

1 **SERVICE AGREEMENT**

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

6 **Recitals**

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

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

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

14 The Parties therefore agree as follows:

15 **Article 1**

16 **Contractor’s Services**

17 1.1 **Scope of Services.** The Contractor shall perform all of the services provided in  
18 Exhibit A to this Agreement.

19 1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and  
20 able to provide all of the services provided in this Agreement.

21 1.3 **Service Level Agreement.** The Contractor shall adhere to the service level  
22 agreement as outlined in Exhibit F.

23 1.4 **Compliance with Laws.** The Contractor shall, at its own cost, comply with all  
24 applicable federal, state, and local laws and regulations in the provision of the services provided  
25 under this Agreement.

26 1.5 **License Term.** The term of the subscription to the Services is listed in Article 4 of  
27 this Agreement. The County shall be entitled to Software updates, upgrades, enhancements,  
28 new versions, bug fixes, other improvements to the Services, as and when released by the

1 Contractor to the Contractor's customers, and access to the Services, and to technical  
2 assistance relating to the Services, for the Term described in this Agreement. Contractor grants  
3 County a non-exclusive, non-transferable, non-sublicensable right to use the Contractor  
4 Products and Services or Software (including the Documentation) as set forth in an Order, for  
5 County's own internal business purposes. County may make a reasonable number of copies of  
6 the Documentation, provided such reproductions include any copyright or proprietary labels,  
7 legends, or notices included in the Documentation.

8       1.6     **Contractor Indemnity.** For the purposes of this Agreement, the term "**Claim**"  
9 means a claim, demand, suit or proceeding brought against a Party by a third party and  
10 "**Content**" means the electronic data and information provided by County through its use of the  
11 Cloud Services. Contractor will defend County from and against any Claim made or brought  
12 against County to the extent such Claim alleges that the Services used in accordance with this  
13 Agreement, infringes or misappropriates such third party's United States patent, copyright,  
14 trademark, or trade secret, and will indemnify County against Losses awarded against County  
15 as a result thereof. The foregoing defense and indemnity obligations will not apply if: (a) the  
16 allegation does not state with specificity that the Services are the basis of the Claim; or (b) if a  
17 Claim arises from: (i) specifications, technology, applications, or designs furnished by County or  
18 a third party on County's behalf; (ii) the use or combination of the Services or any part thereof  
19 with any product or service, data, or processes not provided by Contractor, if the Services or  
20 use thereof would not infringe without such combination; (iii) the modification of the Services not  
21 provided by Contractor's authorized personnel; (iv) Services under an Order for which there is  
22 no charge; (v) County's failure to use the Services in accordance with the Documentation; or (vi)  
23 the Content. If County is enjoined from using the Services, or Contractor reasonably believes  
24 County will be so enjoined, Contractor will have the right, at its sole option and expense to: (a)  
25 procure for County the right to continue using the affected Services in accordance with this  
26 Agreement; (b) replace or modify the Services so that they are no longer claimed to infringe or  
27 misappropriate, provided their functionality after modification is substantially equivalent pursuant  
28 to the Documentation; or, if neither (a) or (b) are feasible using commercially reasonable efforts,

1 then: (c) terminate County's subscriptions for the affected Services upon thirty (30) days' written  
2 notice and, as applicable, refund to County any prepaid Fees for the affected Services for the  
3 unexpired Subscription Term. The collective obligations of Contractor pursuant to this Section  
4 1.6 state the sole and exclusive liability of Contractor, and County's sole and exclusive remedy,  
5 with respect to intellectual property infringement or misappropriation. The indemnification  
6 obligations above are subject to the Party seeking indemnification ("**Indemnified Party**")  
7 hereunder providing the other Party ("**Indemnifying Party**") prompt written notice of the specific  
8 Claim, provided that any delay in providing such notice will not relieve the Indemnifying Party of  
9 its obligations hereunder, except to the extent the delay prejudices its ability to defend the Claim  
10 and provided that the Indemnified Party provides all reasonable assistance to the Indemnifying  
11 Party. The Indemnifying Party will have sole control of the defense and settlement of such  
12 Claim, provided that the Indemnified Party may retain its counsel of its own choosing to monitor  
13 the defense of the claim at its own expense. The Indemnifying Party may settle any Claim  
14 without the Indemnified Party's written consent, unless such settlement: (a) does not include a  
15 release of all covered claims pending against the Indemnified Party; (b) contains an admission  
16 of liability or wrongdoing by the Indemnified Party; or (c) imposes any obligations upon the  
17 Indemnified Party other than an obligation to cease using any infringing items.

18 1.7 **Coordination of Work.** The Contractor shall coordinate all work with the County to  
19 minimize any interruptions to the normal operation of County operations, through the appointee  
20 as identified in section 2.1 of this Agreement.

21 1.8 **Viruses & Disabling Mechanisms.** The Contractor shall use commercially  
22 reasonable, diligent measures to screen the licensed programs provided under this Agreement  
23 to avoid introducing, or coding of, any virus or other destructive programming designed to permit  
24 unauthorized access or use by third parties to the solution provided by Contract (as defined in  
25 Exhibit A), or to disable or damage the County's systems (each, a "Virus"). The Contractor shall,  
26 as soon as practicable, use its diligent, commercially reasonable efforts to assist the County in  
27 eliminating the effects of the Virus, and if the Virus causes a loss of operational efficiency or  
28 loss of data, and upon the County's request, the Contractor will, diligently work as soon as

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

3 1.9 **ADA Compliance.** If applicable and required by law, the provision of Contractor's  
4 Products and Services shall be in compliance with the Americans with Disabilities Act of 1990  
5 (ADA) and shall be the sole responsibility of the Contractor. The Contractor shall indemnify,  
6 defend, and hold the County (including its officers, agents, employees, and volunteers)  
7 harmless from liability of any nature or kind, including damages, costs and expenses (including  
8 attorney's fees and costs) arising from the Contractor's non-compliance therewith, including  
9 compliance with ADA Section 508 of the Rehabilitation Act of 1973.

10 1.10 The Contractor shall ensure that all information and communication technology  
11 (ICT), digital content, and services provided under this Agreement comply with the accessibility  
12 requirements.

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

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

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

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

26 1.11 The parties agree that WCAG 2.2 Level AA (or successor version) shall be used as  
27 the benchmark for compliance with Title II of the ADA for digital content and services.  
28

1 **Article 2**

2 **County's Responsibilities**

3 2.1 **County Contract Administrator.** The County shall provide a County representative  
4 ("County Representative") to represent the County and work with the Contractor to carry out the  
5 Contractor's obligations under this Agreement. The County Representative will be the Director  
6 of Information Technology/Chief Information Officer ("CIO"), or their designee.

7 2.2 **Notice to Proceed.** The County shall issue a Notice to Proceed for each Order or  
8 Statement of Work ("SOW"), (as defined in Exhibit A) for which County may desire, and shall  
9 issue any subsequent Change Requests, which County may desire, for each Order or SOW, as  
10 applicable.

11 2.3 **Written Acceptance.** The County shall provide a Written Acceptance of all Orders or  
12 SOWs, upon the County's determination that the Contractor has fully performed under the Order  
13 or SOW, at the end of an Order or SOW, as applicable.

14 2.4 **Contractor Access.** The County will ensure that the Contractor's consultants have  
15 access to the County's network and systems as required during the County's normal business  
16 hours, which is 8AM to 5PM Monday through Friday, except for County holidays or when the  
17 Office of the Clerk of the Board of Supervisors is officially closed to the public.

18 **Article 3**

19 **Compensation, Invoices, and Payments**

20 3.1 **Compensation.** The County agrees to pay, and the Contractor agrees to receive,  
21 compensation for the performance of its services under this Agreement as described in Exhibit  
22 B to this Agreement.

23 3.2 **Maximum Compensation.** The total maximum compensation payable to the  
24 Contractor during the initial term of this Agreement is \$267,669.60. If this Agreement is  
25 extended for the first additional year as provided in Article 4, below, the total maximum  
26 compensation payable to the Contractor will increase to \$340,375.20. If this Agreement is  
27 extended for the second additional year as provided in Article 4, below, the total maximum  
28 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

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

4 **3.6 Invoices.** The Contractor shall submit invoices referencing the provided agreement  
5 number to the County of Fresno, Information Technology Services Department, Attention:  
6 Business Office, 333 W. Pontiac Way, Clovis, CA 93612,  
7 itsdbusinessoffice@fresnocountyca.gov. Subscription services will be invoiced annually within  
8 60 (60) days after the subscription period begins. All other services will be invoiced within sixty  
9 (60) days after the month in which the Contractor performs services and in any case within sixty  
10 (60) days after the end of the term or termination of this Agreement.

11 **3.7 Payment.** The County shall pay each correctly completed and timely submitted invoice  
12 within 45 days after receipt. The County shall remit any payment to the Contractor's address  
13 specified in the invoice. Without waiving any of its rights or remedies under the Agreement or at  
14 law, Contractor reserves the right to suspend delivery, access, or performance of the Services  
15 until any amounts that are outstanding and past due are paid in full by County.

#### 16 **Article 4**

#### 17 **Term of Agreement**

18 4.1 **Term.** This Agreement is effective on June 16, 2026, and terminates on June 15,  
19 2029, except as provided in Section 4.2, "Extension," or Article 6, "Termination and  
20 Suspension," below.

21 4.2 **Extension.** The term of this Agreement may be extended for no more than two, one-  
22 year periods only upon the written approval of both parties at least 30 days before the first day  
23 of the next one-year extension period. The CIO, or their designee, is authorized to sign the  
24 written approval on behalf of the County based on the Contractor's satisfactory performance.  
25 The extension of this Agreement by the County is not a waiver or compromise of any default or  
26 breach of this Agreement by the Contractor existing at the time of the extension whether or not  
27 known to the County.

1 **Article 5**

2 **Notices**

3 5.1 **Contact Information.** The persons and their addresses having authority to give and  
4 receive notices provided for or permitted under this Agreement include the following:

5 **For the County:**

6 Director of Information Technology/Chief Information Officer  
7 County of Fresno  
8 333 W. Pontiac Way  
9 Clovis, CA 93612  
10 itsdadminoffice@fresnocountyca.gov

11 **For the Contractor:**

12 inContact Inc.  
13 75 West Towne Ridge Parkway, Tower 1,  
14 Sandy, UT 84070  
15 United States  
16 Phone:551-256-5000  
17 Fax: 551-256-5252

18 5.2 **Change of Contact Information.** Either party may change the information in section  
19 5.1 by giving notice as provided in section 5.3.

20 5.3 **Method of Delivery.** Each notice between the County and the Contractor provided  
21 for or permitted under this Agreement must be in writing, state that it is a notice provided under  
22 this Agreement, and be delivered either by personal service, by first-class United States mail, by  
23 an overnight commercial courier service, by telephonic facsimile transmission, or by Portable  
24 Document Format (PDF) document attached to an email.

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

26 (B) A notice delivered by first-class United States mail is effective three County  
27 business days after deposit in the United States mail, postage prepaid,  
28 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.

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

7 5.4 **Claims Presentation.** For all claims arising from or related to this Agreement,  
8 nothing in this Agreement establishes, waives, or modifies any claims presentation  
9 requirements or procedures provided by law, including the Government Claims Act (Division 3.6  
10 of Title 1 of the Government Code, beginning with section 810).

11 **Article 6**

12 **Termination and Suspension**

13 6.1 **Termination for Non-Allocation of Funds.** The terms of this Agreement are  
14 contingent on the approval of funds by the appropriating government agency. In the event that:  
15 (a) funds are not appropriated and are not otherwise available to County for any fiscal period  
16 following its current fiscal year for the acquisition of Services and functions which are the same  
17 as or similar to those for which the Software provided or installed under the Agreement was  
18 acquired, (b) such non-appropriation has not resulted from County's act or failure to act, and  
19 County has exhausted all funds legally available for payment under the Agreement and no other  
20 legal procedure shall exist whereby payment thereunder can be made to Contractor, then  
21 County may terminate this Service Contract as of the last day for which funds were appropriated  
22 or otherwise made available by giving sixty (60) days prior written notice of termination to  
23 Contractor. Notwithstanding the preceding paragraph, County shall remain responsible for  
24 payment to Contractor for all work completed, as well as for all Software delivered. County will  
25 not be liable for any remaining Minimum Technology Monthly Recurring Charge as of the date  
26 written notice is provided under this clause.

27 6.2 **Termination for Breach.**  
28

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

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

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

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

14 6.3 **No Penalty or Further Obligation.** Any termination of this Agreement by the County  
15 under this Article 6 is without penalty to or further obligation of the County.

16 6.4 **Disentanglement Obligations upon Termination.** At the County's discretion, upon  
17 expiration or termination of this Agreement, subject to an additional Order and additional cost,  
18 the Contractor shall accomplish a complete transition of the services as set forth in Exhibit A to  
19 the County, or to any replacement provider designated by the County, (if possible) without any  
20 interruption of or adverse impact on the services. This process shall be referred to as  
21 Disentanglement. The Contractor shall fully cooperate with the County, and/or any new service  
22 provider, and otherwise promptly take all steps, including, but not limited to: providing to the  
23 County, or any new service provider, all requested information or documentation, required to  
24 assist the County in effecting a complete Disentanglement. The Contractor shall provide all  
25 information or documentation regarding the services, or as otherwise needed for  
26 Disentanglement, including, but not limited to: data conversion, client files, interface  
27 specifications, training staff assuming responsibility, passwords, and related professional  
28 services. The Contractor shall provide for the prompt and orderly conclusion of all work required

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

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

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

10 **Article 7**

11 **Independent Contractor**

12 7.1 **Status.** In performing under this Agreement, the Contractor, including its officers,  
13 agents, employees, and volunteers, is at all times acting and performing as an independent  
14 contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint  
15 venturer, partner, or associate of the County.

16 7.2 **Verifying Performance.** The County has no right to control, supervise, or direct the  
17 manner or method of the Contractor's performance under this Agreement, but the County may  
18 verify that the Contractor is performing according to the terms of this Agreement.

19 7.3 **Benefits.** Because of its status as an independent contractor, the Contractor has no  
20 right to employment rights or benefits available to County employees. The Contractor is solely  
21 responsible for providing to its own employees all employee benefits required by law.

22 7.4 **Services to Others.** The parties acknowledge that, during the term of this  
23 Agreement, the Contractor may provide services to others unrelated to the County.

24 **Article 8**

25 **Insurance and Limitation of Liability**

26 8.1 The Contractor shall comply with all the insurance requirements in Exhibit D to this  
27 Agreement.  
28



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

3       **9.2 Ownership of System Software.** The Parties acknowledge and agree that, as  
4 between the Contractor and the County, title and full ownership of all rights in and to the System  
5 Software, System Documentation (as defined in Exhibit A), and all other materials provided to  
6 the County by the Contractor under the terms of this Agreement shall remain with the  
7 Contractor. The County will take reasonable steps to protect trade secrets (as defined in  
8 Government Code Section 7924.510(f)) of the System Software and System Documentation,  
9 and which are identified as such by the Contractor. The County may not disclose or make  
10 available to third parties the System Software or System Documentation or any portion thereof,  
11 unless otherwise required by court order. The Contractor shall own all right, title and interest in  
12 and to all correction, modifications, enhancements, programs, and work product conceived,  
13 created or developed, alone or with the County or others, as a result of or related to the  
14 performance of this Agreement and the applicable Order or SOW documenting such work  
15 product, including all proprietary rights therein and based thereon. Except and to the extent  
16 expressly provided herein, the Contractor does not grant to the County any right or license,  
17 express or implied, in or to the System Software and System Documentation or any of the  
18 foregoing. Except as otherwise provided herein, the parties acknowledge and agree that, as  
19 between the Contractor and the County, full ownership of all rights in and to all County data,  
20 whether in magnetic or paper form, including without limitation printed output from the System,  
21 are the exclusive property of the County.

22       **9.3 Contractor Intellectual Property Rights.** The Contractor shall grant a non-  
23 exclusive, non-transferrable, and non-perpetual license, at no additional cost, to the County to  
24 use the Contractor Products and Services to the extent allowed in the relevant Order or SOW  
25 (Permitted Use). Subject to the written approval of Contractor, the County may reproduce,  
26 modify or create derivative works for its own use, public display, and use any and all of the  
27 Contractor's copyrights in the homepage layout wireframe, sitemap, draft homepage design  
28 concept(s) interior page layouts (collectively, the "Contractor Designs") embodied in the



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

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

3 11.3 **Public Records.** The County is not limited in any manner with respect to its public  
4 disclosure of this Agreement or any record or data that the Contractor may provide to the  
5 County. The County's public disclosure of this Agreement or any record or data that the  
6 Contractor may provide to the County may include but is not limited to the following:

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

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

14 (C) This Agreement, and any record or data that the Contractor may provide to the  
15 County, is subject to public disclosure under the Ralph M. Brown Act (California  
16 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section  
17 54950).

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

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

26 (F) Any marking of confidentiality or restricted access upon or otherwise made with  
27 respect to any record or data that the Contractor may provide to the County shall  
28

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



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.

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

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

11 (C) The provisions of this section satisfy the requirements of Civil Code section  
12 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code,  
13 Division 3, Part 2, Title 2.5, beginning with section 1633.1).

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

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

21 13.13 **Counterparts.** This Agreement may be signed in counterparts, each of which is an  
22 original, and all of which together constitute this Agreement.

23 13.14 **Construction.** The final form of this Agreement is the result of the parties’ combined  
24 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be  
25 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement  
26 against either party.

27 13.15 **Days.** Unless otherwise specified, “days” means calendar days.  
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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*

Dan Belanger – President CX Americas

DocuSigned by:

*Ashley Goodwin*

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

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

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

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

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

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

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

24           Products and Services is defined as the products and services made available to the  
25 County pursuant to the Agreement, which may include the Contractor Products and Services  
26 accessible for use by the County on a subscription basis ("Software-as-a-Service" or "SaaS"),  
27 the Contractor professional services, content from any professional services or other required  
28 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).

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## 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.

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## 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  
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## Exhibit A

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

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

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

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

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

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

## Exhibit A

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

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

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## 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 <i>(see table 1.1 for details)</i>	\$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
<b>Total</b>	<b>\$84,705.60</b>	<b>\$72,705.60</b>	<b>\$72,705.60</b>	<b>\$72,705.60</b>	<b>\$72,705.60</b>	<b>\$375,528.00</b>
Additional Units <i>(see Table 1.2 for details)</i>						\$37,552.80
<b>Grand Total</b>						<b>\$413,080.80</b>

a. SmartReach Subscriptions (MRC)

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

**Exhibit B**

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<b>Table 1.1</b>				
<b>Product Name</b>	<b>Monthly Quantity</b>	<b>Subscription Term</b>	<b>Unit Price</b>	<b>Monthly Minimum Fee</b>
<b>Email</b>	40,000 Emails	36 Months	\$0.0125	\$500.00
<b>Contact Manager</b>	500,000 Contacts	36 Months	No Fee	No Fee
<b>Total Monthly Recurring Charges:</b>				<b>\$6,000.00</b>

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.

<b>Table 1.2</b>	
<b>Product Name</b>	<b>Unit Price for Additional Units</b>
<b>Essential Bundle + Campaign Management</b>	\$0.0577
<b>SMS Minimum</b>	Per SMS
<b>SMS Standard Rate</b>	\$0.0350
<b>Email</b>	\$0.0125
<b>Contact Manager: 500,001 – 1,000,000 contacts</b>	\$1,000.00
<b>Contact Manager: 1,000,001 – 3,000,000 contacts</b>	\$1,500.00
<b>Contact Manager: 3,000,001 – 6,000,000 contacts</b>	\$3,000.00

## Exhibit B

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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

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

## 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

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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

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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,

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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-

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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

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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,

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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	<p style="text-align: center;"><b>Work Stoppage. Incidents that cause a direct financial, brand, or security impact on the business organization:</b></p> <ul style="list-style-type: none"> <li>○ Agents or stations cannot log in (ACD &amp; Workforce Optimization (WFO))</li> <li>○ Severe login latency</li> <li>○ Unable to launch MAX or ThinAgent</li> <li>○ Unable to change/manage agent stat in MAX or ThinAgent</li> <li>○ Calls not routing to agents</li> </ul>

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	<ul style="list-style-type: none"> <li>○ <b>Call refusals resulting in no calls being delivered to agents</b></li> <li>○ <b>Unable to execute an IVR script</b></li> <li>○ <b>Point of contact/toll free number cannot be reached</b></li> <li>○ <b>No routes found</b></li> <li>○ <b>Circuit down</b></li> <li>○ <b>Required real-time reporting unavailable</b></li> </ul>
<p><b>Severity 2 – High</b></p>	<p><b>Work Degraded. An impact to a business service that directly supports the execution of a core business service:</b></p> <ul style="list-style-type: none"> <li>○ <b>Historical reporting unavailable</b></li> <li>○ <b>User administration</b></li> <li>○ <b>Missing contact recordings</b></li> <li>○ <b>QM Enterprise (Engage) not recording (audio or screen)</b></li> <li>○ <b>QM Enterprise (Engage) playback isn't working</b></li> <li>○ <b>Workforce Management (WFM) adherence missing</b></li> <li>○ <b>Severe and sustained sound quality issues preventing two-way communication of voice contacts (one-way audio, dead air, choppy, static)</b></li> <li>○ <b>Dialer calling list not uploading</b></li> <li>○ <b>Call refusals resulting in eventual call delivery</b></li> </ul>
<p><b>Severity 3 – Medium</b></p>	<p><b>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:</b></p> <ul style="list-style-type: none"> <li>○ <b>Intermittent sound quality issues that do not prevent two-way communication of voice contacts (one-way audio, dead air, choppy, static)</b></li> <li>○ <b>Reporting doesn't match up</b></li> <li>○ <b>Stuck agents/contacts/dialer</b></li> </ul>

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	<ul style="list-style-type: none"> <li>○ <b>Delayed recordings</b></li> </ul>
<p><b>Severity 4</b> <b>– Low</b></p>	<p style="text-align: center;"><b>Incidents that cause very little impact on operations. May have valid workarounds:</b></p> <ul style="list-style-type: none"> <li>○ <b>Non-essential buttons missing</b></li> <li>○ <b>User interface or experience is difficult</b></li> </ul>

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.