

SERVICE AGREEMENT

This Service Agreement ("Agreement") is dated May 27, 2026 and is between inContact, Inc., dba NICE, a Delaware corporation on behalf of itself and its affiliates ("Contractor"), and the County of Fresno, a political subdivision of the State of California ("County"). The Contractor and the County are referred to herein as "Party" or "Parties".

Recitals

A. The County's Department of Social Services has a need for a cloud-based outbound dialer software solution that can support high-volume mass client notification and personalized appointment reminder functionality.

B. The Contractor is willing and able to provide maintenance and support for its SmartReach cloud-based mass client notification solution.

C. The County desires to engage the Contractor through a suspension of competition for maintenance and support services of the Contractor's SmartReach solution.

The Parties therefore agree as follows:

Article 1

Contractor's Services

1.1 **Scope of Services.** The Contractor shall perform all of the services provided in Exhibit A to this Agreement.

1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and able to provide all of the services provided in this Agreement.

1.3 **Service Level Agreement.** The Contractor shall adhere to the service level agreement as outlined in Exhibit F.

1.4 **Compliance with Laws.** The Contractor shall, at its own cost, comply with all applicable federal, state, and local laws and regulations in the provision of the services provided under this Agreement.

1.5 **License Term.** The term of the subscription to the Services is listed in Article 4 of this Agreement. The County shall be entitled to Software updates, upgrades, enhancements, new versions, bug fixes, other improvements to the Services, as and when released by the

Contractor to the Contractor's customers, and access to the Services, and to technical assistance relating to the Services, for the Term described in this Agreement. Contractor grants County a non-exclusive, non-transferable, non-sublicensable right to use the Contractor Products and Services or Software (including the Documentation) as set forth in an Order, for County's own internal business purposes. County 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.

1.6 **Contractor Indemnity.** For the purposes of this Agreement, the term "**Claim**" means a claim, demand, suit or proceeding brought against a Party by a third party and "**Content**" means the electronic data and information provided by County through its use of the Cloud Services. Contractor will defend County from and against any Claim made or brought against County to the extent such Claim alleges that the Services used in accordance with this Agreement, infringes or misappropriates such third party's United States patent, copyright, trademark, or trade secret, and will indemnify County against Losses awarded against County as a result thereof. The foregoing defense and indemnity obligations will not apply if: (a) the allegation does not state with specificity that the Services are the basis of the Claim; or (b) if a Claim arises from: (i) specifications, technology, applications, or designs furnished by County or a third party on County's behalf; (ii) the use or combination of the Services or any part thereof with any product or service, data, or processes not provided by Contractor, if the Services or use thereof would not infringe without such combination; (iii) the modification of the Services not provided by Contractor's authorized personnel; (iv) Services under an Order for which there is no charge; (v) County's failure to use the Services in accordance with the Documentation; or (vi) the Content. If County is enjoined from using the Services, or Contractor reasonably believes County will be so enjoined, Contractor will have the right, at its sole option and expense to: (a) procure for County the right to continue using the affected Services in accordance with this Agreement; (b) replace or modify the Services so that they are no longer claimed to infringe or misappropriate, provided their functionality after modification is substantially equivalent pursuant to the Documentation; or, if neither (a) or (b) are feasible using commercially reasonable efforts,

then: (c) terminate County's subscriptions for the affected Services upon thirty (30) days' written notice and, as applicable, refund to County any prepaid Fees for the affected Services for the unexpired Subscription Term. The collective obligations of Contractor pursuant to this Section 1.6 state the sole and exclusive liability of Contractor, and County's sole and exclusive remedy, with respect to intellectual property infringement or misappropriation. The indemnification obligations above are subject to the Party seeking indemnification ("**Indemnified Party**") hereunder providing the other Party ("**Indemnifying Party**") prompt written notice of the specific Claim, provided that any delay in providing such notice will not relieve the Indemnifying Party of its obligations hereunder, except to the extent the delay prejudices its ability to defend the Claim and provided that the Indemnified Party provides all reasonable assistance to the Indemnifying Party. The Indemnifying Party will have sole control of the defense and settlement of such Claim, provided that the Indemnified Party may retain its counsel of its own choosing to monitor the defense of the claim at its own expense. 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.

1.7 **Coordination of Work.** The Contractor shall coordinate all work with the County to minimize any interruptions to the normal operation of County operations, through the appointee as identified in section 2.1 of this Agreement.

1.8 **Viruses & Disabling Mechanisms.** The Contractor shall use commercially reasonable, diligent measures to screen the licensed programs provided under this Agreement to avoid introducing, or coding of, any virus or other destructive programming designed to permit unauthorized access or use by third parties to the solution provided by Contract (as defined in Exhibit A), or to disable or damage the County's systems (each, a "Virus"). The Contractor shall, as soon as practicable, use its diligent, commercially reasonable efforts to assist the County in eliminating the effects of the Virus, and if the Virus causes a loss of operational efficiency or loss of data, and upon the County's request, the Contractor will, diligently work as soon as

practicable to contain and remedy the problem and to restore lost data resulting from the introduction of such Virus.

1.9 **ADA Compliance.** If applicable and required by law, the provision of Contractor's Products and Services shall be in compliance with the Americans with Disabilities Act of 1990 (ADA) and shall be the sole responsibility of the Contractor. The Contractor shall indemnify, defend, and hold the County (including its officers, agents, employees, and volunteers) harmless from liability of any nature or kind, including damages, costs and expenses (including attorney's fees and costs) arising from the Contractor's non-compliance therewith, including compliance with ADA Section 508 of the Rehabilitation Act of 1973.

1.10 The Contractor shall ensure that all information and communication technology (ICT), digital content, and services provided under this Agreement comply with the accessibility requirements.

(A) All web-based and digital deliverables must conform to the Web Content Accessibility Guidelines (WCAG) 2.2 Level AA (or successor version), as published by the World Wide Web Consortium (W3C).

(B) The Contractor shall provide an Accessibility Conformance Report (ACR) using the Voluntary Product Accessibility Template (VPAT) format, identifying how the product or service meets WCAG 2.1/2.2 Level AA and applicable Section 508 standards.

(C) If the Contractor fails to comply with the accessibility requirements specified herein, the Contractor shall, at its own expense and within a mutually agreed timeframe, bring the product or service into compliance.

(D) If applicable, the Contractor shall provide training or documentation for the County's staff on how to maintain and publish accessible content using the delivered system or service.

1.11 The parties agree that WCAG 2.2 Level AA (or successor version) shall be used as the benchmark for compliance with Title II of the ADA for digital content and services.

Article 2

County's Responsibilities

2.1 **County Contract Administrator.** The County shall provide a County representative ("County Representative") to represent the County and work with the Contractor to carry out the Contractor's obligations under this Agreement. The County Representative will be the Director of Information Technology/Chief Information Officer ("CIO"), or their designee.

2.2 **Notice to Proceed.** The County shall issue a Notice to Proceed for each Order or Statement of Work ("SOW"), (as defined in Exhibit A) for which County may desire, and shall issue any subsequent Change Requests, which County may desire, for each Order or SOW, as applicable.

2.3 **Written Acceptance.** The County shall provide a Written Acceptance of all Orders or SOWs, upon the County's determination that the Contractor has fully performed under the Order or SOW, at the end of an Order or SOW, as applicable.

2.4 **Contractor Access.** The County will ensure that the Contractor's consultants have access to the County's network and systems as required during the County's normal business hours, which is 8AM to 5PM Monday through Friday, except for County holidays or when the Office of the Clerk of the Board of Supervisors is officially closed to the public.

Article 3

Compensation, Invoices, and Payments

3.1 **Compensation.** The County agrees to pay, and the Contractor agrees to receive, compensation for the performance of its services under this Agreement as described in Exhibit B to this Agreement.

3.2 **Maximum Compensation.** The total maximum compensation payable to the Contractor during the initial term of this Agreement is \$267,669.60. If this Agreement is extended for the first additional year as provided in Article 4, below, the total maximum compensation payable to the Contractor will increase to \$340,375.20. If this Agreement is extended for the second additional year as provided in Article 4, below, the total maximum compensation payable to the Contractor for the Contractor Products and Services will increase

1 to \$413,080.80. In the event the total maximum compensation amount in the Initial Term and/or
2 Year 4 is not fully expended, the remaining unspent funding amounts shall roll over to each
3 subsequent term's established maximum compensation.

4 The Contractor acknowledges that the County is a local government entity and does so with
5 notice that the County's powers are limited by the California Constitution and by State law, and
6 with notice that the Contractor may receive compensation under this Agreement only for
7 services performed according to the terms of this Agreement and while this Agreement is in
8 effect, and subject to the maximum amount payable under this section. The Contractor further
9 acknowledges that County employees have no authority to pay the Contractor except as
10 expressly provided in this Agreement.

11 **3.3 Contractor Products and Services.** The Contractor's Products and Services are
12 purchased by the County as subscriptions during an Order Term (as defined in Exhibit A)
13 specified in each Order, SOW, or Exhibit. Additional Contractor Products and Services, which
14 may include but are not limited to, licenses, modules, and features, may be added during an
15 Order Term (as described in section 3.4 below), to the System Software as determined
16 necessary by the Contract Administrator.

17 **3.4 Annual Fees.** Product setup and annual fees (as identified in Exhibit B) are due for
18 the first year of the Agreement, and then annually thereafter, and at the beginning of any
19 extended term. Exhibit B of this Agreement identifies the list of Products and Services used in
20 this Agreement. Services supporting the Contractor's products shall be paid annually
21 commencing upon the completion of the implementation of the products, or their being ready for
22 the County's use.

23 a. **Monthly Fee.** The "Outside-of-Scope Line Item – Monthly," as identified in Exhibit
24 B is the monthly service cost for the Contractor to provide and support
25 customization of products used by the County in this Agreement.

26 **3.5 Ordering Products and Services.** The Parties may execute one or more Orders or
27 SOWs related to the sale and purchase of the Contractor's Products and Services. Each Order
28 or SOW will include an itemized list of the Contractor Products and Services as well as the

Order Term for such Contractor Products and Services. Each Order or SOW must, generally, be signed by the Parties. Each Order or SOW shall be governed by this Agreement regardless of any pre-printed legal terms on each Order or SOW, and by this reference is incorporated herein.

3.6 Invoices. The Contractor shall submit invoices referencing the provided agreement number to the County of Fresno, Information Technology Services Department, Attention: Business Office, 333 W. Pontiac Way, Clovis, CA 93612, itsdbusinessoffice@fresnocountyca.gov. Subscription services will be invoiced annually within 60 (60) days after the subscription period begins. All other services will be invoiced within sixty (60) days after the month in which the Contractor performs services and in any case within sixty (60) days after the end of the term or termination of this Agreement.

3.7 Payment. The County shall pay each correctly completed and timely submitted invoice within 45 days after receipt. The County shall remit any payment to the Contractor's address specified in the invoice. Without waiving any of its rights or remedies under the Agreement or at law, Contractor reserves the right to suspend delivery, access, or performance of the Services until any amounts that are outstanding and past due are paid in full by County.

Article 4

Term of Agreement

4.1 Term. This Agreement is effective on June 16, 2026, and terminates on June 15, 2029, except as provided in Section 4.2, "Extension," or Article 6, "Termination and Suspension," below.

4.2 Extension. The term of this Agreement may be extended for no more than two, one-year periods only upon the written approval of both parties at least 30 days before the first day of the next one-year extension period. The CIO, or their designee, is authorized to sign the written approval on behalf of the County based on the Contractor's satisfactory performance. The extension of this Agreement by the County is not a waiver or compromise of any default or breach of this Agreement by the Contractor existing at the time of the extension whether or not known to the County.

Article 5

Notices

5.1 **Contact Information.** The persons and their addresses having authority to give and receive notices provided for or permitted under this Agreement include the following:

For the County:

Director of Information Technology/Chief Information Officer
County of Fresno
333 W. Pontiac Way
Clovis, CA 93612
itsdadminoffice@fresnocountyca.gov

For the Contractor:

inContact Inc.
75 West Towne Ridge Parkway, Tower 1,
Sandy, UT 84070
United States
Phone:551-256-5000
Fax: 551-256-5252

5.2 **Change of Contact Information.** Either party may change the information in section 5.1 by giving notice as provided in section 5.3.

5.3 **Method of Delivery.** Each notice between the County and the Contractor provided for or permitted under this Agreement must be in writing, state that it is a notice provided under this Agreement, and be delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, by telephonic facsimile transmission, or by Portable Document Format (PDF) document attached to an email.

(A) A notice delivered by personal service is effective upon service to the recipient.

(B) A notice delivered by first-class United States mail is effective three County business days after deposit in the United States mail, postage prepaid, addressed to the recipient.

(C) A notice delivered by an overnight commercial courier service is effective one County business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient.

(D) A notice delivered by telephonic facsimile transmission or by PDF document attached to an email is effective when transmission to the recipient is completed (but, if such transmission is completed outside of County business hours, then such delivery is deemed to be effective at the next beginning of a County business day), provided that the sender maintains a machine record of the completed transmission.

5.4 Claims Presentation. For all claims arising from or related to this Agreement, nothing in this Agreement establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

Article 6

Termination and Suspension

6.1 Termination for Non-Allocation of Funds. The terms of this Agreement are contingent on the approval of funds by the appropriating government agency. In the event that: (a) funds are not appropriated and are not otherwise available to County for any fiscal period following its current fiscal year for the acquisition of Services and functions which are the same as or similar to those for which the Software provided or installed under the Agreement was acquired, (b) such non-appropriation has not resulted from County's act or failure to act, and County has exhausted all funds legally available for payment under the Agreement and no other legal procedure shall exist whereby payment thereunder can be made to Contractor, then County may terminate this Service Contract as of the last day for which funds were appropriated or otherwise made available by giving sixty (60) days prior written notice of termination to Contractor. Notwithstanding the preceding paragraph, County shall remain responsible for payment to Contractor for all work completed, as well as for all Software delivered. County will not be liable for any remaining Minimum Technology Monthly Recurring Charge as of the date written notice is provided under this clause.

6.2 Termination for Breach.

(A) Upon determining that a breach (as defined in paragraph (C) below) has occurred, the County may give written notice of the breach to the Contractor, and must provide at least 30 days for the Contractor to cure the breach.

(B) If the Contractor fails to cure the breach to the County's satisfaction within the time stated in the written notice, the County may terminate this Agreement immediately.

(C) For purposes of this section, a breach occurs when, in the determination of the County, the Contractor has:

- (1) Obtained or used funds illegally or improperly;
- (2) Failed to comply with any material part of this Agreement;
- (3) Failed to adhere to any service expectations as detailed in Exhibit F.
- (4) Submitted a substantially incorrect or incomplete report to the County; or
- (5) Improperly performed any of its material obligations under this Agreement.

6.3 No Penalty or Further Obligation. Any termination of this Agreement by the County under this Article 6 is without penalty to or further obligation of the County.

6.4 Disentanglement Obligations upon Termination. At the County's discretion, upon expiration or termination of this Agreement, subject to an additional Order and additional cost, the Contractor shall accomplish a complete transition of the services as set forth in Exhibit A to the County, or to any replacement provider designated by the County, (if possible) without any interruption of or adverse impact on the services. This process shall be referred to as Disentanglement. The Contractor shall fully cooperate with the County, and/or any new service provider, and otherwise promptly take all steps, including, but not limited to: providing to the County, or any new service provider, all requested information or documentation, required to assist the County in effecting a complete Disentanglement. The Contractor shall provide all information or documentation regarding the services, or as otherwise needed for Disentanglement, including, but not limited to: data conversion, client files, interface specifications, training staff assuming responsibility, passwords, and related professional services. The Contractor shall provide for the prompt and orderly conclusion of all work required

under the Agreement, as the County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to the County or the County's designee. The Contractor's obligation to provide the services shall not cease until the earlier of the following:

(A) The Disentanglement, including the performance by the Contractor of all asset-transfers and other obligations of the Contractor provided in this Section, once completed shall be deemed satisfactory to the County when so mutually agreed by both parties in writing; or

(B) Twelve months after the expiration of the Agreement.

Article 7

Independent Contractor

7.1 **Status.** In performing under this Agreement, the Contractor, including its officers, agents, employees, and volunteers, is at all times acting and performing as an independent contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the County.

7.2 **Verifying Performance.** The County has no right to control, supervise, or direct the manner or method of the Contractor's performance under this Agreement, but the County may verify that the Contractor is performing according to the terms of this Agreement.

7.3 **Benefits.** Because of its status as an independent contractor, the Contractor has no right to employment rights or benefits available to County employees. The Contractor is solely responsible for providing to its own employees all employee benefits required by law.

7.4 **Services to Others.** The parties acknowledge that, during the term of this Agreement, the Contractor may provide services to others unrelated to the County.

Article 8

Insurance and Limitation of Liability

8.1 The Contractor shall comply with all the insurance requirements in Exhibit D to this Agreement.

8.2 In no event will either Party, together with its affiliates, have any liability for indirect, incidental, consequential, special, punitive, exemplary or similar damages arising out of or related to the agreement (whether arising in contract, tort or otherwise), or for lost profits, revenues, goodwill, loss of or corruption of data, interrupted communications, or business interruption, and regardless of the theory of liability, even if advised of the possibility of such damages, such damages were foreseeable, or if a Party's remedy otherwise fails of its essential purpose.

8.3 In no event will the aggregate liability of each Party, together with its affiliates, arising out of or related to the agreement exceed the total amount of fees payable or paid by county in the previous twenty-four (24) months under the transaction document under which such liability arose. However, the foregoing limitation will not apply to county's payment obligations under Article 6 or for contractor to recover payment for use of the services or software in excess of the quantity purchased under a transaction document.

8.4 The limitations in Section 8.2 and Section 8.3 above will not apply to a Party's liability for its infringement or misappropriation of the other Party's intellectual property rights, its indemnification obligations under Article 1.6 (Indemnity), or to the extent prohibited by law.

Article 9

Ownership of Data

9.1 **Ownership of Data.** The Parties acknowledge and agree that all the County's data (Data), is and shall remain the exclusive property of the County. The Contractor acknowledges that in performing its obligations under the Agreement it may have access to the County's networks and Data. The Contractor shall use and access such Data only as necessary for the purpose of providing the services and supporting the Software as agreed. For the avoidance of doubt, Resulting Information does not include the County's data. For the purposes of this Agreement, **"Resulting Information"** means data created by, or resulting from, use of the Services, including anonymized analyses, statistics, reports, and aggregations, all of which are

Contractor Confidential Information. For the avoidance of doubt, the term Resulting Information does not include personal data or any other information that could identify an individual.

9.2 **Ownership of System Software.** The Parties acknowledge and agree that, as between the Contractor and the County, title and full ownership of all rights in and to the System Software, System Documentation (as defined in Exhibit A), and all other materials provided to the County by the Contractor under the terms of this Agreement shall remain with the Contractor. The County will take reasonable steps to protect trade secrets (as defined in Government Code Section 7924.510(f)) of the System Software and System Documentation, and which are identified as such by the Contractor. The County may not disclose or make available to third parties the System Software or System Documentation or any portion thereof, unless otherwise required by court order. The Contractor shall own all right, title and interest in and to all correction, modifications, enhancements, programs, and work product conceived, created or developed, alone or with the County or others, as a result of or related to the performance of this Agreement and the applicable Order or SOW documenting such work product, including all proprietary rights therein and based thereon. Except and to the extent expressly provided herein, the Contractor does not grant to the County any right or license, express or implied, in or to the System Software and System Documentation or any of the foregoing. Except as otherwise provided herein, the parties acknowledge and agree that, as between the Contractor and the County, full ownership of all rights in and to all County data, whether in magnetic or paper form, including without limitation printed output from the System, are the exclusive property of the County.

9.3 **Contractor Intellectual Property Rights.** The Contractor shall grant a non-exclusive, non-transferrable, and non-perpetual license, at no additional cost, to the County to use the Contractor Products and Services to the extent allowed in the relevant Order or SOW (Permitted Use). Subject to the written approval of Contractor, the County may reproduce, modify or create derivative works for its own use, public display, and use any and all of the Contractor's copyrights in the homepage layout wireframe, sitemap, draft homepage design concept(s) interior page layouts (collectively, the "Contractor Designs") embodied in the

County's website and intranet, which are prepared or caused to be prepared by the Contractor under this Agreement. All rights not licensed are reserved to the Contractor and no rights may be implied. The Contractor retains all intellectual property rights in the Contractor Products, Services, and Software, and the County agrees to implement software protection measures designed to prevent unauthorized use and copying of the Contractor Products, Services and Software.

9.4 **Data Sources.** Data uploaded into the Contractor Products and Services must be brought in from County sources (interactions with end users and opt-in contact lists). The County cannot upload purchased contact information into the Contractor Products and Services without the Contractor's written permission, which shall not be unreasonably withheld or delayed, and professional services support for list cleansing. The Contractor understands and acknowledges, however, that the County is a government agency and intends to use the Contractor for the purpose of publishing information required by law to be available to the public. County agrees it will not, nor will it allow any user to: (a) publish, disclose, copy, lease, modify, translate, loan, distribute, resell, transfer, assign, alter or create derivative works based on the Services or any part thereof; (b) reverse engineer (except to the extent specifically permitted by statutory law), decompile, adapt, disassemble or otherwise attempt to discover source code or underlying algorithms, ideas, features or functions of the Services; (c) attempt to defeat, disable, or circumvent any protection mechanism related to the Services, including those intended to prevent, limit or control use, copying or access to the Services; (d) test the vulnerability of a Service, including scanning, performing load testing, stress testing or penetration testing, nor attempt to breach any security or authentication mechanisms used by the Service; or (e) access or use the Services: (i) on or to service the systems, networks or devices of a third party; (ii) for benchmarking, development, or competitive purposes; (iii) in violation of the rights of any third party, or any applicable law or regulation (including intellectual property and data privacy laws); or (iv) for any purpose other than as expressly provided in this Section.

Article 10

Confidentiality & Data Security

1 10.1 **Confidentiality.** The County and the Contractor may have access to information that
2 the other Party considers to be a trade secret as defined in California Government Code section
3 7924.510(f). For the purposes of this Agreement, “**Confidential Information**” means non-
4 public information that one Party (or their Affiliate) (the “**Disclosing Party**”) discloses to the
5 other Party under this Agreement (the “**Receiving Party**”) and which is either marked as
6 confidential (or words of similar import) or would reasonably under the circumstances be
7 considered confidential. It does not include information that after the date of disclosure becomes
8 public through no fault of the Receiving Party, was already known by the Receiving Party prior
9 to its disclosure by the Disclosing Party, was rightfully disclosed to the Receiving Party by a
10 third party without breach of an obligation of confidentiality owed to the Disclosing Party, or is
11 independently developed by the Receiving Party without use of or reference to the Disclosing
12 Party’s Confidential Information. Contractor’s Confidential Information also includes materials or
13 information related to requests for proposals, quotes, and Contractor’s Services,
14 Documentation, and proprietary models and algorithms. Notwithstanding the foregoing, if the
15 Parties entered into a non-disclosure agreement prior to the Effective Date, the information
16 disclosed under such agreement shall be deemed to be Confidential Information hereunder. For
17 the avoidance of doubt, Confidential Information shall not include the Content of the County and
18 for the purposes of this Agreement, Content shall mean the electronic data and information
19 provided by County through its use of the Contractor’s Products and Services.

20 10.2 Each Party shall use the other’s Confidential Information only to perform its
21 obligations under, and for the purposes of, the Agreement. Neither Party shall use the
22 Confidential Information of the other Party for the benefit of a third party. Each Party shall
23 maintain the confidentiality of all Confidential Information in the same manner in which it
24 protects its own information of like kind, but in no event shall either Party take less than
25 reasonable precautions to prevent the unauthorized disclosure or use of the Confidential
26 Information.

27 10.3 The Contractor shall not disclose the County’s data except to any third parties as
28 necessary to operate the Contractor Products and Services (provided that the Contractor

1 hereby grants to the County, at no additional cost, a non-perpetual, worldwide, nonexclusive
2 license to utilize any data, that arises from the use of the Contractor Products and Services by
3 the Contractor, whether disclosed on, subsequent to, or prior to the Effective Date, to improve
4 the functionality of the Contractor Products and Services and any other legitimate business
5 purpose, subject to all legal restrictions regarding the use and disclosure of such information).

6 10.4 Upon termination of the Agreement, or upon a Party's request, each Party shall
7 return to the other all Confidential Information of the other in its possession. All provisions of the
8 Agreement relating to confidentiality, ownership, and limitations of liability shall survive the
9 termination of the Agreement.

10 10.5 The provision of the services by the Contractor shall be in strict conformance with all
11 applicable Federal, State of California, and/or local laws and regulations relating to
12 confidentiality, California Civil Code, California Welfare and Institutions Code, California Health
13 and Safety Code, California Code of Regulations, and the Code of Federal Regulations.

14 10.6 **Data Security.** The Contractor shall be responsible for the privacy and security
15 safeguards, as identified in Exhibit E, entitled "Data Security."

16 **Article 11**

17 **Inspections, Audits, and Public Records**

18 11.1 **Inspection of Documents.** The Contractor shall make available to the County, and
19 the County may examine at any time during Business Hours and as often as the County deems
20 necessary, all of the applicable Contractor's records and data with respect to the payment(s)
21 covered by this Agreement and subject to confidentiality obligations, excluding attorney-
22 Contractor privileged communications. The Contractor shall, upon request by the County, permit
23 the County to audit and inspect all of such records and data to ensure the Contractor's
24 compliance with the terms of this Agreement.

25 11.2 **State Audit Requirements.** Solely as provided by applicable law, if the
26 compensation to be paid by the County under this Agreement exceeds \$10,000, the Contractor
27 is subject to the examination and audit of the California State Auditor, as provided in
28

Government Code section 8546.7, for a period of three years after final payment under this Agreement. This section survives the termination of this Agreement.

11.3 Public Records. The County is not limited in any manner with respect to its public disclosure of this Agreement or any record or data that the Contractor may provide to the County. The County's public disclosure of this Agreement or any record or data that the Contractor may provide to the County may include but is not limited to the following:

(A) The County may voluntarily, or upon request by any member of the public or governmental agency, disclose this Agreement to the public or such governmental agency.

(B) The County may voluntarily, or upon request by any member of the public or governmental agency, disclose to the public or such governmental agency any record or data that the Contractor may provide to the County, unless such disclosure is prohibited by court order.

(C) This Agreement, and any record or data that the Contractor may provide to the County, is subject to public disclosure under the Ralph M. Brown Act (California Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

(D) This Agreement, and any record or data that the Contractor may provide to the County, is subject to public disclosure as a public record under the California Public Records Act (California Government Code, Title 1, Division 10, Chapter 3, beginning with section 7920.200) ("CPRA")

(E) This Agreement, and any record or data that the Contractor may provide to the County, is subject to public disclosure as information concerning the conduct of the people's business of the State of California under California Constitution, Article 1, section 3, subdivision (b).

(F) Any marking of confidentiality or restricted access upon or otherwise made with respect to any record or data that the Contractor may provide to the County shall

1 be disregarded and have no effect on the County's right or duty to disclose to the
2 public or governmental agency any such record or data.

3 **11.4 Public Records Act Requests.** If the County receives a written or oral request
4 under the CPRA to publicly disclose any record that is in the Contractor's possession or control,
5 and which the County has a right, under any provision of this Agreement or applicable law, to
6 possess or control, subject to confidentiality obligations, then the County may demand, in
7 writing, that the Contractor deliver to the County, for purposes of public disclosure, the
8 requested records that may be in the possession or control of the Contractor. Within five
9 business days or other timeline as mutually-agreed after the County's demand, if the services
10 have to capability to extract such records, the Contractor shall (a) deliver to the County all of the
11 requested records that are in the Contractor's possession or control, together with a written
12 statement that the Contractor, after conducting a diligent search, has produced all requested
13 records that are in the Contractor's possession or control, or (b) provide to the County a written
14 statement that the Contractor, after conducting a diligent search, does not possess or control
15 any of the requested records or believes that an exemption applies to this request. The
16 Contractor shall cooperate with the County with respect to any County demand for such
17 records. If the Contractor wishes to assert that any specific record or data is exempt from
18 disclosure under the CPRA or other applicable law, it must deliver the record or data to the
19 County and assert the exemption by citation to specific legal authority within the written
20 statement that it provides to the County under this section. The Contractor's assertion of any
21 exemption from disclosure is not binding on the County, but the County will give at least 10
22 days' advance written notice to the Contractor before disclosing any record subject to the
23 Contractor's assertion of exemption from disclosure.

24 **Article 12**

25 **Disclosure of Self-Dealing Transactions**

26 **12.1 Applicability.** This Article 12 applies if the Contractor is operating as a corporation,
27 or changes its status to operate as a corporation.
28

12.2 **Duty to Disclose.** If any member of the Contractor's board of directors is party to a self-dealing transaction, he or she shall disclose the transaction by completing and signing a "Self-Dealing Transaction Disclosure Form" (Exhibit C to this Agreement) and submitting it to the County before commencing the transaction or immediately after.

12.3 **Definition.** “Self-dealing transaction” means a transaction to which the Contractor is a party and in which one or more of its directors, as an individual, has a material financial interest.

Article 13

General Terms

13.1 **CIO.** Director of Information Technology/Chief Information Officer (“CIO”).

13.2 **Modification.** Except as provided in Article 6, "Termination and Suspension," this Agreement may not be modified, and no waiver is effective, except by written agreement signed by both parties. The Contractor acknowledges that County employees have no authority to modify this Agreement except as expressly provided in this Agreement.

13.3 Non-Assignment. Neither Party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other Party.

13.4 **Governing Law.** The laws of the State of California govern all matters arising from or related to this Agreement.

13.5 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno County, California. The Contractor consents to California jurisdiction for actions arising from or related to this Agreement, and, subject to the Government Claims Act, all such actions must be brought and maintained in Fresno County.

13.6 **Severability.** If anything in this Agreement is found by a court of competent jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of this Agreement with lawful and enforceable terms intended to accomplish the parties' original intent.

1 13.7 **Nondiscrimination.** During the performance of this Agreement, the Contractor shall
2 not unlawfully discriminate against any employee or applicant for employment, or recipient of
3 services, because of race, religious creed, color, national origin, ancestry, physical disability,
4 mental disability, medical condition, genetic information, marital status, sex, gender, gender
5 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
6 all applicable State of California and federal statutes and regulation.

7 13.8 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
8 of the Contractor under this Agreement on any one or more occasions is not a waiver of
9 performance of any continuing or other obligation of the Contractor and does not prohibit
10 enforcement by the County of any obligation on any other occasion.

11 13.9 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
12 between the Contractor and the County with respect to the subject matter of this Agreement,
13 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,
14 publications, and understandings of any nature unless those things are expressly included in
15 this Agreement. If there is any inconsistency between the terms of this Agreement without its
16 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
17 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the
18 exhibits.

19 13.10 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to
20 create any rights or obligations for any person or entity except for the parties.

21 13.11 **Authorized Signature.** The Contractor represents and warrants to the County that:

22 (A) The Contractor is duly authorized and empowered to sign and perform its
23 obligations under this Agreement.

24 (B) The individual signing this Agreement on behalf of the Contractor is duly
25 authorized to do so and his or her signature on this Agreement legally binds the
26 Contractor to the terms of this Agreement.

27 13.12 **Electronic Signatures.** The parties agree that this Agreement may be executed by
28 electronic signature as provided in this section.

(A) An “electronic signature” means any symbol or process intended by an individual signing this Agreement to represent their signature, including but not limited to (1) a digital signature; (2) a faxed version of an original handwritten signature; or (3) an electronically scanned and transmitted (for example by PDF document) version of an original handwritten signature.

(B) Each electronic signature affixed or attached to this Agreement (1) is deemed equivalent to a valid original handwritten signature of the person signing this Agreement for all purposes, including but not limited to evidentiary proof in any administrative or judicial proceeding, and (2) has the same force and effect as the valid original handwritten signature of that person.

(C) The provisions of this section satisfy the requirements of Civil Code section 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title 2.5, beginning with section 1633.1).

(D) Each party using a digital signature represents that it has undertaken and satisfied the requirements of Government Code section 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other party may rely upon that representation.

(E) This Agreement is not conditioned upon the parties conducting the transactions under it by electronic means and either party may sign this Agreement with an original handwritten signature.

13.13 **Counterparts.** This Agreement may be signed in counterparts, each of which is an original, and all of which together constitute this Agreement.

13.14 **Construction.** The final form of this Agreement is the result of the parties’ combined efforts. If anything in this Agreement is found by a court of competent jurisdiction to be ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement against either party.

13.15 **Days.** Unless otherwise specified, “days” means calendar days.

1 13.16 **Headings.** The headings and section titles in this Agreement are for convenience
2 only and are not part of this Agreement.

3 13.17 **Agent for Service of Process.** The Contractor represents to the County that the
4 Contractor's agent for service of process in California, and that such agent's address for
5 receiving such service of process in California, which information the Contractor shall maintain
6 with the office of the California Secretary of State, is as follows:

7 1505 Corporation CSC – Lawyers Incorporating Service

8 2710 Gateway Oaks Drive

9 Sacramento, California

10 The Contractor further represents to the County that if the Contractor changes its agent for
11 service of process in California, or the Contractor's agent for service of process in California
12 changes its address for receiving such service of process in California, which changed
13 information the Contractor shall maintain with the office of the California Secretary of State, the
14 Contractor shall give the County written notice thereof within five calendar days thereof pursuant
15 to Article 5.

16 [SIGNATURE PAGE FOLLOWS]
17
18
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27
28

The parties are signing this Agreement on the date stated in the introductory clause.

INCONTACT INC., dba NICE

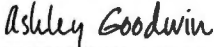
COUNTY OF FRESNO

DocuSigned by:



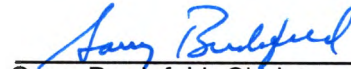
Dan Belanger – President CX Americas

DocuSigned by:



Ashley Goodwin – Vice President, Business
Finance, Americas

75 West Towne Ridge Parkway, Tower 1,
Sandy, UT 84070
United States


Garry Bredefeld, Chairman of the Board of
Supervisors of the County of Fresno

Attest:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 
Deputy

For accounting use only:

Org No.: 8905
Account No.: 7309
Fund No.: 1020
Subclass No.: 10000

Exhibit A

Scope of Work

1. **Product Descriptions.** The Contractor's product, SmartReach, is an automated dialing and messaging platform that enables the County to efficiently contact customers and employees with time sensitive updates and reminders, such as appointment reminders and confirmations, required paperwork notifications, and upcoming deadlines.

2. **Definitions.** In addition to the terms defined elsewhere in the Agreement, the following terms shall have the meanings specified:

Change Control Process is defined as the process used by the County's Information Technology Services Department to inform County staff of new or updated production use systems.

Configured User(s) or Named Agent(s) is defined as the number of uniquely identified County employees, agents, traders, or contractors, as applicable, who shall have one or more interactions processed by the Contractor's Cloud Services each month, with the identities of such persons being capable of variation, such that new agents may be added and old agents may be removed or terminated so long as the number of users having monthly interactions does not exceed the licensed capacity detailed in the Agreement.

Documentation is defined as the applicable specifications, user manuals, and self-help guides accompanying Contractor Product and Services or Software.

Force Majeure is defined as an unforeseen or uncontrollable event including, without limitation, any act or provision of any present or future law or regulation or government authority, any act of God, pandemic, epidemic, war, civil or military disobedience or disorder, riot, terrorism, fire, earthquake, storm, flood, strike, work stoppage, or similar occurrence.

Products and Services is defined as the products and services made available to the County pursuant to the Agreement, which may include the Contractor Products and Services accessible for use by the County on a subscription basis ("Software-as-a-Service" or "SaaS"), the Contractor professional services, content from any professional services or other required equipment components or other required hardware, as specified in each Order or SOW.

Exhibit A

1 License is defined as the license granted under the Agreement, and the rights and
2 obligations that it creates under the laws of the United States of America and the State of
3 California, including without limitation, copyright and intellectual property law.

4 Minimum Commitment is defined as the minimum commitment amount, whether
5 expressed in units or currency, of Cloud Services as specified in the Agreement.

6 Minimum MRC or Minimum Technology MRC is defined as the minimum monthly
7 recurring charges ("MRC") amount that the County is required to pay for the Cloud Services,
8 excluding NRC and Network Connectivity charges (if applicable), for the duration of the
9 Subscription Term.

10 Network Connectivity is defined as those services that (a) facilitate or allow a connection
11 from the County's agent location to the Contractor's platform; or (b) enable or facilitate
12 telephone calls or other means of communication or data transmission.

13 NRC is defined as the non-recurring charges, e.g., professional services.

14 Order or Statement of Work (SOW) is defined as a written order, proposal, or purchase
15 document in which the Contractor agrees to provide and the County agrees to purchase specific
16 Contractor Products and Services. Statement of Work ("SOW") means a written order, proposal,
17 or purchase document that is signed by both Parties and describes the Contractor Products and
18 Services to be provided and/or performed by the Contractor. Each Order or SOW shall describe
19 the Parties' performance obligations and any assumptions or contingencies associated with the
20 implementations of the Contractor Products and Services, as specified in each Order or SOW
21 placed hereunder.

22 Order Term is defined as the then-current duration of performance identified on each
23 Order or SOW, for which the Contractor has committed to provide, and the County has
24 committed to pay for, the Contractor Products and Services.

25 Production is defined as an operational environment deployed for commercial use
26 (excluding, but not limited to, any test, development, staging, or lab environment).

Exhibit A

1 Support is defined as the ongoing support and maintenance services performed by the
2 Contractor related to the Contractor Products and Services as specified in each Order or SOW
3 placed between the Parties.

4 System is defined as the System Software and System Documentation, collectively,
5 including all modifications and enhancements.

6 System Documentation is defined as the documentation relating to the System Software,
7 including all manuals, reports, and specifications provided by the Contractor in connection with
8 the System Software.

9 System Software is defined as the Contractor's platform provided and hosted by the
10 Contractor. System Software does not include operating system software, or any other third-
11 party software.

12 System Software Maintenance and Support and Support is defined as software hosting
13 for System Software, regular software updates to System Software, and support provided for
14 System Software in case of errors, mistakes, or other technical difficulties.

15 Transaction-Based or Usage-Based is defined as the actual amount the County is
16 required to pay for its actual usage of the Cloud Services, excluding NRC and Network
17 Connectivity charges (if applicable), during each month of the Subscription Term.

18 Variance is defined as, for the NICE CXone Mpower and CXone Integrated Solution
19 families, the difference between the actual spend for Cloud Services, excluding NRC and
20 Network Connectivity charges (if applicable), versus the Minimum Commitment (for the
21 avoidance of doubt, this will be measured monthly (MRC) or annually (ARC) depending on the
22 type of commitment) or, for NICE CX Solution family, the actual number of licenses, or
23 additional Network Connectivity, used by the County in excess of the Minimum Commitment.

24 **3. Warranties & Disclaimers.** The Contractor agrees that all services performed under the
25 Agreement shall conform in all aspects with the requirements of the Agreement and the
26 Documentation. The Contractor agrees that it takes precautions that are standard in the
27 industry with best effort.

Exhibit A

1 Except as provided herein, each Party hereby disclaims any and all other warranties of
2 any nature whatsoever whether oral and written, express or implied, including, without limitation,
3 the implied warranties of merchantability, title, non-infringement, and fitness for a particular
4 purpose.

5 4. **Project Deadlines.** It is understood and agreed by both Parties to the Agreement that if
6 all the work specified or indicated in the Order or SOW is not completed within the specified
7 time frames set forth in the Order or SOW, or within such time limits as extended, the Parties
8 will discuss in good faith remediation to find a solution that addresses this situation, provided
9 however, nothing in this section limits any of the County's remedies under the Agreement for
10 the Contractor's breach of the Agreement.

11 5. **Contractor's Project Coordinator.** Upon execution of the Agreement, the Contractor
12 shall appoint a Project Coordinator who will act as the primary contact person to interface with
13 the County for the services discussed in the Agreement.

14 6. **Documentation.** The Contractor shall provide to the County Documentation, which is
15 available to all of its customer through the Contractor's website All Documentation is to be used
16 by the County only for the purposes identified within the Agreement.

17 7. **Technical Information.** The Contractor shall provide technical information to the
18 County. Such information may cover areas regarding the software discussed in the Agreement.
19 Technical information shall be provided at the discretion of the Contractor but shall not be
20 unreasonably withheld.

21 8. **Adhere to Change Control Process.** The Contractor employs a procedure to
22 implement updates, upgrades, and version releases to a system that is in production use. This
23 forum allows the Contractor to inform the County of upcoming changes to a production system.

24 9. **Support Services.** Support Services are defined as technical support, account
25 management, and education and training. The Contractor shall support day-to-day operation of
26 the System as follows. Basic support related to standard Contractor Products and Services is
27 included within the fees paid during the Order Term. The Contractor may update its Support
28

Exhibit A

obligations under the Agreement, so long as the functionality purchased by the County is not materially diminished.

a. The Contractor shall provide technical support for the Cloud Services and, when available, updates. Support is available via web portal and via telephone as provided in this section herein. Support shall be delivered by a member of the Contractor's technical support team during the applicable regional hours of operation.

b. An emergency is defined as the Contractor's services described in the Agreement being down for more than ten minutes.

10. **Downtime.** Downtime shall be defined as System non-availability due to System Software error or malfunction. Examples of Downtime include, without limitation, the County and public cannot access the System for reasons within the Contractor's Control or any functional Component of the System or Interference is not available and is within the Contractor's Control. The County requires that there be no unscheduled Downtime for routine System Software Maintenance and Support of the Application Software. Routine System Software Maintenance and Support includes such tasks as major System Software version Updates. The Contractor shall use its best efforts to keep scheduled Downtime for non-routine maintenance to a minimum (99.9% up time guarantee).

11. **Data Sources.** Data uploaded into the Contractor Products and Services must be brought in from County sources (interactions with end users and opt-in contact lists). The Contractor certifies that it will not sell, retain, use, or disclose any personal information provided by the County for any purpose other than retaining, using, or disclosing such personal information for the specific purpose of performing the services outlined within the Agreement.

12. **Passwords.** Passwords are not transferable to any third party. The County is responsible for keeping all passwords secure and all use of the Contractor products and services accessed through the County's passwords. In the event that the initial creation of usernames and passwords is the responsibility of the Contractor, the Contractor shall provide all such usernames and respective passwords to the County within a reasonable timeframe. Should the Agreement terminate prior to the provision of such usernames and passwords, this

Exhibit A

requirement survives the termination of the Agreement and there shall be no expectation of further compensation for the Contractor to abide by this requirement.

13. **County Feedback.** The County will provide feedback to the Contractor with any suggestion, enhancement, request, recommendation, correction or other feedback provided by the County relating to the use of the Contractor Products and Services. The Contractor may use such feedback submissions as it deems appropriate in its sole discretion.

Exhibit B

Compensation

The Contractor will be compensated for the Contractor’s Products and Services under the Agreement as provided in this Exhibit B. The Contractor is not entitled to any compensation except as expressly provided in this Exhibit B.

1. **Fees.** The County agrees to pay all fees, costs, and other amounts as specified in each Order or SOW approved by the County.

Table 1						
	Y1	Y2	Y3	Y4	Y5	Total
Monthly Recurring Charges (see table 1.1 for details)	\$72,000.00	\$72,000.00	\$72,000.00	\$72,000.00	\$72,000.00	\$360,000.00
One-Time Set-Up Fees	\$12,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$12,000.00
Administrative Fee (0.98%)	\$705.60	\$705.60	\$705.60	\$705.60	\$705.60	\$3,528.00
Total	\$84,705.60	\$72,705.60	\$72,705.60	\$72,705.60	\$72,705.60	\$375,528.00
Additional Units (see Table 1.2 for details)	\$37,552.80					\$37,552.80
Grand Total						\$413,080.80

a. SmartReach Subscriptions (MRC)

Table 1.1				
Product Name	Monthly Quantity	Subscription Term	Unit Price	Monthly Minimum Fee
Essential Bundle + Campaign Management	103,950 (Minutes)	36 Months	\$0.0481	\$5,000.00
SMS Minimum	1 Minimum	36 Months	\$500.00	\$500.00
SMS Standard Rate	Per SMS	36 Months	\$0.0350	\$0.00

Exhibit B**Table 1.1**

Product Name	Monthly Quantity	Subscription Term	Unit Price	Monthly Minimum Fee
Email	40,000 Emails	36 Months	\$0.0125	\$500.00
Contact Manager	500,000 Contacts	36 Months	No Fee	No Fee
Total Monthly Recurring Charges:				\$6,000.00

b. Unit Price for Additional Units: Additional units may be purchased upon written request by the County, including but not limited to the items below. An amount of \$37,552.80 has been set aside in the first year of the agreement for the purchase of additional units, and any unused funds will roll over into subsequent years of the agreement. Any purchase(s) of additional units are subject to the Maximum Compensation as stated in Article 3.

Table 1.2

Product Name	Unit Price for Additional Units
Essential Bundle + Campaign Management	\$0.0577
SMS Minimum	Per SMS
SMS Standard Rate	\$0.0350
Email	\$0.0125
Contact Manager: 500,001 – 1,000,000 contacts	\$1,000.00
Contact Manager: 1,000,001 – 3,000,000 contacts	\$1,500.00
Contact Manager: 3,000,001 – 6,000,000 contacts	\$3,000.00

Exhibit B

Table 1.2	
Product Name	Unit Price for Additional Units
Contact Manager: 6,000,001 – 12,000,000 contacts	\$5,000.00

Exhibit C

Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

Instructions

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit C

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)			
(5) Authorized Signature			
Signature:		Date:	

Exhibit D

Insurance Requirements

1. Required Policies

Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of the Agreement.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Contractor shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under the Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Contractor's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any non-owned and hired auto used in connection with the Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- (E) **Professional Liability (Errors and Omissions).** Professional liability (errors and omissions) insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and in the aggregate. Coverage must encompass all of the Contractor's obligations under the Agreement, including but not limited to claims involving Cyber Risks.
- (F) **Cyber Liability.** Cyber liability insurance, which may be on a standalone basis or as a part of Contractor's Professional Liability coverage, with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must include claims involving Cyber Risks.

Definition of Cyber Risks. "Cyber Risks" include but are not limited to (i) Security Breach, which may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) data breach; (iii) breach of any of the Contractor's obligations under Article 11 of the Agreement; (iv) system failure; (v) data recovery; (vi) failure to timely disclose data breach or Security Breach; (vii) failure to comply with privacy policy; (viii) payment card liabilities and costs; (ix) infringement of intellectual property, including but not limited to infringement of copyright, trademark, and trade dress; (x) invasion of privacy, including release of private information; (xi) information theft; (xii) damage to or destruction or alteration of electronic information; (xiii) cyber extortion; (xiv) extortion related to the

Exhibit D

Contractor's obligations under the Agreement regarding electronic information, including Personal Information; (xv) fraudulent instruction; (xvi) funds transfer fraud; (xvii) telephone fraud; (xviii) network security; (xix) data breach response costs, including Security Breach response costs; (xx) regulatory fines and penalties related to the Contractor's obligations under the Agreement regarding electronic information, including Personal Information; and (xxi) credit monitoring expenses.

2. Additional Requirements

- (A) **Verification of Coverage.** Within 30 to 60 days (or as mutually agreed upon by the Contractor and County) after the Contractor signs the Agreement, and at any time during the term of the Agreement as requested by the County's Risk Manager or the County Administrative Office, the Contractor shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 93721, or HRRiskManagement@fresnocountyca.gov, and by mail or email to the person identified to receive notices under the Agreement, certificates of insurance and endorsements for all of the coverages required under the Agreement.
- (i) Each insurance certificate must state that the insurance coverage has been obtained and is in full force and the Contractor has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by the Agreement and that waiver does not invalidate the insurance policy.
 - (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under the Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the Contractor's policy.
 - (iii) The automobile liability insurance certificate must state that the policy covers any non-owned and hired auto used in connection with the Agreement.
 - (iv) The professional liability insurance certificate must also state that coverage encompasses all of the Contractor's obligations under the Agreement, including but not limited to claims involving Cyber Risks, as that term is defined in the Agreement.
- (B) **Acceptability of Insurers.** All insurance policies required under the Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of the Agreement an A.M. Best, Inc. rating of no less than A: VII.
- (C) **Notice of Cancellation or Change.** For each insurance policy required under the Agreement, the Contractor shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the

Exhibit D

policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the Contractor or its insurer to timely provide a written notice required by this paragraph is a breach of the Agreement.

- (D) **County's Entitlement to Greater Coverage.** If the Contractor has or obtains insurance with broader coverage, higher limits, or both, than what is required under the Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Contractor shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under the Agreement.
- (E) **County's Remedy for Contractor's Failure to Maintain.** If the Contractor fails to keep in effect at all times any insurance coverage required under the Agreement, the County may, in addition to any other remedies it may have, suspend or terminate the Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The County may offset such charges against any amounts owed by the County to the Contractor under the Agreement.

Exhibit E

Data Security

A. Data Security Definitions.

Capitalized terms used in this Exhibit E have the meanings set forth in this section A.

“Authorized Employees” means the Contractor’s employees who have access to Personal Information.

“Authorized Persons” means: (i) any and all Authorized Employees; and (ii) any and all of the Contractor’s subcontractors, representatives, agents, outsourcers, and consultants, and providers of professional services to the Contractor, who have access to Personal Information and are bound by law or in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms of this Exhibit E.

“CIO” means the County’s Director of Information Technology/Chief Information Officer or his or her designee.

“Disclose” or any derivative of that word means to disclose, release, transfer, disseminate, or otherwise provide access to or communicate all or any part of any Personal Information orally, in writing, or by electronic or any other means to any person.

“Person” means any natural person, corporation, partnership, limited liability company, firm, or association.

“Personal Information” means any and all non-anonymized and non-aggregated information, including any data provided, or to which access is provided, to the Contractor by or upon the authorization of the County, including but not limited to vital records, that: (i) identifies, describes, or relates to, or is associated with, or is capable of being used to identify, describe, or relate to, or associate with, a person (including, without limitation, names, physical descriptions, signatures, addresses, telephone numbers, e-mail addresses, education, financial matters, employment history, and other unique identifiers, as well as statements made by or attributable to the person); (ii) is used or is capable of being used to authenticate a person (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or personal identification numbers (PINs), financial account numbers, credit report information, answers to security questions, and other personal identifiers); or is personal information within the

Exhibit E

meaning of California Civil Code section 1798.3, subdivision (a), or 1798.80, subdivision (e).

Personal Information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

“Privacy Practices Complaint” means a complaint received by the County relating to the Contractor’s (or any Authorized Person’s) privacy practices, or a Security Breach. Such complaint shall have sufficient detail to enable the Contractor to promptly investigate and take remedial action under this Exhibit E.

“Security Safeguards” means physical, technical, administrative or organizational security procedures and practices put in place by the Contractor (or any Authorized Persons) that relate to the protection of the security, confidentiality, value, or integrity of Personal Information. Security Safeguards shall satisfy the minimal requirements set forth in subsection C.(5) of this Exhibit E.

“Security Breach” means any unauthorized Use or Disclosure any Personal Information.

“Use” or any derivative thereof means to receive, acquire, collect, apply, manipulate, employ, process, transmit, disseminate, access, store, disclose, or dispose of Personal Information.

B. Standard of Care.

(1) The Contractor acknowledges that, in the course of its engagement by the County under the Agreement, the Contractor, or any Authorized Persons, may Use Personal Information only as permitted in the Agreement.

(2) The Contractor acknowledges that Personal Information is deemed to be Confidential information of, or owned by, the County (or persons from whom the County receives or has received Personal Information) and is not Confidential information of, or owned or by, the Contractor, or any Authorized Persons. The Contractor further acknowledges that all right, title, and interest in or to the Personal Information remains in the County (or persons from whom the County receives or has received Personal Information) regardless of the Contractor’s, or any Authorized Person’s, Use of that Personal Information.

(3) The Contractor agrees in favor of the County that the Contractor shall: (i) keep and maintain all Personal Information in confidence, using industry-recognized administrative,

Exhibit E

technical, and physical safeguards consistent with Contractor's ISO 27001 and SOC 2 programs; (ii) Use Personal Information exclusively for the purposes for which the Personal Information is made accessible to the Contractor pursuant to the terms of this Exhibit E; (iii) not Use, Disclose, sell, rent, license, or otherwise make available Personal Information for the Contractor's own purposes or for the benefit of anyone other than the County, without the County's express prior written consent, which the County may give or withhold in its sole and absolute discretion; and (iv) not, directly or indirectly, Disclose Personal Information to any person (an "Unauthorized Third Party") other than Authorized Persons pursuant to the Agreement, without the CIO's express prior written consent.

Notwithstanding the foregoing paragraph, in any case in which the Contractor believes it, or any Authorized Person, is required to disclose Personal Information to government regulatory authorities, or pursuant to a legal proceeding, or otherwise as may be required by applicable law, the Contractor shall (a) if allowed under applicable law and permitted under judicial order, notify the County of the specific demand for, and legal authority for the disclosure, including providing the County with a copy of any notice, discovery demand, subpoena, or order, as applicable, received by the Contractor, or any Authorized Person, from any government regulatory authorities, or in relation to any legal proceeding, and (b) notify the County before such Personal Information is offered by the Contractor for such disclosure so that the County may have sufficient time to obtain a court order or take any other action the County may deem necessary to protect the Personal Information from such disclosure, and the Contractor shall cooperate with the County to minimize the scope of such disclosure of such Personal Information.

C. Information Security.

(1) The Contractor agrees to the County that the provision of the services related to Contractor's Use of Personal Information under the Agreement does and shall at all times comply with all applicable federal, state, and local, privacy and data protection laws, as well as all other applicable regulations and directives, including but not limited to California Civil Code, Division 3, Part 4, Title 1.81 (beginning with section 1798.80), and the Song-Beverly Credit Card Act of 1971 (California Civil Code, Division 3, Part 4, Title 1.3, beginning with section 1747). If the Contractor

Exhibit E

Uses credit, debit, or other payment cardholder information, the Contractor shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing and maintaining all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor's sole cost and expense.

(2) The Contractor agrees to the County that, as of the Effective Date, the Contractor has not received notice of any violation of any privacy or data protection laws, as well as any other applicable regulations or directives, and is not the subject of any pending legal action or investigation by any government regulatory authority regarding same.

(3) Without limiting the Contractor's obligations under subsection C.(1) of this Exhibit E, the Contractor's (or Authorized Person's) Security Safeguards shall be no less rigorous than security controls in SOC 2 Type II and, at a minimum, include the following: (i) limiting Use of Personal Information strictly to the Contractor's and Authorized Persons' technical and administrative personnel who are necessary for the Contractor's, or Authorized Persons', Use of the Personal Information pursuant to the Agreement; (ii) ensuring that all of the Contractor's connectivity to the County computing systems will only be through the County's security gateways and firewalls, and only through security procedures approved upon the express prior written consent of the CIO and as mutually agreed by the Parties in writing; (iii) to the extent that they contain or provide access to Personal Information, (a) securing the Contractor's business facilities, data centers, paper files, servers, back-up systems and computing equipment, operating systems, and software applications, including, but not limited to, all operating systems, and software applications with information storage capability; (b) employing adequate controls and data security measures with respect to the Contractor Facilities and Equipment), both internally and externally, to protect (1) the Personal Information from unauthorized Use, and (2) the County's operations from disruption and abuse; (c) having and maintaining network, device application, database and platform security; (d) maintaining authentication and access controls within the Contractor's provided platform ; and (e) installing and maintaining in all Contractor issued laptops a secure internet connection, having continuously updated anti-virus software protection and a remote wipe feature always enabled,

Exhibit E

consistent with Contractor's endpoint and access security policies; (iv) encrypting all Personal Information at advance encryption standards of Advanced Encryption Standards (AES) of 128 bit or higher (a) stored on any mobile devices, including but not limited to hard disks, portable storage devices, or remote installation, or (b) transmitted over public or wireless networks (the encrypted Personal Information must be subject to password or pass phrase, and be stored on a secure server and transferred by means of secure, encrypted channels, or another type of secure connection, all of which is subject to express prior written consent of the CIO); (v) strictly segregating County's Confidential Information uploaded to the platform from all other information of the Contractor in a logical way, including any Authorized Person, or anyone with whom the Contractor or any Authorized Person deals so that County's Confidential Information in the platform is not commingled and is logically separated with other customers' information; (vi) having a patch management process including installation of all operating system/software vendor security patches; (vii) maintaining appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks of Authorized Employees consistent with applicable law; and (viii) providing appropriate privacy and information security training to Authorized Employees.

(4) During the term of each Authorized Employee's employment by the Contractor, the Contractor shall cause such Authorized Employees to abide strictly by the Contractor's standard policies. The Contractor confirms that it shall maintain a disciplinary process to address any unauthorized Use of Personal Information by any Authorized Employees.

(5) The Contractor shall, in a secure manner, backup daily, or more frequently if it is the Contractor's practice to do so more frequently, Personal Information received from the County as applicable to the solution and the County should use the Services available capabilities where needed, and Contractor will support restoration of Customer data in accordance with its disaster recovery and data retention policies where applicable. Backup environments are not directly accessible to customers.

(6) The Contractor shall provide the County with the name and contact for the Technical Account Manager. The Technical Account Manager shall be available to assist the County twenty-

Exhibit E

four (24) hours per day, seven (7) days per week as a contact in resolving the Contractor's obligations associated with a Security Breach or a Privacy Practices Complaint.

D. Security Breach Procedures.

(1) Promptly, and without undue delay (no longer than seventy-two (72) hours), upon the Contractor's confirmation of a successful Security Breach, the Contractor shall (promptly by email at the following email address: (which email address the County may update by providing notice to the Contractor), and (b) preserve all relevant and applicable evidence in accordance with Contractor's incident response and forensic preservation procedures relating to the Security Breach. The notification shall include, to the extent reasonably possible the extent of Personal Information that has been breached, including but not limited to, compromised, or subjected to unauthorized Use.

(2) Immediately following the Contractor's notification to the County of a successful Security Breach, as provided pursuant to subsection D(1) of this Exhibit E, the Parties shall coordinate with each other to investigate the successful Security Breach. The Contractor agrees to fully cooperate with the County, required to comply with applicable law, regulation, industry standards, or as otherwise reasonably required by the County. To that end, the Contractor shall, with respect to a Security Breach, be solely responsible, at its cost, for all notifications required by law and regulation to the regulator if required and mutually-agreed, and the Contractor shall provide a written report of the investigation and reporting required to the CIO within thirty (30) days after the Contractor's discovery of the Security Breach.

(3) The County shall promptly notify the Contractor of the CIO's knowledge, or reasonable belief, of any Privacy Practices Complaint, and upon the Contractor's receipt of notification thereof and the notification is reasonable and mutually-agreed upon, the Contractor shall promptly address such Privacy Practices Complaint, including taking any corrective action under this Exhibit E, all at the Contractor's sole expense, in accordance with applicable privacy rights, laws, regulations and standards. In the event the Contractor discovers a Security Breach, the Contractor shall treat the Privacy Practices Complaint as a Security Breach. Within 72 hours of the Contractor's receipt of notification of such Privacy Practices Complaint, the Contractor shall notify the County whether the

Exhibit E

matter is a Security Breach.

(4) The Contractor shall take prompt corrective action to respond to and remedy any Security Breach and take reasonable mitigating actions, including but not limiting to, preventing any reoccurrence of the Security Breach and correcting any deficiency in Security Safeguards as a result of such incident, all at the Contractor's sole expense, in accordance with applicable privacy rights, laws, regulations and standards.

E. Oversight of Security Compliance.

(1) The Contractor shall have and maintain a written information security policy that specifies Security Safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.

(2) The Contractor shall ensure that all Authorized Persons who Use Personal Information agree to the substantially similar restrictions and conditions in this Exhibit E. that apply to the Contractor with respect to such Personal Information by incorporating the substantially similar provisions of these provisions into a valid and binding written agreement between the Contractor and such Authorized Persons.

F. Return or Destruction of Personal Information.

Upon the termination of the Agreement, the Contractor shall, and shall instruct all Authorized Persons to, promptly return to the County all Personal Information (may be subject to additional cost), whether in written, electronic or other form or media, in its possession or the possession of such Authorized Persons, in a mutually agreed upon industry standard export format or as mutually agreed to in writing , securely destroy all such Personal Information, and certify in writing to the County that such Personal Information have been returned to the County or disposed of securely, as applicable. If the Contractor is authorized to dispose of any such Personal Information, as provided in this Exhibit E, Contractor will follow industry-recognized secure disposal methods consistent with ISO 27001 and NIST 800-88-aligned processes. The Contractor shall perform return or deletion activities in accordance with mutually agreed procedures and the Agreement with respect to the return or disposal of Personal Information and copies thereof. If return or disposal of such Personal Information or copies of Personal Information is not feasible,

Exhibit E

the Contractor shall notify the County accordingly, specifying the reason, and continue to extend the protections of this Exhibit E to all such Personal Information and copies of Personal Information. The Contractor shall not retain any copy of any Personal Information after returning or disposing of Personal Information as required by this section F. The Contractor's obligations under this section F survive the termination of the Agreement and apply to all Personal Information that the Contractor retains if return or disposal is not feasible and to all Personal Information that the Contractor may later discover.

G. Survival.

The respective rights and obligations of the Contractor and the County as stated in this Exhibit E shall survive the termination of the Agreement.

H. No Third-Party Beneficiary.

Nothing express or implied in the provisions of in this Exhibit E is intended to confer, nor shall anything herein confer, upon any person other than the County or the Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

I. No County Warranty.

The County does not make any warranty or representation whether any Personal Information in the Contractor's (or any Authorized Person's) possession or control or Use by the Contractor (or any Authorized Person), pursuant to the terms of the Agreement is or will be secure from unauthorized Use, or a Security Breach or Privacy Practices Complaint.

Exhibit F

Service Level Agreement

1. **Service Levels.** The following service expectations, deadlines, and subsequent penalties for non-compliance with the agreed upon services stated herein are included below for convenience or reference by the Contractor and the County. The service level expectations stated herein define the minimum acceptable performance standards for the Contractor's services, including but not limited to response times, resolutions times, uptime guarantees, and any other measurable criteria. The Contractor shall maintain 99.99% uptime.

Incident Priority	Initial Response	Status Updates
Priority 1 - all hours	Respond to Customer within 1 hour of notification.	Every 2 Hours
Priority 2 - all hours	Respond to Customer within 4 hours of notification.	Every 8 Hours
Priority 3 - standard hours	Respond to Customer next business day.	Every 24 Hours
Priority 4 - standard hours	Respond to Customer next business day.	Every 48 Hours

Severity Definitions	Description
Severity 1 – Critical	Work Stoppage. Incidents that cause a direct financial, brand, or security impact on the business organization: ○ Agents or stations cannot log in (ACD & Workforce Optimization (WFO)) ○ Severe login latency ○ Unable to launch MAX or ThinAgent ○ Unable to change/manage agent stat in MAX or ThinAgent ○ Calls not routing to agents

Exhibit F

	○ Call refusals resulting in no calls being delivered to agents ○ Unable to execute an IVR script ○ Point of contact/toll free number cannot be reached ○ No routes found ○ Circuit down ○ Required real-time reporting unavailable
Severity 2 – High	Work Degraded. An impact to a business service that directly supports the execution of a core business service: ○ Historical reporting unavailable ○ User administration ○ Missing contact recordings ○ QM Enterprise (Engage) not recording (audio or screen) ○ QM Enterprise (Engage) playback isn't working ○ Workforce Management (WFM) adherence missing ○ Severe and sustained sound quality issues preventing two-way communication of voice contacts (one-way audio, dead air, choppy, static) ○ Dialer calling list not uploading ○ Call refusals resulting in eventual call delivery
Severity 3 – Medium	Work not affected or workarounds available. Incidents that are inconvenient but do not impede core functions of the Contractor's applications. May have valid workarounds: ○ Intermittent sound quality issues that do not prevent two-way communication of voice contacts (one-way audio, dead air, choppy, static) ○ Reporting doesn't match up ○ Stuck agents/contacts/dialer

Exhibit F

	○ Delayed recordings
Severity 4 – Low	Incidents that cause very little impact on operations. May have valid workarounds: ○ Non-essential buttons missing ○ User interface or experience is difficult

a. **Service Level Correction.** For Priority 1 and Priority 2 incidents, Level 1 and Level 2 Errors, the County may call 1-800-826-8028 (or as designated/updated by Contractor) at any time (seven days a week, 24 hours a day) to report the incident. For Service Level 3 Requests, the County may call the Technical Account Manager during normal Business Hours or email support@businessphone.com, or submit the request via the Contractor's support services tool. The Contractor shall respond to and resolve reported Service Level Errors in accordance with the table above.

b. **Service Level Expectation Exclusion Events.** The Contractor shall not be liable for any failure to meet service level expectation that is directly caused by any one or more of the following (collectively, "Service Level Expectation Exclusion Events"): (i) any breach of the Agreement by the County or the negligence or willful misconduct of the County or the County's other contractors; (ii) with respect to any equipment or software component of the County systems for which the Contractor does not bear operational responsibility, any failure of the County to secure the necessary rights or maintenance and support services from the Contractor of such equipment or software component; (iii) any problems arising from the County systems, including facility and user controlled problems, that are not required to be supported or addressed by the Contractor pursuant to the performance of service expectations; (iv) the failure of the County's personnel to perform or act in accordance with the Agreement; or (v) the occurrence of a Force Majeure Event. Upon the occurrence of any event the Contractor reasonably believes to be a Service Level Exclusion Event, the Contractor shall promptly escalate the issue to the County in writing. The Parties agree to cooperate to minimize the adverse impact of such Service Level Exclusion Events on the County's business.