

These NICE Standard Terms of Use (“**Terms**”), together with any Product-Specific Terms and any Orders (collectively, the “**Agreement**”), specify the terms and conditions upon which inContact, Inc. and its Affiliates (collectively, “**NICE**,” “**we**,” and “**us**”) provide Services and Network Connectivity to you the customer and your Affiliates (collectively, “**Customer**”, “**you**”, and “**your**”) and govern your use of the same.

## 1. License and Scope of Use of Services.

- a. **Use Grant.** You are granted a non-exclusive, non-transferable, non-sublicensable right to use the Cloud Services (including Documentation) solely for your internal business purposes, subject to these Terms and for the user quantities, location, term, and other transaction-specific details as specified in an Order. You may make a reasonable number of copies of the Documentation, provided such reproductions include any copyright or proprietary labels, legends, or notices included in the Documentation.
- b. **Artificial Intelligence.** You will not, either directly or indirectly, use AI (as defined in [NICE’s Cloud Service/Software AI Acceptable Use Policy](#) (“**AI AUP**”)) or any third-party AI application to model, replicate, or emulate the functionality, design, or any other aspect of the Services. Additionally, you will not use the Services to train AI technologies or to create similar applications or services, or technologies capable of generating software with a similar style, functionality, or genre as the Services. All use of the Cloud Services with AI technology must comply with the AI AUP.
- c. **Restrictions.** With respect to the Cloud Services and any NICE Intellectual Property, you may not, nor allow any user to: (i) sub-license, publish, disclose, copy, rent, lease, modify, translate, loan, distribute, sell, resell, transfer, assign, alter, or create derivative works based on the Cloud Services or any part thereof; (ii) disassemble, adapt, reverse engineer (except to the extent specifically permitted by applicable law), decompile, translate, including to build or create a similar or competitive product or service using similar ideas, features, functions or graphics; (iii) attempt to create or discover the source code or underlying algorithms, ideas, features or functions of the Services or from the object code; (iv) attempt to defeat, disable, or circumvent any protection mechanism related to the Cloud Services, including those intended to prevent, limit or control use, copying or access to the Cloud Services; (v) test the vulnerability of a Cloud Service including, scanning or performing load testing, stress testing, penetration testing, nor attempt to breach any security or authentication mechanisms used by the Services; (vi) permit any third party to use or access the Cloud Services, except as expressly permitted herein or under an Order or SOW, with the exception of a third party requested by you and authorized by us in advance, or our authorized maintenance providers; (vii) access or use the Cloud Services: (A) on or to service the systems, networks or devices of a third party; (B) in violation of the rights of any third party, or any applicable law or regulation (including intellectual property and data privacy laws); or (C) for any purpose other than as expressly provided in this Section 1.
- d. **Government Use of Services.** If Customer is a unit or agency of the United States or any of its instrumentalities (“**Government**”), or when the Services are used for the benefit of a unit or an agency of the Government, the following applies: The Services are deemed “commercial computer software” pursuant to DFARS Section 227.7202 and FAR Section 12.212 (and any successor sections). The use of the Services by the Government is governed by this Agreement. Under no circumstances shall NICE be obligated to comply with any Government requirements regarding cost or pricing data or cost accounting requirements. If Customer’s use of the Services would otherwise require compliance by NICE with such Government requirements, or in any manner affect NICE’s rights in the Services, Customer must notify NICE of such Government requirement and obtain a waiver or exemption from such requirements for the benefit of NICE prior to any Government access to the Services.
- e. Any violation of this Section 1 (License and Scope of Use of Services) by Customer will be deemed a material breach of this Agreement, and NICE will have the right to either suspend delivery, access, or performance of the Services or terminate this Agreement and any Orders hereunder immediately, without any liability to Customer, and to seek all remedies available at law or in equity.

2. **Disclaimer of Warranties.** Except as expressly stated in the Agreement, we do not provide any warranty for the Services, and specifically disclaim any warranties, express or implied, including warranties of merchantability, fitness for a particular purpose, title, non-infringement, or that the Services will be free from unauthorized access or hacking attempts, uninterrupted or error-free.

3. **Suspension/Termination.**

- a. You are responsible for all activity that occurs via your use of the Cloud Services and Network Connectivity. In addition, without waiving any of its rights or remedies under the Agreement or at law, NICE reserves the right to suspend delivery, access, or performance of the Services: (i) for Cause, (ii) if you use the Cloud Services or Network Connectivity in a manner that may be unlawful, may harm NICE or a third party, or materially hinder performance of the Cloud Services or Network Connectivity, or (iii) if any amounts due under an Order are outstanding and past due.
- b. Orders are non-cancellable and non-refundable. If Customer decides to cease using the Services during the Subscription Term, Customer will continue to be liable for all amounts payable under the Order for such Services or Software for the remainder of the Subscription Term, including all amounts that are subject to a minimum commitment, and Customer shall not be entitled to any refunds.
- c. Either Party may terminate an Order for Cause, upon written notice to the other Party setting forth the effective date of termination, if the other Party fails to cure a material breach of the Agreement within thirty (30) days after receiving such notice. Any termination of this Agreement will not serve to terminate any Orders and/or SOWs thereunder. Unless otherwise provided herein or in an Order and/or SOW, the termination of an Order and/or SOW will not operate to terminate any other Orders and/or SOWs, and these Terms will continue to govern such Orders and/or SOWs until completion or their earlier termination in accordance with this Agreement.
- d. Upon the later of either the termination of these Terms, or termination or expiration of an Order: (i) you will: (A) cease access and use of the applicable Services; (B) return or destroy all copies of any Documentation in your possession or control; and (C) certify in writing to the completion of such return or destruction upon NICE's request; and (ii) each Party will cease using the other Party's Confidential Information. Notwithstanding the foregoing, either Party may retain such information as may be required by law or for compliance purposes, and the confidentiality obligations of these Terms will continue to apply for as long as the Confidential Information is retained by such Party. Termination will not relieve you of its obligations to pay: (1) any fees accrued or due and payable to NICE through the effective date of termination; and (2) all future amounts due under all Orders.

4. **Compliance with Laws; Export Restrictions.**

- a. NICE is committed to acting ethically and in compliance with applicable laws and regulations, and has policies and guidelines in place to provide awareness of and compliance with such laws and regulations. NICE is conscientious in its efforts to operate in accordance with the highest global ethical standards, as described in the [NICE Code of Ethics and Business Conduct](#). NICE implements and maintains programs for its compliance with applicable anti-corruption and anti-bribery laws and has a zero-tolerance approach to bribery and corruption. [NICE's Anti-bribery and Corruption Policy](#) prohibits the offering or soliciting of any illegal or improper bribe, kickback, payment, gift, or anything of value to or from any Customer, its employees, agents, or any government official on its behalf.
- b. The Cloud Services may be subject to export laws and regulations of the United States and other jurisdictions ("Export Laws"). Each Party represents that it is not on any United States government denied-party list, including the Treasury Department's List of Specially Designated Nationals and the Commerce Department's List of Denied Persons or Entity List. NICE will comply with all Export Laws applicable to its provision of the Services to you. You will comply with all applicable Export Laws and will not export, re-export, ship, transfer, permit access to, or otherwise use the Services in any country subject to an embargo or other sanction by the United States, including

the Crimea, Luhansk or Donetsk regions, Cuba, Iran, North Korea, or Syria, or for any purpose in violation of Export Laws.

5. **Security.** NICE will implement appropriate administrative, physical, and technical safeguards to protect the security, confidentiality, and integrity of Customer Confidential Information, including Content, as set forth in the [Cloud Services Security Terms](#), and Customer shall implement reasonable and appropriate measures to secure its access and use of the Services.
6. **Content.** You have sole ownership of your Content, including all intellectual property rights related thereto. By providing Content to a Cloud Service, you grant to NICE and its Affiliates a limited, non-exclusive, non-sublicensable, non-transferable license to use, copy, store and display the Content to provide the Cloud Services to you as contemplated hereunder, and to fulfill NICE's legitimate interest in supporting and enhancing them. You will: (a) have sole responsibility for the accuracy, quality, and legality of all Content; and (b) take commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and will immediately notify NICE if you become aware or have reason to believe that the Services are being used in an unauthorized manner. You are responsible for: (i) implementing any security features and options made available by NICE in connection with Cloud Service; and (ii) routinely archiving and backing up Content. If a Cloud Service includes the ability for Customer to implement security features or options (e.g., multi-factor authentication) and Customer elects not to enable such security features or options, then Customer will be responsible for any liability resulting therefrom. Without limiting the generality of the foregoing, you are responsible for all activity and charges incurred, including all telephony and network connectivity charges, within its assigned Business Unit. As used in herein, "Business Unit" means an independent, billable software instance of the Cloud Services.
7. **Intellectual Property.** We (and our licensors) remain the sole owner of all right, title, and interest in and to: (a) the Cloud Services and Documentation, and all modifications, enhancements, improvements, adaptations, and translations thereto; (b) trademarks, service marks, and trade names associated with the Cloud Services; (c) Resulting Information; and (d) all other NICE supplied material developed for use in connection with the Services generally, exclusive of the Content. You may not display or use the NICE Intellectual Property without our express prior written approval.
8. **Feedback.** You grant us the right to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback you provide to us. Although not required, if you provide feedback, ideas, or other suggestions ("**Feedback**") about the Cloud Services, then NICE and its Affiliates will own and may use and exploit such Feedback without restriction or obligation to Customer. All rights not expressly granted to Customer herein are reserved to NICE.
9. **Confidential Information.**
  - a. The Receiving Party will maintain the confidentiality of the Disclosing Party's Confidential Information using at least the same standard of care as the Receiving Party employs for its own confidential information of a similar nature, but in any event no less than a reasonable standard of care. The Receiving Party will not use the Disclosing Party's Confidential Information, except as permitted by this Agreement. The Receiving Party will not disclose the Disclosing Party's Confidential Information to any other person except to its Affiliates and its and their respective officers, directors, employees, consultants, auditors, subcontractors and professional advisors (collectively, the "**Representatives**") who have a need to know, and who are subject to a confidentiality obligation regarding such Confidential Information. The Receiving Party is responsible for its Representatives' compliance with the confidentiality obligations of this Agreement.
  - b. Notwithstanding anything to the contrary contained herein, the Receiving Party may disclose Confidential Information of the Disclosing Party if required by applicable law, regulation, order, or legal process, provided that: (i) to the extent permitted under applicable law, the Receiving Party gives the Disclosing Party prompt written notice of such requirement so that the Disclosing Party has an opportunity to seek a protective order, confidential treatment, or other appropriate remedy to such order; (ii) the Receiving Party provides the Disclosing Party with reasonable assistance, at the Disclosing Party's expense, in opposing such required disclosure or seeking a protective order or confidential treatment for all or part of such Confidential Information; and (iii) the Receiving Party discloses only such portion of the Confidential Information as is either permitted by the Disclosing

Party or legally required, subject to any protective order or confidential treatment obtained by the Disclosing Party.

#### **10. Indemnification.**

- a. You will indemnify, defend, and hold harmless NICE and our Affiliates, officers, agents, employees, partners, and licensors from any Losses resulting from, arising out of, or related to a Claim brought against us to the extent such Claim: (i) alleges that any Content or any service, product, or technology provided by or on behalf of you hereunder, infringes or misappropriates such third party's patent, copyright, trademark, or trade secret, or violates any other right of such third party; (ii) arises from any Content or personal data provided to NICE by you or on your behalf; or (iii) arises from your use of Content or the Services in an unlawful manner.
- b. Indemnification Procedure. We will notify you promptly in writing of a Claim for indemnification; however, untimely notice will not waive any of our rights except to the extent that your rights or defenses are actually prejudiced or liability increased thereby. You will have exclusive control of the defense and settlement of such Claim, and we will reasonably cooperate with you; however, we may employ our own counsel at our own expense and join in the defense and settlement of such Claim. You may settle any Claim without our written consent unless such settlement: (i) does not include a release of all covered Claims pending against us; (ii) contains an admission of liability or wrongdoing by us; or (iii) imposes any obligation upon us except to cease any infringement.

#### **11. Limitation of Liability.**

- a. We are not liable for any loss of use, data, goodwill, or profits, whatsoever, and any special, incidental, indirect, consequential, punitive, exemplary or similar damages whatsoever, regardless of cause (even if we have been advised of the possibility of the loss or damages) arising out of or related to this Agreement, including losses and damages resulting from or based upon: (i) loss of or corruption of data, profits, revenues, goodwill, interrupted communications, or business interruption whether or not foreseeable; (ii) any theory of liability, including breach of contract or warranty, negligence or other tortious action; or (iii) any other claim arising out of or in connection with your use of or access to the Cloud Services.
- b. Our total liability arising out of or related to an Order is limited to the aggregate amount payable by you under such Order for use or receipt of the Services during the twelve (12) month period preceding the event giving rise to the liability. This limitation will apply regardless of the form or source of claim or loss, whether the claim or loss was foreseeable, and whether a Party has been advised of the possibility of the claim or loss.
- c. We do not control the flow of information over the internet; accordingly, in no event will we be liable for any Losses resulting from or related to an internet disruption or the acts, omissions, or delays of any Infrastructure Provider.
- d. Remedies specified in these Terms, an Order, or any Services-specific terms are exclusive and limited to those expressly described therein.

**12. Product-Specific Terms.** Certain Cloud Services or other products or Services that we provide may be subject to additional product-specific terms ("**Product-Specific Terms**"), which can be found at [Enterprise Terms and Conditions | NICE](#), and as may be incorporated through corresponding product descriptions. In the event of a conflict between any Product-Specific Terms, these Terms, and an Order, with respect to a specific Order, the order of precedence shall be the Order, the Product-Specific Terms, and these Terms.

**13. Updates to the Terms and Product-Specific Terms.** We may modify these Terms and the Product-Specific Terms and post the modified version to [NICE.com/Terms](#). You should look at the Terms regularly. By continuing to use or access the Cloud Services after the revisions are posted, you agree to be bound by the revised Terms or Product-Specific Terms.

**14. Non-Solicitation.** You will not, without our prior written approval, either directly or indirectly, solicit or attempt to solicit, divert, encourage to terminate employment, or hire away any of our employees who performed duties related to the

Services performed under the Agreement, before one (1) year after expiration of the last existing Service Term of an Order.

## 15. Governing Law.

- a. This Agreement is governed by and construed in accordance with the laws of the applicable NICE Affiliate that executes an Order. In the case of:
  - i. inContact, Inc., or NICE Systems, Inc., such law shall be the laws of the State of New Jersey, excluding its conflict of law rules 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 the Agreement; (This Agreement is governed by and construed in accordance with the laws of the State of New Jersey, excluding its conflict of law rules. Both Parties hereby consent and submit to the exclusive jurisdiction of the state and federal courts in New Jersey in all questions and controversies arising out of this Agreement.
  - ii. 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;
  - iii. NICE Systems Technologies Brasil Ltda., such laws shall be the laws of the Federative Republic of Brazil, excluding its rules of conflicts of law and the Parties submit to the exclusive jurisdiction of the courts located in São Paulo, State of São Paulo, Brazil;
  - iv. NICE Technologies Mexico, S. De R.L. De C.V., such laws shall be the laws of the United Mexican States , excluding its rules of conflicts of law and the Parties submit to the exclusive jurisdiction of the courts located in Mexico City, Mexico;
  - v. NICE Systems UK Limited, NICE France SARL, NICE Systems GmbH, NICE Netherlands B.V. and NICE Switzerland AG, such laws 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 the 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. Notwithstanding the foregoing, in the case of NICE Systems UK Limited, and if Customer is not incorporated in the United Kingdom or a country in the European Union, Section 15.a.viii below shall apply;
  - vi. NICE Systems Australia Pty Limited, such laws shall be the laws of New South Wales, Australia excluding its rules of conflicts of law and the Parties submit to the exclusive jurisdiction of the courts of New South Wales and the courts competent to hear appeals from those courts in all questions and controversies arising out of the 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;
  - vii. NICE Ltd., such laws shall be the laws of Israel excluding its rules of conflicts of law and the Parties submit to the exclusive jurisdiction of the state and federal courts in Tel Aviv-Jaffa in all questions and controversies arising out of the 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. Notwithstanding the foregoing, if Customer is incorporated in India, Section 15.a.xi below shall apply;
  - viii. NICE Systems UK Limited, and where Customer is not incorporated in the United Kingdom or a country in the European Union, such laws shall be the laws of England. Additionally, (A) any dispute, claim, difference or controversy arising out of, relating to or having any connection with the Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it (for the purpose of this Section, a "**Dispute**"), shall be submitted to the LCIA Court and shall be finally resolved by arbitration under the LCIA Arbitration Rules as amended from time to time (for the purpose of this Section, the "**Rules**"); (B) the Rules are incorporated by reference into this Section and capitalised terms used in this Section, which are not otherwise defined in the

Agreement, have the meaning given to them in the Rules; (C) the number of arbitrators shall be one, and the Parties shall jointly nominate the sole arbitrator for appointment by the LCIA Court; (D) the seat or legal place of arbitration shall be London; (E) the language used in the arbitral proceedings shall be English; (F) the jurisdiction of the English courts under section 69 of the English Arbitration Act 1996 is excluded; and (G) notwithstanding Sections 15.a.viii(A) to 15.a.viii(F) (inclusive) above, and to the extent permitted by law, either Party may at any time seek urgent injunctive, interlocutory or interim relief in any court of competent jurisdiction in support of any arbitration commenced or to be commenced in accordance with this Section 15.a.viii. Nothing in this Section 15.a.viii below shall undermine the Parties' choice of London as the seat or legal place of arbitration;

- ix. NICE Japan Ltd., such laws shall be the laws of Japan, without referring to any conflict of law rules. Any suit, action or proceeding arising out of, in connection with, or relating to the Agreement (including any non-contractual dispute or claim) will be settled by the Tokyo District Court, and the Parties hereby expressly and irrevocably submit to the exclusive jurisdiction of such court for the purpose of any such suit, action or proceeding;
- x. NICE Systems (Singapore) Pte. Ltd., such laws shall be the laws of Singapore without regard to any conflict of law rules. Additionally, (A) any suit, action or proceeding arising out of, having any connection with, or relating to the Agreement (including any non-contractual dispute or claim, and any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity) shall be determined by arbitration seated in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") in force from time to time (for the purposes of this Section, the "Rules"), and the law governing the agreement contained in Sections 15.a.x(A) to 15.a.x(G) (inclusive) shall be the laws of Singapore; (B) the Rules are incorporated by reference into this Section and capitalised terms used in this Section which are not otherwise defined in the Agreement have the meaning given to them in the Rules. The arbitration shall be administered by the SIAC; (C) there shall be one arbitrator, and the arbitrator shall be appointed in accordance with the Rules; (D) the arbitration proceedings shall be conducted in English; (E) the Parties shall bear their own costs and expenses, including attorneys' fees, but the arbitrator may, in the award, allocate all of the administrative costs of the arbitration, including the fees of the arbitrator, against the Party that did not prevail; (F) the arbitrator shall have the power to order, among other things, specific performance and injunctive relief, and the decision of the arbitrator shall be final and binding upon both Parties and shall be enforceable in any court of law; (G) except as modified by the provisions of this Section 15.a.x and the Rules, Part II of the International Arbitration Act (Cap. 143A) shall apply to any arbitration proceedings commenced under Sections 15.a.x(A) to 15.a.x(G) (inclusive); and (viii) notwithstanding the foregoing, if Customer is incorporated in India, Section 15.a.xi below shall apply; and
- xi. NICE Ltd. or NICE Systems (Singapore) Pte. Ltd. and where Customer is incorporated in India, such laws shall be the laws of Singapore without regard to any conflict of law rules. Additionally, (A) any suit, action or proceeding arising out of, having any connection with, or relating to the Agreement (including any non-contractual dispute or claim, and any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity) shall be determined by arbitration seated in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") in force from time to time (for the purposes of this Section, the "Rules"), and the law governing the agreement contained in Sections 15.a.xi(A) to 15.a.xi(F) (inclusive) shall be the laws of Singapore; (B) the Rules are incorporated by reference into this Section and capitalised terms used in this Section which are not otherwise defined in the Agreement have the meaning given to them in the Rules. The arbitration shall be administered by the SIAC; (C) there shall be one arbitrator, and the arbitrator shall be appointed in accordance with the Rules; (D) the arbitration proceedings shall be conducted in English; (E) the Parties shall bear their own costs and expenses, including attorneys' fees, but the arbitrator may, in the award, allocate all of the administrative costs of the arbitration, including the fees of the arbitrator, against the Party that did not prevail; (F) the arbitrator shall have the power to order, among other things, specific performance and injunctive relief, and the decision of the

arbitrator shall be final and binding upon both Parties and shall be enforceable in any court of law; (G) Subject to the foregoing provisions of this Section 15.a.xi above, in the event that court proceedings relating to this agreement to arbitrate are commenced in India, the courts of competent jurisdiction at Mumbai shall have exclusive jurisdiction with respect to such proceedings, including to determine any objection to the jurisdiction of the courts of India. Each Party irrevocably waives any objection that it may have at any time to the commencing of such proceedings in any such court or that such proceedings have been brought in an inconvenient forum. Notwithstanding the foregoing provisions of this Section 15.a.x(G), the courts of the seat shall have exclusive supervisory jurisdiction over the arbitration proceedings.

- b. In addition to any other remedies available at law or in equity, in the event of a breach by either Party of any term of this Agreement, including a breach of confidentiality obligations, monetary damages may not be sufficient, and the non-breaching Party may seek injunctive or other equitable relief to prevent the continuation or recurrence of such breach, without the need to prove actual damages. Such relief will be in addition to any damages or other remedies to which the non-breaching Party may be entitled.
- c. Any claim or cause of action arising under or connection with the Agreement, except for amounts payable to us for Services and Network Connectivity, must be brought within one (1) year following the date the claim or cause of action first arose.

## 16. Miscellaneous.

- a. **Assignment.** You may not assign or otherwise transfer the Agreement or your rights and obligations under the Agreement, in whole or in part, without our written consent, and any such attempt will be void. We may transfer our rights under the Agreement to a third party.
- b. **Third-Party Providers.** NICE has existing arrangements with certain third-party technology service providers, which provide NICE with the ability to supplement its employee workforce providing Services to NICE's customers ("**Third-Party Provider(s)**"). Notwithstanding anything to the contrary contained in an Order, you acknowledge and agree that NICE may use Third-Party Providers to assist NICE in the delivery of Services under this Agreement, provided that NICE remains responsible for such Third-Party Providers' compliance with the terms herein and in an Order or SOW.
- c. **Customer Information.** You agree to disclose to us and maintain a valid physical location where the Cloud Services and Network Connectivity will be used for purposes of telephony Laws compliance and billing. You are solely responsible for any costs resulting from an invalid or inaccurate physical location.
- d. **Force Majeure.** Neither Party shall be in default of any provision of this Agreement, or for failure in performance of its obligations hereunder (excluding payment obligations), resulting from acts or events beyond the reasonable control of such Party, including acts of God, civil or military authority, acts or threats of terrorism, civil disturbance, war, riot, strike or labor dispute (not related to either Party's workforce), fires, floods, infectious disease, or acts of government (each a "**Force Majeure Event**"). Such Force Majeure Event, to the extent it prevents a Party's performance or any other obligation under this Agreement, will extend the time for performance for as many days beyond the applicable performance date as is required to correct the effects of such Force Majeure Event.
- e. **Headings.** Headings used in the Agreement are provided for convenience only and will not be used to construe meaning or intent.
- f. **Integration.** These Terms, together with any Orders, represent the full and complete Agreement between you and us, and revokes and supersedes all prior agreements, oral or written between you and us.
- g. **No Waiver.** Our failure to enforce or exercise any provision of the Terms is not a waiver of that provision.

- h. **Notice.** All notices, requests, or other communications between you and us must be in writing and shall be deemed to have been delivered when sent by registered or certified mail, return receipt requested, by reputable courier as evidenced by a delivery receipt to each Party's respective address as listed on an Order, except that notices from you to us regarding the non-renewal of a Service Term shall be sent to us by email to ContractUnsubscribe@NICEinContact.com; any other notice is invalid.
- i. **Publicity.** By entering into an Agreement with us, you consent to the inclusion of your name and logo in a customer listing as part of our website and marketing materials. Subject to your prior approval, and after the Go-Live Date, we may issue a press release announcing your use of the Cloud Services and may include a quote from one of your senior executives.
- j. **Severability.** If any provision of the Agreement is held invalid or unenforceable for any reason, the remaining provisions of the Agreement will continue in full force and effect.
- k. **Survival.** Any provision of this Agreement or an Order that contemplates performance or observance subsequent to the termination of this Agreement or an Order, and any other provision that by its nature may reasonably be presumed to survive any termination of this Agreement or an Order, shall survive its termination.
- l. **Order of Precedence.** In the event of any conflict or inconsistency between the terms of: (a) this Agreement and any Order or SOW, 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 the Agreement, in which case such superseding terms will apply only to that Order or SOW; and (b) any Order and any SOW, the terms of the Order shall prevail, except to the extent that a SOW specifically states that specified terms in that SOW supersede specified terms in 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 non-working URL. Words importing the singular include the plural, words importing any gender include every gender, and words importing persons include entities, corporate and otherwise; and (in each case) vice versa. The section headings are for ease of reference only and are not intended to affect the interpretation or construction of this Agreement. Whenever the terms "including" or "include" are used in this Agreement in connection with a single item or a list of items within a particular classification (whether or not the term is followed by the phrase "but not limited to" or words of similar effect) that reference will be interpreted to be illustrative only, and will not be interpreted as a limitation on, or an exclusive enumeration of the items within such classification.
- m. **Additional Provisions.** A digital copy of an Agreement, or a digital signature on an Agreement, will be treated the same as an original Agreement or signature. References to "include," "includes," or "including" shall mean "including without limitation," and references to "and" or "or" shall mean "and/or." In any legal action arising out of or related to this Agreement, the successful or prevailing Party will be entitled to recover reasonable attorneys' fees and other costs incurred in that action, in addition to any other relief to which it may be entitled from the non-prevailing Party. Nothing contained herein creates any third-party beneficiary rights.

**17. Definitions.** Some of the terms defined below may not appear in these Terms, but instead in an Order governed by these Terms.

- a. **"Affiliate(s)"** 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.
- b. **"Cause"** means any material breach of the Agreement.
- c. **"Cloud Services"** means a subscription based software-as-a-service (including Documentation), support, hosting environment, and other Services specified in an Order, but excludes Services to implement the Cloud services, Network Connectivity, or other professional Services.



- d. **"Claim"** means a claim brought against NICE by a third party.
- e. **"Confidential Information"** means non-public information that one Party (or their Affiliate) (the "Disclosing Party") discloses to the other Party under this Agreement (the "Receiving Party") and which is either marked as confidential (or words of similar import) or would reasonably under the circumstances be considered confidential. It does not include information that after the date of disclosure becomes public through no fault of the Receiving Party, was already known by the Receiving Party prior to its disclosure by the Disclosing Party, was rightfully disclosed to the Receiving Party by a third party without breach of an obligation of confidentiality owed to the Disclosing Party, or is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. NICE's Confidential Information also includes materials or information related to requests for proposals, quotes, NICE's Services, Documentation, and proprietary models and algorithms. Notwithstanding the foregoing, if the Parties entered into a non-disclosure agreement prior to the Effective Date, the information disclosed under such agreement shall be deemed to be Confidential Information hereunder.
- f. **"Content"** means the electronic data and information provided by you through your use of the Cloud Services.
- g. **"Documentation"** means the applicable specifications, user manuals, and self-help guides accompanying the Cloud Services, which we distribute generally to our customers. Documentation does not include any business requirement documents (BRD(s)) or other Customer-specific documents provided by us.
- h. **"Effective Date"** means the last date of signature of the applicable Order.
- i. **"Go-Live Date," "Cloud Services Initiation Date," and "Activation Date"** mean the earlier of the date (1) you are given notice that the Cloud Services are available for your live use, (2) your first live use of the Cloud Services, (3) the date specified in an Order, or three (3) months after your signature on the Order.
- j. **"Infrastructure Provider(s)"** means any underlying carrier, hosting provider, data center, or other infrastructure provider in connection with your use of the Cloud Services and Network Connectivity.
- k. **"Losses"** means losses, damages, and reasonable attorneys' fees and costs.
- l. **"Minimum MRC" or "Minimum Technology MRC"** means the minimum MRC you are required to pay each month for the Cloud Services; for clarity, Minimum MRC does not include NRC, professional services fees, or Network Connectivity.
- m. **"MRC"** means monthly recurring charges.
- n. **"Network Connectivity"** means those services that: (a) enable or facilitate phone calls or other means of communication or data transmission; (b) provide a connection to the internet; or (c) constitute colocation services. Network connectivity may also include fixed, defined, or dedicated communications routes for voice or data transmission between the Cloud Services and your facilities, users, phones, or other devices.
- o. **"NRC"** means non-recurring charges.
- p. **"NICE Intellectual Property"** means all patents, copyrights, trademarks, service marks, trade dress, logos, product or service names, ideas, designs, concepts, object and source code, APIs, Resulting Information, know-how, and functionalities related to the Services, including software, Documentation, solutions overviews, business requirements documents, or the like.
- q. **"Order(s)"** means any document accepted by NICE for the ordering of products or Services, including a Service Contract, purchase order, order form, Statement of Work, schedule, addendum, or email, regardless whether such document references these Terms. an ordering document executed by the Parties subject to this Agreement, which details the Services, including the commercial details for such purchase. Orders do not include any preprinted terms on a Customer purchase order or other terms that are additional to, or inconsistent with, the terms of this Agreement. For Professional Services, the term 'Order' may mean a SOW.

- r. **"Party"** means either Customer or NICE, individually as the context indicates; and **"Parties"** means NICE and Customer, collectively.
- s. **"Past Due Date"** means the time period specified in an Order after which point your invoice will be past due.
- t. **"Resulting Information"** means data created by, or resulting from, the use of the Services and Network Connectivity, including analyses, statistics, reports, and aggregations, all of which shall be considered NICE Confidential Information and NICE Intellectual Property. For clarity, 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.
- u. **"Service Term"** or **"Subscription Term"** means the time period specified in an Order during which you are permitted to use or receive the Cloud Services and includes any renewal period after the initial Service Term (each, a "Renewal Term").
- v. **"Services"** means the Cloud Services, professional services, Network Connectivity, or other services to be provided by us pursuant to the Agreement and as may be specified in an Order.
- w. **"Statement of Work"** or **"SOW"** means a document executed by the Parties pursuant to these Terms, which describes, the Services to be provided by NICE. If the Parties agree, an Order may be used in lieu of a Statement of Work.
- x. **"Support"** means the technical support and maintenance services offered by NICE and identified in the Order.
- y. **"Transaction-Based"** or **"Usage-Based"** means the actual amount Customer is required to pay for its actual usage of the Cloud Services, excluding NRC and Network Connectivity charges (if applicable), during each month of the Subscription Term.