*

By signing below, the parties agree to the terms set out in this Agreement as of the final date of signature below (the “Effective Date”):

**PolyAI [Limited/Technologies Inc.]**

**[Client full legal name]**

Signature:

Signature:

Name:

Name:

Version [Date]

Title:

Title:

Date:

Date:



## Pricing Framework

### Schedule 1

**Pricing Framework.** This Pricing Framework will apply as of the Effective Date of this Agreement. However, we retain the discretion to update this Pricing Framework from time to time.

Version [Date]

A “**Usage Fee**” will apply to each minute during which the Virtual Agent automates customer interactions (“**Minute Usage**”). This begins as soon as a call connects to the Virtual Agent and stops once the call has been disconnected or the Virtual Agent transfers the call.

The total handle time from all calls will be calculated at the end of each billing period. If the duration of a call is not an even number, the seconds will be rounded up to the closest 30 second increment. For example, if there are 2 calls during a billing period:

- Call 1: 3 minutes, 55 seconds
- Call 2: 4 minutes, 20 seconds

You will be billed 8 minutes and 30 seconds as the Usage Fee. This will be broken down as 4 minutes for Call 1 and 4 minutes and 30 seconds for Call 2.

What’s included:

- Ongoing support and maintenance are included in all Usage Fees (this does not refer to or include any additional Professional Services fees set out in the relevant SOW).

What’s not included:

- **Telephony fees.** PSTN telephony charges will be billed separately through your existing communications provider. There will be no additional charges if a private SIP line is used to deliver calls.
- **SMS fees.** If the scope of the SOW requires a SMS to be sent by the Virtual Agent, all SMS fees incurred will be charged to you.
- **PCI transactional fees.** If the scope of the SOW requires a PCI payment to be taken by the Virtual Agent, all PCI fees incurred will be charged to you;
- **Voice talent fees.** PolyAI works with a roster of voice talent to record prompts for our Virtual Agents.

The Usage Fee applicable to the total amount of annual minutes used will be prescribed within the applicable SOW along with commitments regarding a specific amount of annual minutes and the per minute fee for excess minutes you use over the agreed amount of annual minutes.