

# Master Subscription Agreement

THIS MASTER SUBSCRIPTION AGREEMENT (THE “AGREEMENT”) CONSTITUTES A LEGALLY BINDING CONTRACT BETWEEN INCONTACT, INC., DBA NICE, SUCCESSOR-IN-INTEREST TO MINDTOUCH, INC., A DELAWARE CORPORATION, OR NICE AFFILIATE SPECIFIED IN AN ORDER FORM (in each case, “**NICE**,” “**WE**,” “**OUR**,” OR “**US**”) AND YOU AND GOVERNS YOUR PURCHASE AND USE OF OUR SERVICES.

BY ACCEPTING THIS AGREEMENT, VIA EXECUTION OF AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “**YOU**,” “**YOUR**” OR “**CUSTOMER**” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

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## 1. DEFINITIONS

“**Abuse**” shall be deemed to have occurred if, in your access and use of the Services your actions, or inactions, cause material degradation to the Services for you and our other customers. Examples of Abuse may include situations where (i) you build applications that interact with, or combine applications with, the Services which applications negatively affect the speed and performance of the Services, (ii) you create dynamic pages which (a) take longer than 5 seconds to resolve, or (b) take longer than 8 seconds to load, or (iii) you reach ten percent (10%) or more of the annual web request subscription allowance set forth in the Order Form within a 24-hour period.

“**Affiliate**” means, when used with respect to a Party, any legal entity controlled by, controlling, or under common control with that Party, where “control” (and its derivatives) means: (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a corporation, person, or other entity through the ownership of voting securities; or (b) direct or indirect ownership in the aggregate of fifty percent (50%) or more of any class of voting or equity interests in the other corporation, person, or entity.

“**Claim**” means a claim brought against a Party by a third party.

**“Data”** means all electronic data or information submitted by you or Users to the Services including identities, data and information on, of or about any Users of the Services.

**“Extraordinary Circumstances”** means all circumstances beyond our reasonable control including, without limitation, fire, flood, earthquake, elements of nature or acts of God, pandemic, acts of war, terrorism, riots, civil disorders, rebellions, civil unrest, or revolutions, strikes, lockouts, labor difficulties, generalized internet interruptions (through denial of service, worms, telecommunications problems or the like).

**“Losses”** means costs, damages, expenses, or liabilities.

**“Malicious Code”** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**“Order Form”** means the ordering documents for the Services hereunder, including addenda thereto, that are entered into between you and us, or you and a NICE Affiliate or your Affiliate and either us or a NICE Affiliate from time to time, provided that Customer and any Customer Affiliate that purchases Services under this Agreement shall be jointly and severally liable for any breach of this Agreement by any Customer Affiliate. Order Forms shall be deemed incorporated herein by reference.

**“Party”** means either NICE or Customer, individually as the context indicates; and **“Parties”** means NICE and Customer, collectively.

**“Professional Services”** means the ancillary services such as data transfer and cleaning, training and consulting services offered by NICE as may be set forth in an Order Form.

**“Resulting Information”** means data created by, or resulting from, the use of the Services, including analyses, statistics, reports, and aggregations, all of which shall be considered NICE Confidential Information. For the avoidance of doubt, the term Resulting Information does not include personally identifiable information, such that there is no reasonable basis on which any individual, or Customer itself, could be identified by the Resulting Information.

**“Services”** means the subscription-based service consisting of the ability to use, and receive support in connection with, our software in a hosting environment as described under an Order Form.

**“Third-Party Applications”** means online, web-based applications and offline software products that are provided by third parties, interoperate with the Services, and are identified as third-party applications.

**“User Guide”** means the online user guide for the Services made available on our website located at <http://expert-help.nice.com> (the **“Website”**), as such Website may be updated from time to time.

**“Users”** means individuals who are authorized by you to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by you (or by us at your request). Users may include but are not limited to your employees, consultants, contractors and agents; or third parties with which you transact business. Users may sometimes be referred to as Configured Users or Named Users.

## 2. SERVICES

### 2.1. Provision of Services

We shall make the Services available to you pursuant to this Agreement and the relevant Order Forms during the Subscription Period (as defined below). You agree that your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by us regarding future functionality or features.

## **2.2. User Subscriptions**

If specified in the applicable Order Form, (i) Services are purchased as User subscriptions and may be accessed by no more than the number of Users specified on the Order Form, and (ii) additional User subscriptions may be added during the Subscription Period via execution of a separate Order Form. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new users replacing former Users who no longer require ongoing use of the Services.

# **3. USE OF THE SERVICES**

## **3.1 Our Responsibilities**

During the Subscription Period, we shall use commercially reasonable efforts to provide you with access and use of the Services in accordance with the terms set forth in this Agreement, including the support and service level agreements attached hereto as Exhibit A (“SLA”).

## **3.2. Your Responsibilities**

You shall (i) be responsible for Users’ compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of the Data and of the means by which you acquired the Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the User Guide and applicable laws and government regulations.

## **3.3. Usage Limitations**

Services may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls you are permitted to make against our application programming interface, and, for Services that enable you to provide public websites, on the number of page views by visitors to those websites. Any such limitations are specified in the applicable Order Form. The Services may provide real-time information to enable you to monitor your compliance with such limitations.

# **4. THIRD-PARTY PROVIDERS**

## **4.1. Acquisition of Third-Party Products and Services**

Any acquisition by you of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between you and any third-party provider, is solely between you and the applicable third-party provider. We do not warrant or support third-party products or services, whether or not they are designated by us as “certified” or otherwise, except as expressly specified in an Order Form.

## **4.2. Third-Party Applications and Your Data**

If you install or enable Third-Party Applications for use with the Services, you acknowledge that NICE may allow providers of those Third-Party Applications to access the Data as required for the interoperability of such Third-Party Applications with the Services. We shall not be responsible for any disclosure, modification or deletion of Data resulting from any such access by Third-Party Application providers.

# **5. FEES AND PAYMENT**

## **5.1. User Fees**

You shall pay all fees specified in all Order Forms hereunder. Unless stated otherwise in an Order Form, fees are quoted and payable in United States dollars. Subscription fees are based on the Services

purchased and not actual usage. Services are non-cancelable by Customer. If Customer elects to cease using the Services during the Subscription Period, Customer shall: (a) continue to be liable for all amounts payable under the Order Form for the remainder of the Subscription Period; and (b) not be entitled to any refunds. The number of User subscriptions purchased cannot be decreased during a Subscription Period.

## **5.2. Invoicing and Payment**

You may provide us with a valid purchase order or alternative document reasonably acceptable to us. Any such document must reference the applicable Order Form by date or number and will be governed by the terms of this Agreement. No terms or conditions stated in your purchase order or other ordering documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. All charges for the Services shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. Unless otherwise stated in the Order Form, invoiced charges are due within fifteen (15) days from the invoice date. Written notice of an invoice dispute must be received by the invoice due date or such invoice will be deemed to be correct and binding. You are responsible for maintaining complete and accurate billing and contact information in the Services.

## **5.3. Overdue Charges**

If any charges are not received from you by the due date, then at NICE's discretion, (a) such charges may accrue late charges equal to the lesser of (a) one and one-half percent (1.5%) per month, compounded, or (b) the maximum rate permitted by law, from the date such payment was due until the date paid, and/or (b) we may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment). Payments will be applied first to late charges and related expenses, then past due amounts, and then to the current invoice. Customer agrees to pay reasonable costs and expenses of collecting payment of past due balances, including attorneys' fees, expenses, court costs and service charges.

## **5.4. Suspension of Services and Acceleration**

If any amount owing by you under this Agreement or any other agreement for our services is thirty (30) or more days overdue, we may, without limiting our other rights and remedies, cancel any extended payment plans or discounts awarded and accelerate all unpaid fee obligations under such agreements for the entire Subscription Period at the undiscounted rates so that all such obligations become immediately due and payable, and suspend our services to you until such amounts are paid in full.

## **5.5. Taxes**

You shall, in addition to the other amounts payable under this Agreement, bear and pay all sales and other taxes, federal, state or otherwise, however designated that are levied or imposed by reason of the transactions contemplated hereunder but excluding taxes on our net income. Without limiting the foregoing, if any such taxes are imposed upon and paid by us, you shall reimburse us within thirty (30) days of receipt of an invoice from us for such amount. If, at any time, you claim that your purchase of Services hereunder is exempt from any taxes, it shall be your responsibility to provide us with the appropriate tax exemption certificate(s). In the absence of valid proof of exemption, we reserve the right to charge you for, and you agree to pay, the applicable taxes.

# **6. PROPRIETARY RIGHTS**

## **6.1. Reservation of Rights**

Subject to the limited rights expressly granted hereunder, we reserve all rights, title and interest in and to the Services and Professional Services, including all related intellectual property rights. No rights are

granted to you hereunder other than as expressly set forth herein.

## **6.2. Restrictions**

You shall not, (i) make the Services available to anyone other than Users, (ii) sell, resell, rent or lease the Services, (iii) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (iv) use the Services to store or transmit Malicious Code, (v) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (vi) attempt to gain unauthorized access to the Services or their related systems or networks, (vii) create derivative works of the Services or any Professional Services, (viii) copy, frame or mirror any part or content of the Services, other than copying or framing on your own intranets or otherwise for your own internal business purposes, (ix) reverse engineer the Services, or (x) access the Services in order to build a competitive product or service, (xi) copy any features, functions or graphics of the Services, or (xii) Abuse the Services. If an Abuse is flagged by our monitoring systems, we shall, in addition to, and not exclusive of, any other remedies at law or in equity, have the right to audit and require you to take immediate corrective actions.

## **6.3. Ownership of Data**

As between NICE and you, you exclusively own all rights, title and interest in and to your Data, which, for the avoidance of doubt, does not include Resulting Information. For the purposes of providing the Service and for no other purpose, you hereby grant to NICE a worldwide, non-exclusive, fully-paid, royalty-free, transferable license to use, reproduce and display the Data solely in order to provide the Services to you.

## **6.4. Federal Government End Use Provisions**

We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

## **6.5. Ownership**

We will own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, User Guide, Resulting Information, techniques and materials of any kind used or generated by us in connection with performing the Services and Professional Services (collectively **“Our Materials”**), including all intellectual property rights therein. You will have no rights in Our Materials except as expressly agreed to in writing by the Parties. Nothing in these terms will be deemed to restrict or limit our right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party; provided that we comply with our confidentiality obligations hereunder. NICE shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use, copy, modify, or distribute, including by incorporating into any product or service owned by NICE, any suggestions, enhancement requests, recommendations or other feedback provided by you and any of your Users, relating to the Services, Professional Services and/or any other product or service owned or provided by NICE.

## 7. PROFESSIONAL SERVICES

### 7.1. Professional Services

We agree to perform the Professional Services set forth on the Order Form or a mutually agreed statement of work ("**SOW**"), subject to the terms of this Agreement and in a good and workmanlike manner consistent with applicable industry standards.

### 7.2. Customer Responsibilities

In connection with Professional Services, you will: (i) provide qualified personnel who are capable of performing your duties and tasks reasonably requested by us; (ii) provide us with access to your sites, systems and facilities as reasonably required by us to perform the Professional Services; and (iii) provide us with such working space and office support (including access to telephones, photocopying equipment, and the like) as we may reasonably request. You will also make available to us any data, information and any other materials required by us to perform the Professional Services. You will be responsible for ensuring that the materials you provide to us are accurate and complete.

## 8. CONFIDENTIALITY

### 8.1. Definition of Confidential Information

As used herein, "**Confidential Information**" means all confidential information disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include the Data; our Confidential Information shall include the Services and Resulting Information; and Confidential Information of each Party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

### 8.2. Protection of Confidential Information

Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

### 8.3. Compelled Disclosure

The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for

its reasonable cost of compiling and providing secure access to such Confidential Information.

## 9. WARRANTIES AND DISCLAIMERS

### 9.1. Mutual Warranties

Each Party represents and warrants that it (i) has the legal power to enter into this Agreement, and (ii) shall perform its obligations in a manner that complies with all applicable laws, regulations, and compliance requirements with which is required thereunder.

### 9.2. Disclaimer

EXCEPT AS SET FORTH IN SECTION 9.1, THE SERVICES AND PROFESSIONAL SERVICES PROVIDED BY NICE OR ITS AFFILIATES ARE PROVIDED AND LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT GUARANTEE THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

## 10. INDEMNIFICATION

### 10.1. NICE Indemnification of Customer

NICE shall indemnify, defend, and hold harmless Customer from and against any Losses resulting from or arising out of a Claim against Customer to the extent that such Claim alleges the infringement of such third party's U.S. patent or copyright by the Services. The foregoing indemnity shall not apply if the infringement arises out of: (a) specifications or designs furnished by Customer and implemented by NICE at Customer's request; (b) the Services being modified by, combined with, added to, interconnected with or used with any equipment, apparatus, device, data, software or service not supplied or approved by NICE in writing; (c) the modification to Services by any person or entity other than NICE; or (d) use of Services other than in accordance with its User Guide.

**10.2.** If a Claim for which Customer is entitled to be indemnified under Section 10.1 above has occurred, or in NICE's opinion is likely to occur, NICE shall, at NICE's expense, do one of the following: (a) procure for Customer the right to continue using the affected Services; (b) replace with non-infringing alternates or modify the relevant Services so that they become non-infringing but its functionality after modification is substantially equivalent; or (c) cease providing the Services and refund any prepaid fees applicable to the period after the Services has ceased. The collective obligations of NICE pursuant to Section 10.1 and this Section 10.2 state the sole and exclusive liability of NICE, and Customer's sole and exclusive remedy, with respect to intellectual property infringement or misappropriation.

### 10.3. Customer Indemnification of NICE

Customer shall indemnify, defend, and hold harmless NICE from and against any Losses resulting from or arising out of any Claim brought against NICE alleging Customer's violation of applicable laws in connection with Customer's use of Data or the Services.

### 10.4. Indemnification Procedure.

Promptly after a Party obtains knowledge of the existence or commencement of a Claim for which it is entitled to be indemnified under Section 10.1 or 10.3 above (the "**Indemnified Party**"), the Indemnified Party will notify the other Party (the "**Indemnifying Party**") of such Claim in writing, provided, however, that any failure to give such notice will not waive any rights of the Indemnified Party except to the extent that the rights of the Indemnifying Party are actually prejudiced or liability increased thereby. The Indemnifying

Party will have exclusive control of the defense and settlement of such Claim; provided, however, that the Indemnified Party may join in the defense and settlement of such Claim and employ counsel at its own expense, and will reasonably cooperate with the Indemnifying Party in the defense and settlement of such Claim. The Indemnifying Party may settle any Claim without the Indemnified Party's written consent unless such settlement: (a) does not include a release of all covered claims pending against the Indemnified Party; (b) contains an admission of liability or wrongdoing by the Indemnified Party; or (c) imposes any obligations upon the Indemnified Party other than an obligation to cease using any infringing items.

## 11. LIMITATION OF LIABILITY

### 11.1. Limitation of Liability

SUBJECT TO SECTION 11.2 BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR: (a) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES, INCLUDING LOSS OF USE, LOSS OF OR DAMAGE TO RECORDS OR DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, LOST REVENUE AND/OR PROFITS, SUSTAINED OR INCURRED REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, INCLUDING NEGLIGENCE, STRICT LIABILITY, INDEMNITY (EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT) OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN AND REGARDLESS OF WHETHER SUCH PARTY HAD RECEIVED NOTICE OR HAD BEEN ADVISED, OR KNEW OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; OR (b) DIRECT DAMAGES IN EXCESS OF THE AMOUNTS PAYABLE UNDER THE ORDER FORM, PURCHASE ORDER, OR SOW UNDER WHICH SUCH LIABILITY AROSE.

**11.2.** The limitations in Section 11.1 above shall not apply to: (a) damages occasioned by the breach by either Party, including by their Affiliates', officers, directors, employees, consultants, subcontractors, external auditors and legal advisors, of its obligations of confidentiality under Section 8 above; or (b) matters that cannot be excluded or limited by applicable law.

## 12. TERM AND TERMINATION

### 12.1. Term of Agreement

This Agreement commences on the date you start using the Services and continues through the end of the Subscription Period.

### 12.2. Subscription Period

Your subscription commences on the start date specified in the applicable Order Form and continues for the period identified in such Order Form (the "**Subscription Period**"), provided that if no period is identified in the Order Form, then the Subscription Period shall be for a period of twelve (12) months from the commencement date. A Subscription Period may also be referred to under an Order Form as a Subscription Term or Service Term. Except as otherwise specified in the applicable Order Form, at the end of the Subscription Period, the Subscription Period shall continue for successive periods of one (1) year each, unless either Party gives the other notice of non-renewal at least sixty (60) days before the end of then- current Subscription Period. Customer's notice of non-renewal or termination must be sent to [ContractUnsubscribe@NICEinContact.com](mailto:ContractUnsubscribe@NICEinContact.com); notice of non-renewal or termination via alternate methods shall not constitute notice. The fees during any renewal term shall be the same as that during the prior term unless we have given you written notice of a pricing increase at least sixty (60) days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed ten percent (10%) over the pricing for the same usage of Services in the



immediately prior Subscription Period, unless the pricing in the prior term was designated in the relevant Order Form as promotional or one-time.

### **12.3. Termination**

This Agreement will terminate at the expiration of ninety (90) days following written notice of termination given by one Party to the other; provided, however, that termination of this Agreement will not operate to terminate any Order Form and the terms and conditions of this Agreement will continue in full force and effect to any Order Form in effect at the time of termination of this Agreement until such time as the applicable Order Form expires at the end of the then-current Subscription Period or is terminated as set forth below.. We may terminate the Order Form if you materially breach the terms of this Agreement or an Order Form, and such breach (if capable of being cured) is not cured within thirty (30) days after written notice of the breach is given to you; provided, however, that no cure period will be required for a breach of Section 6.2 of this Agreement. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination.

### **12.4. Return of Data**

Upon request by you made within thirty (30) days after the effective date of termination or expiration of the Subscription Period or an Order Form, we will make available to you for download a file of your Data in an industry standard format. After such 30-day period, we shall have no obligation to maintain or provide any of your Data and shall thereafter, unless legally prohibited, delete all of your Data in our systems or otherwise in our possession or under our control.

### **12.5. Surviving Provisions**

Any provision of this Agreement, an Order Form or a SOW that contemplates performance or observance subsequent to the termination of such Order Form or SOW and any other provision that by its nature may reasonably be presumed to survive any termination of this Agreement, an Order Form or a SOW shall survive its termination.

## **13. GENERAL PROVISIONS**

### **13.1. Notices**

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (iii) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to you shall be addressed to the system administrator designated by you for your relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by you. Notices sent by Customer shall be addressed: inContact, Inc., 75 West Towne Ridge Parkway, Tower # 1, Sandy, Utah 84070, Attn: VP & General Counsel, CXone (with a copy to: [contractnotices@nice.com](mailto:contractnotices@nice.com))

### **13.2. Agreement to Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of the applicable NICE Affiliate that executes the Order Form or SOW. In case of: (a) NICE Systems, Inc. or inContact, Inc., such law shall be the laws of the State of New Jersey, excluding its rules of conflicts of law and the Parties submit to the exclusive jurisdiction of the state and federal courts in New Jersey in all questions and controversies arising out of this Agreement; (b) NICE Systems Canada, Ltd. such laws shall be the laws of the Province Ontario, Canada excluding its rules of conflicts of law and the Parties submit to the exclusive jurisdiction of the state and federal courts in Toronto, Ontario; (c) NICE Systems UK Limited, NICE France SARL, NICE Systems GmbH, NICE Netherlands B.V. and NICE Switzerland AG, such law shall be the

laws of England and the Parties submit to the exclusive jurisdiction of the English courts in all questions and controversies arising out of this Agreement provided that NICE, at its option and at any time, may seek and obtain injunctive and other relief in any court of competent jurisdiction; and (d) NICE Systems Australia Pty Ltd, such laws shall be the laws of the State of New South Wales excluding its rules of conflicts of law and the Parties submit to the exclusive jurisdiction of the state and federal courts in Sydney in all questions and controversies arising out of this Agreement. Both Parties hereby exclude the application of the Uniform Computer Information Transactions Act (“**UCITA**”), the United Nations Convention on the International Sale of Goods (“**CISG**”), and any law of any jurisdiction that would apply UCITA or CISG or terms equivalent to UCITA or CISG to this Agreement.

### **13.3. Waiver of Jury Trial**

To the extent not prohibited by applicable law that cannot be waived, the Parties hereby waive, and covenant that they will not assert any right to trial by jury in any action arising in whole or in part under or in connection with this Agreement or any of the transactions contemplated hereunder.

### **13.4. Export Compliance**

Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) you shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

### **13.5. Relationship of the Parties**

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

### **13.6. Waiver and Cumulative Remedies**

No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

### **13.7. Severability**

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

### **13.8. Attorney Fees**

You shall pay on demand all of our reasonable attorney fees and other costs incurred by us to collect any fees or charges due us under this Agreement following your breach of Section 5.2 (Invoicing and Payment).

### **13.9. Assignment**

Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld). Notwithstanding the foregoing, we may assign this Agreement in its entirety (including all Order Forms), without your consent to an Affiliate or a successor in interest pursuant to a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

### **13.10. Force Majeure**

Neither Party shall be deemed to be in default of any provision of this Agreement, or for failure in performance of its obligations hereunder (excluding payment obligations), due to Extraordinary Circumstances.

### **13.11. Order of Precedence**

In the event of any conflict or inconsistency between the terms of: (a) this Agreement and any Order Form or SOW, the terms of the Agreement shall prevail; except to the extent that an Order Form or SOW specifically states that specified terms in the Order Form or SOW supersede specified terms in the Agreement, in which case such superseding terms will apply only to that Order Form or SOW; and (b) any Order Form and any SOW, the terms of the Order Form shall prevail; except to the extent that: a SOW specifically states that specified terms in that SOW supersede specified terms of the applicable Order, in which case such superseding terms will apply only to that SOW. The Parties agree that if a URL contained in this Agreement does not work or has stopped working, it will notify the other Party and NICE will then repair or create a new URL to replace the URL.

### **13.12. Entire Agreement**

This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the Party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of this Agreement shall prevail; except to the extent that an Order or SOW specifically states that specified terms in the Order or SOW supersede specified terms in this Agreement, in which case such superseding terms will apply only to that Order or SOW. Notwithstanding any language to the contrary therein, no terms or conditions stated in your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

# Exhibit A

## Service Level Agreement

This Exhibit A shall apply solely with respect to CXone Expert Services.

### 1. Definitions

For purposes of this Exhibit A, the following definitions will apply:

1. "Availability" means the monthly availability of the Services in production multiplied by 98% service level less any Excusable Downtime.
2. "Excusable Downtime" means and includes: (a) maintenance services performed during the maintenance windows below; (b) maintenance Services performed on an emergency basis to avoid harm to NICE, Customer, or the Services; (c) any time spent by NICE in its performance of any additional services requested or agreed to by Customer; (d) Customer-caused outages or disruptions; (e) outages or disruptions caused by: (i) software, infrastructure, databases, operator error or hardware not provided or controlled by NICE, (ii) disruptions attributable to Extraordinary Circumstances, or (iii) configuration changes not made by NICE; or (f) network connectivity issues.
3. "Response" or "Respond" means the acknowledgement by NICE to Customer that a problem has been reported and identification of a remedial course of action.
4. "Response Time" means the estimated time periods set forth in Section 5 Table 4 below, or Section 10 below if applicable add-on has been purchased under an Order Form, for NICE to convey its Response to Customer, with such period beginning upon Customer giving notice to NICE of the problem.
5. "Severity Levels" means the Severity Levels defined in Section 5 of this Exhibit A.
6. "Malfunction" means a function that is not executing at all.
7. "Defect" means a function that is executing but is producing a system or application error during the execution.
8. "Base-line" is a direct connection between the NICE performance monitoring service and the NICE servers.

### 2. Services Availability

NICE will use commercially reasonable efforts to maintain 98% Availability of the Services. The Services are only considered "**Unavailable**" when a Severity Level 1 incident occurs.

### 3. Availability Report

Each calendar month, NICE will make an automated report of actual Services Availability, Response Time and Average Load Time available to Customer at <http://status.mindtouch.us>.

### 4. Service Level Credit

Availability will be measured on a rolling average of the previous 31 days. Should the monthly Availability of the CXone Expert Services fall below the 98% Availability Service Level as a result of the Services being Unavailable, an outage corresponding to such incident will be measured from the time of the beginning of Unavailability until the time the Services are deemed restored by NICE ("Outage"). In the event that we fail to meet 98% Availability of the Services as measured during an Outage in any calendar month, Customer shall be eligible to receive a service level credit ("SLA Credit"), in the form of a credit issued in the next invoice equal to a dollar amount calculated as follows:

Table 1

Percentage Point below the 98% Service Level for Availability	Percentage of the applicable Monthly Value of the Subscription Fee
≥0.1% to < 0.39%	1%
>0.4% to < 0.69%	2%
>0.7% to < 0.99%	4%
≥1%	5%

Customer must submit an SLA Credit request to NICE within thirty (30) days following the month in which the Services Availability fell below 98%. NICE considers a request submitted when NICE receives from Customer a fax, email or support ticket on the support portal requesting a credit and identifying:

- Customer's name and account number;
- Support/Case number;
- Date(s) and approximate beginning / ending time of the Outage; and
- A reference to CXone Expert as the product affected by the Outage.

Any SLA Credit shall be waived to the extent that the Availability of the Services has been impacted by Customer's acts and omissions, including if Customer's financial account with NICE is not in good standing. In no event shall the total SLA Credits due in any given calendar month exceed 5% of the monthly fee for the Services. SLA Credits are the Customer's sole and exclusive remedy for NICE's failure to maintain the Availability as stated in this Exhibit A.

## 5. Severity Levels

**Customer Duties.** Customer will appoint two (2) resources (unless subscribed to Enterprise Support package in which case four (4) resources will apply) who have completed the NICE training in the operation and use of the Services ("Designated Contact(s)") and shall act as NICE's primary point of contact regarding requests for technical assistance. The Designated Contact shall initiate a request for support assistance submitted by the Customer via the designated support channels outlined in Section 9 below ("Case") via the designated support channels in Section 9 below. Prior to initiating a Case, the Designated Contact shall use reasonable efforts to attempt to diagnose and resolve the particular issue including using available self-help tools. The Designated Contacts are required to establish and maintain Customer's processes to provide first tier support for the Services, which includes: (a) a direct response to user inquiries concerning the performance, functionality, or operation of the Services; and (b) an attempt to diagnose and resolve problems or issues with the Services. Case severity levels are classified based upon the definitions outlined in Table 2 below.

Table 2

<b>CXone Expert Case Severity Levels</b>		
<b>Severity Level</b>	<b>Definition</b>	<b>Examples</b>
<b>1. Critical (System Unavailable) ("S1")</b>	I. Services completely unavailable. II. Services down or a major malfunction is present resulting in the Services being inoperable. III. No workaround. IV. Applies to Services in Production only.	I. Majority of Users* are: (a) unable to login; (b) experiencing severe login latency; or (c) unable to reasonably perform their normal functions II. Data integrity issues
<b>2. High (System Impaired) ("S2")</b>	I. Critical loss of application functionality or performance resulting in high number of users unable to perform normal user functions. II. Major functionality is significantly impacted. III. No workaround. IV. Applies to Services in Production only.	I. Service interruptions to some but not all functionality II. Some Users* not able to login or experiencing latency III. Alerts not generating
<b>3. Medium (Minor Impact) ("S3")</b>	I. Minor feature/product failure or performance degradation II. Moderate loss of functionality or performance III. Impact is to a non-Production environment. IV. A workaround exists.	I. Multiple Users* experiencing moderate loss to their normal user functions II. Reports not being generated III. Alternative method is in place until permanent solution can be applied
<b>4. Low (Informational) ("S4")</b>	I. Non-critical or minor loss of features or functionality II. Inquiries	I. Non-essential buttons missing II. User interface or experience is difficult III. "How-to" questions; IV. Product feature requests V. Documentation requests

\*For NICE CXone as described in the Technical Support Case Priority Matrix in Table 3 below.

Table 3

<b>Technical Support Case Priority Matrix IMPACT</b>				
<b>Severity Level</b>	<b>&gt;50% active Users **</b>	<b>&gt;25% active Users **</b>	<b>&lt;25% active Users **</b>	<b>Individual</b>
S1	S1	S1	S1	S3
S2	S1	S2	S3	S4
S3	S2	S3	S3	S4
S4	S3	S4	S4	S4

\*\*The number of active Users is based on the active User population (that should be operational at the time of a Case), not the total User base. NICE will elevate Cases based on the severity of the impact.

Table 4

NICE's response to a Case will be handled, as follows:

Case Severity	Target Initial Response Times <sup>^</sup>
S1	60 minutes
S2	4 hours during Customer's business day
S3	Next business day
S4	Next business day

<sup>^</sup>S1 times are based on 24x7x365, all other Case Severity levels are based on standard business hours, each as measured from the date of Customer's initial notification to NICE, as provided for in the Customer Duties clause above.

## 6. Escalation Procedures

NICE will maintain an escalation process to aid in problem resolution for Severity Level 1 issues should any outstanding errors warrant or because a Party has not Responded to an error within the parameters set forth in this Exhibit A.

## 7. Planned Outages

All maintenance work is done on an "as needed" basis . As of the Effective Date, the standard scheduled maintenance downtime for the NICE CXone Expert Services is one (1) time per week between 11:00 PM PST and 12:00 AM PST. Under certain conditions, NICE inContact may need to perform urgent or emergency preventative maintenance regardless of time of day or business hour. NICE inContact shall not be precluded or restricted from providing such emergency maintenance.

## 8. Redundancy and Disaster Recovery Plan

The Services will be fully physically redundant. Throughout the Subscription Period, NICE will maintain a written disaster recovery plan to apply in the event of Extraordinary Circumstances or other similar disruption to the Services. NICE will implement the plan upon the occurrence of any Extraordinary Circumstance or similar circumstance. Without limitation, NICE's CXone Expert disaster recovery plan will include back-up and a disaster recovery data set, including Customer Content, will be available to Customer that is current within 3 days of the day the primary data set was lost, destroyed or otherwise becomes unavailable.

## 9. Contact Information

### For NICE CXone

[community.niceincontact.com](https://community.niceincontact.com)

Recommended First Step

[community.niceincontact.com](https://community.niceincontact.com)

Self-Help Tool

For all locations

+1 800 826 8028

**Alternate Contact Phone Number: US: 619-795-8459**


**Hours of Operation: 8AM PST to 6PM PST**

NICE may update this support contact information by posting updated information to the above website or otherwise informing Customer.

## 10. 24x7 Support

24x7 Customer Support is an add-on available solely to those Customer's subscribed to Enterprise Support Plans and is intended to cover "Show-Stopper" issues as described below. If 24x7 Customer Support is purchased, as specified in the Order Form, Customer's support will include the additional Issue Classification and Response Time identified in the following Table 5:

Table 5 – 24x7 Support Add-On Issue Classification

Development Classification*	Legal-Term	Definition	24x7 Support Available
Show-Stopper	Downtime	Site unavailable. Authentication unavailable (LDAP, Active Directory, SAML, ADFS)	

**\*Notwithstanding the forgoing, only issues classified as Show-Stopper are able to receive 24x7 Support. Non Show-Stopper issues that are reported outside of regular hours (6AM PST to 5PM PST) will be triaged and classified pursuant to the Severity Levels and response times applicable to Customer's Enterprise Support Plan details and Table 6 below.**

Table 6 – Enterprise Support Plan Response Times

Contact	Description	Response Time
24x7 Support	Available 24x7 for Show-Stopper issues	Two (2) Hours
<a href="https://community.niceincontact.com">https://community.niceincontact.com</a>	Available Monday – Friday 6AM PST to 5PM PST for all issue classifications.	≥ Four (4) Hours during business hours
619-795-8459	Available Monday – Friday 6AM PST to 5PM PST for all issue classifications.	During business hours