

# NICE CXone Standard Terms of Use

These NICE CXone Standard Terms of Use (the “**Terms**”), together with any Product-Specific Terms, Service Contracts, and any Order Forms (collectively, the “**Agreement**”), contain the terms and conditions upon which inContact, Inc. dba NICE CXone and its Affiliates (“**NICE CXone**”, “**we**”, and “**us**”) provides Services to you the customer (“**Customer**”, “**you**”, and “**your**”) and govern your use of the NICE CXone Platform. In the event of a conflict between these Terms and any transaction-specific language found in a Service Contract, the Service Contract shall control.

- 1. Non-Exclusive Access Grant.** You are granted non-exclusive, non-transferrable, and revocable access to NICE CXone’s Platform solely for Your internal business purposes, subject to these Terms. This access is limited by the restrictions listed below, as well as user count, location, term, and other transaction-specific details that may be found in an Order Form.
- 2. Restrictions.** You may not reproduce, resell, assign, grant access to, license, sub-license, market, or otherwise distribute the Platform or any NICE CXone Intellectual Property. You also may not: (i) attempt to reverse engineer, decompile, disassemble, or otherwise translate or modify the Platform or any NICE CXone Intellectual Property; (ii) defeat, disable, or circumvent any protection mechanism related to the Platform, including network, application, or information systems scanning or performing penetration testing; (iii) allow any third-party, with the exception of our authorized maintenance providers, to maintain or repair the Platform; or (iv) allow or encourage any third-party to do any of the foregoing.
- 3. Disclaimer of Warranties. The Platform is provided as-is. We do not provide any warranty for the Platform, and specifically disclaim any warranties, express or implied, including warranties of merchantability, fitness for a particular purpose, title, or non-infringement.**
- 4. Suspension/Termination.** You are responsible for all activity that occurs via your account. Services may be suspended for Cause or use of the Platform in a manner that may be unlawful, may harm NICE CXone or a third party, or materially hinder performance of the Platform. The Agreement may be terminated for Cause by giving written notice of such Cause to the breaching party. Termination for Cause will be effective thirty (30) days after receipt of such notice if such Cause is not cured in all material respects.
- 5. Compliance with Laws.** Both you and NICE CXone shall comply with applicable laws. You are solely responsible to monitor your account for illegal or fraudulent use. If either you or we become aware of a violation of applicable law by itself or the other party, or illegal or fraudulent use, that party must promptly notify the other party of the violation.
- 6. Content. You retain all rights in and title to your Content except as expressly granted herein.** We may access, view, display, or listen to your Content in the course of providing the Platform, for example, to (a) provide the Platform; (b) respond to support requests; (c) detect, prevent, or otherwise address fraud, security, unlawful, or technical issues; and (d) enforce the Agreement. When you upload Content to the Platform, you grant us a nonexclusive, worldwide, royalty-free, sublicensable, and transferable license during the Term to use, reproduce, display, distribute, modify (so as to better showcase your Content, for example), perform, and translate the Content as needed in response to user driven actions (such as when you choose to privately store or share your Content with others). Except to the extent granted herein, we disclaim any rights of title to your Content. You warrant that (a) you are the owner or authorized licensee of the Content and have all necessary licenses, consents, authorizations and waivers for the use of the Content; and (b) the Content and your use of the Platform at all times complies with the Agreement.
- 7. Intellectual Property.** We (and our licensors) remain the sole owner of all right, title, and interest in the Platform, Resulting Information, and all NICE CXone Intellectual Property rights, and any rights therein not granted in these Terms are reserved by us. You may not display or use the NICE CXone Intellectual Property without our express prior written approval.
- 8. Feedback.** In the event that you submit Feedback to us, you grant us a non-exclusive, worldwide, royalty-free, sublicensable, and transferable license to use your Feedback for any legal purpose, including incorporating it into our products and services.
- 9. Confidentiality.** During the term of an Agreement, you or we may disclose information to each other that the discloser believes to be confidential (“**Confidential Information**”). So long as this information is disclosed as being confidential, either orally or in writing, or should reasonably be believed to be confidential, the receiving party will treat the information with the same

degree of care as it treats its own Confidential Information, but never less than a reasonable degree of care. The receiving party will not disclose the Confidential Information to any third party, except for those that have a fiduciary duty to the receiving party (i.e. legal, financial, or insurance advisors, or auditors). If the receiving party is required to disclose the Confidential Information of the other party, it will promptly notify the discloser of the obligation, and allow them the opportunity to seek an injunction against disclosure. This provision supersedes any previous agreement between you and us related to Confidential Information. The terms of any Agreement will be the Confidential Information of each party.

**10. Indemnification.** You will indemnify us and our affiliates, officers, agents, employees, partners, and licensors from any claim, demand, loss, or damage, including reasonable attorneys' fees, arising out of or related to your Content, your use of the Platform, or your breach of Section 1 (Non-Exclusive Access Grant), Section 5 (Compliance with Laws), Section 7 (Intellectual Property), or Section 9 (Confidentiality) of these Terms.

**11. Limitation of Liability.**

**11.1.** We are not liable for any loss of use, data, goodwill, or profits, whatsoever, and any special, incidental, indirect, consequential, or punitive damages whatsoever, regardless of cause (even if we have been advised of the possibility of the loss or damages), including losses and damages (a) resulting from loss of use, data, or profits, whether or not foreseeable; (b) based on any theory of liability, including breach of contract or warranty, negligence or other tortious action; or (c) arising from any other claim arising out of or in connection with your use of or access to the Platform.

**11.2.** Our total liability arising out of or related to an Agreement is limited to the aggregate amount paid by you for access to the Platform 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.

**11.3.** We do not control the flow of information over the internet; accordingly, in no event will we be liable for any damages, liabilities, costs, or expenses resulting from or related to an internet disruption or the acts, omissions, or delays of Infrastructure Providers.

**11.4.** Remedies specified in these Terms or any Product-Specific Terms are exclusive and limited to those expressly described therein.

**12. Product-Specific Terms.** Certain products or services that we provide may be subject to additional product-specific terms ("**Product-Specific Terms**"), found online at [www.NICEinContact.com/Terms](http://www.NICEinContact.com/Terms) and associated sub-URLs, and as may be incorporated through corresponding product descriptions. In the event of a conflict between these Terms and any Product Specific Terms, the Product-Specific Terms will control in relation to that product or service.

**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 [NICEinContact.com/Terms](http://NICEinContact.com/Terms). You should look at the Terms regularly. By continuing to use or access the Platform after the revisions are posted, you agree to be bound by the revised Terms or Product-Specific Terms.

**14. Non-Solicitation.** During the term of any Agreement and for twelve (12) months after any termination of any Agreement, , you won't, without our prior written approval, either directly or indirectly, solicit or attempt to solicit, divert, or hire away any of our employees. However, nothing shall prevent either party from hiring employees of the other party that respond to a general public solicitation of employment for that party.

**15. Governing Law.** If you reside in North America, your Agreement with us will be governed by the law of Delaware. If you reside outside of North America, your Agreement with us will be governed by the law of England and Wales. Jurisdiction and venue for any dispute arising under an Agreement will be exclusive to the state and federal courts seated in Salt Lake County, Utah. Any claim or cause of action must be brought within one (1) year following the date the claim or cause of action first arose.

**16. Miscellaneous.**

**16.1. 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.

- 16.2. Customer Information Errors.** In order to use the Platform, you must provide us with a valid physical location where the Platform will be used. You are solely responsible for any costs resulting from an invalid or inaccurate physical location.
- 16.3. Force Majeure.** Neither party will be liable to perform any obligations under an agreement, except for payment of monies owed, because of circumstances beyond its reasonable control, including but not limited to natural disaster, terrorism, sabotage, war, internet outages, infrastructure failure, power failures, or acts or omissions of government.
- 16.4. Headings.** Headings used in the Agreement are provided for convenience only and will not be used to construe meaning or intent.
- 16.5. Integration.** These Terms, together with any Order Forms, represent the full and complete Agreement between you and us, and revokes and supersedes all prior agreements, oral or written between you and us.
- 16.6. No Waiver.** Our failure to enforce or exercise any provision of the Terms is not a waiver of that provision.
- 16.7. 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 Form, or by email to [ContractUnsubscribe@NICEinContact.com](mailto:ContractUnsubscribe@NICEinContact.com); any other notice is invalid.
- 16.8. 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 Platform and containing a quote from one of your senior executives.
- 16.9. 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.
- 16.10. Survival.** Those provisions that would, by their nature, survive termination of the Agreement, together with Sections 3 (Disclaimer of Warranties), 7 (Intellectual Property), 9 (Confidentiality), and 11 (Limitation of Liability), shall survive termination of the Agreement.
- 16.11. 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 in any party. Service Contracts you entered before May 01, 2016, are subject to additional terms found online at [www.NICEinContact.com/Terms/Term](http://www.NICEinContact.com/Terms/Term), [www.NICEinContact.com/Terms/Payment](http://www.NICEinContact.com/Terms/Payment), and [www.NICEinContact.com/Terms/911](http://www.NICEinContact.com/Terms/911), which are incorporated by reference.
- 17. Definitions.** Some of the terms defined below may not appear in these Terms, but instead in an Order Form governed by these Terms.
- 17.1. "Affiliate(s)"** means a company owned by, controlled by, or under common control with either party.
- 17.2. "Cause"** means any material breach of the Agreement, including your failure to pay undisputed amounts by the Past Due Date.
- 17.3. "Cloud Services"** means all NICE CXone hosted software services and support packages. For clarity, Cloud Services does not include implementation of Cloud services, Network Connectivity, or professional services.
- 17.4. "Content"** means any data you provide to us in order for you to use the Platform.
- 17.5. "Documentation"** means materials concerning the Platform which we distribute generally to our customers, including manuals, descriptions, instructions, and training materials, but does not include software code.

- 17.6. **“Domestic”** means traffic originating and terminating within the forty-eight contiguous United States and Washington, D.C.
- 17.7. **“Feedback”** means suggestions, recommendations, enhancement requests, ideas, or other feedback related to the Platform.
- 17.8. **“Go-Live Date”** means the earlier of the date (1) the Platform is made available for your use, or (2) your first use of the Platform in a production environment.
- 17.9. **“Infrastructure Provider(s)”** means any underlying carrier, cloud services provider, data center, or other infrastructure provider of NICE CXone.
- 17.10. **“Minimum MRC”** means the minimum MRC you are required to pay each month for the Platform; for clarity, Minimum MRC does not include NRC, professional services fees, or Network Connectivity MRC.
- 17.11. **“MRC”** means monthly recurring charges.
- 17.12. **“Network Connectivity”** means those services that either: (i) enable or facilitate phone calls or other means of communication or data transmission; (ii) provide a connection to the internet; or (iii) colocation services. It may also include fixed, defined, or dedicated communications routes for voice or data transmission between the Platform and your data center, office, individual stations, phones, or other devices.
- 17.13. **“NRC”** means non-recurring charges.
- 17.14. **“NICE CXone” “us” or “we”** means inContact, Inc and its Affiliates.
- 17.15. **“NICE CXone 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 Platform, including software, Documentation, solutions overviews, business requirements documents, statements of work, or the like.
- 17.16. **“Order Form(s)”** means any document accepted by NICE CXone for the ordering of products or services, including Service Contracts, purchase orders, statements of work, addenda, emails, regardless whether such document references these Terms.
- 17.17. **“our”** means belonging to or associated with inContact, Inc.
- 17.18. **“Past Due Date”** means the time period specified in a Service Contract after which point your account will be past due.
- 17.19. **“PHI”** means personal health information.
- 17.20. **“PII”** means sensitive personally identifiable information.
- 17.21. **“Platform” or “NICE CXone Platform”** means NICE CXone’s products, services, hosting environment, and related documentation.
- 17.22. **“Resulting Information”** means data created by, or resulting from, the use of the Platform, including analyses, statistics, reports, and aggregations, which may include: (i) agent identifier; (ii) phone, text, chat, email, skills, and work performance metrics; (iii) information related to your registered devices; and (iv) technical, aggregate statistics and traffic patterns derived from the Content (but not including the Content), all of which shall be considered NICE CXone 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.
- 17.23. **“Service Term” or “Subscription Term”** means the time period specified in a Service Contract for your use of the Platform. It also includes any renewal period after the initial Service Term.
- 17.24. **“you” or “your”** means the legal entity listed as **“Customer”** on an Order Form.