



## STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 4

CONTRACT #: AR2492

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and Unisys Corporation (Referred to as CONTRACTOR).

### BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

The attached NICE inContact SaaS Contact Center Solution STANDARD TERMS OF USE is made a part of Attachment E

Effective Date of Amendment: The date of last signature on this amendment

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.  
IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

**CONTRACTOR**

**STATE OF UTAH**

Contractor's Signature

Date

Director

State of Utah Division of Purchasing

Date

Contractor's Name (Print)

Title (Print)

Christopher Hughes Jul 17, 2019  
Christopher Hughes (Jul 17, 2019)

7/16/19  
swann kingberry  
Vice President

| Purchasing Agent | Phone #      | e-mail                                                     | Contract # |
|------------------|--------------|------------------------------------------------------------|------------|
| Solomon Kingston | 801-538-3228 | <a href="mailto:skingston@utah.gov">skingston@utah.gov</a> | AR2492     |

**Unisys Scope to NASPO:**

Unisys was awarded the opportunity to provide IaaS, PaaS and SaaS services under the NASPO Cloud Solutions contract. It is our goal to provide meaningful and current services to our clients. Unisys, being a system integrator, partners with the latest service providers to meet today's demand that include lesser-known SaaS providers. NICE InContact is one of those innovative, up and coming SaaS providers offering their clients a consumption model for contact center services at a lower price than the major players on the market today. We see their solution as positioned very well for Public Sector clients that cannot afford or do meet the requirements to procure the offerings from larger providers.

**Service Description:**

The NICE inContact CXone platform provides cloud based call center functionality with Omnichannel Routing, Analytics, Workforce Optimization, Automation and Artificial Intelligence—all built on an Open Cloud Foundation.

- CXone Omnichannel Routing: Connect customer journeys across any channel by empowering agents to provide quick, personalized, and proactive service.
- CXone Analytics: Turn insights into results by making data relevant, easy to consume, and actionable to drive measurable improvements.
- CXone Workforce Optimization: Unlock the potential of your team by inspiring employee self-improvement and amplifying agent quality management efforts.
- CXone Automation & AI: Streamline service delivery by providing agent-assisted and fully automated actions that eliminate mundane tasks and speed resolution of customer issues.
- CXone Open Cloud Foundation: Power rapid innovation with an extensible enterprise-grade platform that scales securely, deploys quickly, and serves customers of all sizes globally.
- NICE inContact SaaS Contact Center Solution with CXone is quoted as a custom SaaS implementation. Please contact you Unisys Sales or Client Executive for pricing.

**Service Components:****Agent:**

- NICE inContact CXone ACD / IVR (per Configured User)
- NICE inContact CXone FedRAMP (per Configured User)
- NICE inContact CXone Additional Configured Universal Port
- NICE inContact CXone ACD Call Recording
- NICE inContact CXone Additional Active Storage
- NICE inContact CXone Long Term Storage
- NICE inContact CXone Long Term Storage Retrieval

**Support:**

- NICE inContact CXone Enterprise Monthly Success Package

**Implementation Services include:****Central:**

- NICE inContact CXone with Central
- NICE inContact CXone Enterprise Plus – Professional Services Implementation
- NICE inContact CXone Additional 25 Menu Options DTMF Navigation (4)
- NICE inContact CXone Additional 50 Point of Contact Based Routing (6)
- NICE inContact CXone ACD Training: Core plus Workforce Intelligence
- NICE inContact CXone CRM Driven ScreenPOP/Call Routing Implementation (2)
- NICE inContact CXone Scripting Training: Web Integrations
- NICE inContact CXone Enterprise Onboarding Package (6 days onsite with the Onboarding Manager during go-live)

# NICE inCONTACT STANDARD TERMS OF USE

These NICE inContact Standard Terms of Use (“**Terms**”) contain the terms and conditions upon which inContact, Inc. dba NICE inContact (“**NICE inContact**”) provides Services to any customer (“**Customer**”). The complete agreement (“**Agreement**”) between the Parties consists of these Terms and all Service Contracts between NICE inContact and Customer. In the event of any conflict between the Service Contract and the Terms, the Service Contract shall govern.

**1. Non-Exclusive and Limited License.** Subject to the terms and conditions of this Agreement and effective only during the Service Term, NICE inContact grants to Customer a revocable, non-exclusive, non-transferable, limited license to use the NICE inContact Software, Services, and Documentation solely for Customer’s internal business purposes. Nothing in this Agreement shall be construed to grant to Customer any right to reproduce, market, or distribute any of NICE inContact Software and Documentation. Customer shall not: (i) attempt to reverse engineer, decompile, disassemble or otherwise translate or modify NICE inContact Intellectual Property in any manner, (ii) market, sell, assign, grant access to, license, sub-license or otherwise transfer, transmit, or convey the Intellectual Property or Services, (iii) defeat, disable, or circumvent any protection mechanism related to the NICE inContact Software, (iv) allow any service provider or other third party, with the exception of NICE inContact’s authorized maintenance providers who are acting solely on behalf of and for the benefit of Customer, to use or execute any software commands that facilitate the maintenance or repair of any product, nor (v) permit or encourage any third party to do any of the foregoing. During the Service Term and after termination of the Services for any reason, Customer shall not use any of the NICE inContact Intellectual Property for any use or purpose, except as expressly permitted under the Agreement to operate the Services during the Service Term, and Customer shall not disclose any of the NICE inContact Intellectual Property to any other person or entity. All such use is subject to any restrictions identified in this Agreement with respect to the number of seats, concurrent users, and unique accounts, use in a designated location, use in a designated environment, and use on designated hardware or other designated equipment. NICE inContact may suspend or terminate any license granted to Customer if the Services are used for any illegal purpose or in any way contrary to any law or regulation, tampered with or modified without prior NICE inContact authorization, or if the Services are used other than for the intended use or purpose of that Service. Customer agrees to inform any third party to whom Customer gives access to the NICE inContact Software or Documentation of the terms and conditions of this Agreement and shall obligate such third party to comply with such terms and conditions. Customer shall be responsible for any third party’s failure to comply with this Agreement and shall indemnify NICE inContact for any damages, loss, expenses or costs, including attorneys’ fees and costs of suit, incurred by NICE inContact as a result of non-compliance with this section.

**2. Compliance with Laws.** Customer shall be responsible for complying with all applicable laws, statutes, rules, regulations, and ordinances of the country or territory in which Customer uses the NICE inContact Software or Services. If Customer receives any notice or becomes aware of any violation of any law, statute, rule, regulation, or ordinance by the NICE inContact Software or Services, or the use thereof, Customer shall promptly notify NICE inContact of such notice or violation. NICE inContact may amend all or any part of these Terms, Service Contract(s) and/or Services. Any such modifications and/or amendments to these Terms will not apply retroactively and shall become effective seven (7) days after publication, however, changes made for legal or regulatory reasons will be effective immediately upon publication. The modified and/or amended Terms will be published on NICE inContact’s website at [www.NICEinContact.com/Terms](http://www.NICEinContact.com/Terms). Customer should review these Terms regularly. Customer’s continued use and/or receipt of the Services following any such modification and/or amendment shall be deemed acknowledgment thereof and consent thereto.

**3. Confidential Information.** Recipient agrees to hold the Confidential Information in the strictest confidence and use confidential information only for the Purpose, and to refrain from disclosing such information to third parties (except to its legal, financial and insurance counsel and auditors), directly or indirectly, except with the prior written consent of the Discloser or as may be required by legal, accounting or regulatory requirements beyond the reasonable control of the Parties. Upon the earlier of request or the termination or expiration of the Agreement for any reason, each Recipient will promptly deliver to the Discloser or destroy (at the Discloser’s option) the Discloser’s Confidential Information and any copies, notes, extracts or summaries thereof. This provision supersedes and replaces any previously executed confidentiality or non-disclosure agreements that may have been executed between the Parties, and shall survive any termination or expiration of the Agreement. Discloser may elect at any time, via notice to the Recipient, to terminate further access by the Recipient to, and Recipient’s review of, the Confidential Information. Recipient agrees to promptly destroy all Confidential Information in such case. No such termination or destruction of the Confidential Information will affect either Party’s obligations under the Agreement, which obligations will continue in effect. NICE inContact will not sell, rent, or lease Customers’ Confidential Information to any third party without Customer’s prior, written consent.

**4. Proprietary Rights.**

**4.1 Intellectual Property Rights.** Customer agrees that all rights title and interest in and to all intellectual property rights in the Services are owned exclusively by NICE inContact or its licensors. In addition, NICE inContact shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including employees and/ or independent Agent of Customer, relating to the operation of the Service. Any rights not expressly granted herein are reserved by NICE inContact. Customer agrees not to display or use the NICE inContact Marks in any manner without NICE inContact's express prior written permission. Customer is not permitted to use these Third Party Marks without the prior written consent of such third party which may own the Third Party Marks.

**4.2 Metadata.** By executing any Service Contract, Customer consents and agrees to the collection and use of Metadata to provide and invoice use of the Services to Customer. Metadata is the sole property of NICE inContact and does not include Customer's Confidential Information. Customer acknowledges and consents that NICE inContact may share Metadata with its Associated Companies for purposes of providing the Services, or upon the request of a government agency, law enforcement agency, court or as otherwise required by law.

**4.3** Customer will indemnify NICE inContact and its Representatives against any and all damages, claims, costs, or liabilities of any kind whatsoever arising directly or indirectly from or relating to (i) Customer's use of the Services outside the scope of the Agreement, or (ii) any acts or omissions of Customer or its affiliates or Representatives in breach of Sections 1 (Non-Exclusive and Limited License), 2 (Compliance with Laws), 3 (Confidential Information), or 7 (Export Restrictions) of this Agreement.

## **5. Limitation of Liability.**

**5.1 CONSEQUENTIAL DAMAGES:** EXCEPT FOR CUSTOMER BREACH OF SECTION 1 (NON-EXCLUSIVE AND LIMITED LICENSE) AND/OR CUSTOMER OBLIGATIONS UNDER SECTION 4 (PROPRIETARY RIGHTS) OF THIS AGREEMENT, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, NEITHER PARTY NOR ITS AFFILIATES SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL DAMAGES OF ANY NATURE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE OR WHETHER SUCH DAMAGES ARE REASONABLY FORESEEABLE. CUSTOMER ACKNOWLEDGES AND AGREES THAT NICE INCONTACT DOES NOT, AND CANNOT, CONTROL THE FLOW OF INFORMATION OF INFORMATION OVER THE INTERNET, AND AS SUCH, IN NO EVENT SHALL NICE INCONTACT BE LIABLE FOR ANY DAMAGES, LIABILITIES, COSTS, OR EXPENSES ARISING FROM OR RELATED TO THE ACTS, OMISSIONS, OR DELAYS OF ITS ASSOCIATED COMPANIES; PROVIDED, HOWEVER, THAT NICE INCONTACT SHALL MAKE REASONABLE EFFORTS TO OBTAIN PERFORMANCE BY SUCH ASSOCIATED COMPANIES ON A TIMELY BASIS.

**5.2 LIMITATION OF LIABILITY:** EXCEPT FOR CUSTOMER BREACH OF SECTION 1 (NON-EXCLUSIVE AND LIMITED LICENSE) AND/OR CUSTOMER OBLIGATIONS UNDER SECTION 4 (PROPRIETARY RIGHTS) OF THIS AGREEMENT, EACH PARTY'S MAXIMUM LIABILITY TO THE OTHER RELATING TO THIS AGREEMENT AND EACH PARTY'S PERFORMANCE OR NONPERFORMANCE HEREUNDER SHALL BE LIMITED IN THE AGGREGATE TO THE FEES RECEIVED BY NICE INCONTACT PURSUANT TO THIS AGREEMENT DURING THE PREVIOUS TWELVE (12) MONTH PERIOD. ANY ACTION BY EITHER PARTY MUST BE BROUGHT WITHIN TWO (2) YEARS AFTER THE CAUSE OF ACTION AROSE.

**5.3 Force Majeure:** Neither Party shall be liable for any failure to perform its obligations under this Agreement except for the payment of monies owed because of circumstances beyond the reasonable control of such Party, which such circumstances may include, without limitation: natural disaster, terrorism, riot, sabotage, war, global or regional internet outages, power failures, any acts or omissions of any government or governmental authority, declarations of government, or transportation delays.

**5.4** Remedies specified in this Agreement are exclusive and limited to those expressly described herein.

**6. DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE SERVICES OR ANY PART THEREOF, RELATED PRODUCTS, EQUIPMENT, SOFTWARE OR DOCUMENTATION. NICE INCONTACT SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS.

**7. Export Restrictions.** Software may be subject to export laws and regulations. None of the NICE inContact Software, Documentation, or underlying information or technology may be downloaded or otherwise exported or re-exported into a country embargoed by any export law or regulation; to anyone or in any country in violation of export laws and regulations; or to any country who is considered as a supporter of international terrorism. Customer shall indemnify, defend, and hold NICE inContact harmless of and from any and all damages incurred by NICE inContact as a result of the Customer's failure to obtain the necessary licenses to export, re-export, or import NICE inContact Software or Documentation, or for any other breach of these Terms.

**8. Theft of Services; Notice to NICE inContact.** Customer is solely responsible to monitor Customer's use of Services for possible unlawful or fraudulent usage, and shall notify NICE inContact immediately if it becomes aware or has reason to believe that Services are being stolen or fraudulently used. Customer acknowledges and agrees that its failure to notify NICE inContact may result in the termination or suspension of Services and additional charges to Customer.

**9. Miscellaneous Provisions.**

**9.1 Publicity.** Customer hereby consents to NICE inContact's inclusion of Customer's name and logo in a customer listing as part of NICE inContact's website and marketing materials. Subject to Customer's consent (which will not be unreasonably withheld), NICE inContact may issue a press release after the Go-Live Date, announcing that Customer is using NICE inContact's Services, and containing a quote from a senior executive at Customer. NICE inContact will provide a draft of and obtain Customer's prior written approval (which will not be unreasonably withheld) of the content of any press releases announcing that Customer is using NICE inContact's Services.

**9.2 Assignment.** Customer may not assign its account, right to Services, or any of its rights hereunder without the prior written consent of NICE inContact, which consent shall not be unreasonably withheld.

**9.3 Credit Information.** Initial delivery of the Services is subject to credit approval by NICE inContact through review of third party credit reporting services.

**9.4 Customer Information Errors.** Customer has notified NICE inContact of a valid physical location where the Services will be utilized ("Service Location"). Customer is responsible for all costs and expenses resulting from an invalid or inaccurate physical location. Additional implementation fees may be incurred by Customer for Customer's requested changes in implementation scope, inaccurate information resulting in reasonably required changes in implementation scope, or costs associated with installing, modifying or reprogramming Customer's equipment or interconnection circuit(s) to render them compatible with the Services, such as extending demarcation points or extending wiring inside Customer's premises.

**9.5 Notices.** All notices, requests, or other communications between the Parties shall be in writing and shall be deemed to have been delivered when sent by registered or certified mail, return receipt requested, or by reputable courier as evidenced by a delivery receipt, electronic mail, or by facsimile with confirmation of transmission, to each Party's respective address as set forth in the Agreement.

**9.6 Severability.** If any provision of the Agreement is held to be invalid or unenforceable, the remainder of the Agreement, as applicable, will remain in full force and effect, and such provision will be deemed to be amended to the minimum extent necessary to render the remainder enforceable.

**9.7 Governing Law.** This Agreement shall be governed by the laws of the State of Utah, excluding conflicts of law provisions. Jurisdiction for any dispute arising hereunder shall be valid exclusively in federal and state courts seated in Salt Lake County, Utah.

**9.8 Integration.** This Agreement constitutes the entire understanding between both Parties, and revokes and supersedes all prior agreements, oral or written, between the Parties, and is intended as a final expression of their agreement. Other than as provided in Section 2, Compliance with Laws, this Agreement may not be modified or amended except by written agreement of the Parties.

**9.9 Non-Solicitation.** During the term of this Agreement and for twelve (12) months after any termination of this Agreement, neither Party will, without the prior written consent of the other, either directly or indirectly, solicit or attempt to solicit, divert, or hire away any person employed by the other Party. Notwithstanding the foregoing, nothing shall prevent either Party from hiring employees of the other Party who respond to a general public solicitation of employment for that Party.

**9.10 Additional Provisions.** The Parties agree that a digitized copy of the executed Agreement shall be the same as an original copy. The Agreement may be entered into either by use of any NICE inContact Software, or by being executed in one or more counterparts, with each counterpart deemed an original and together constituting one and the same instrument. In addition to any provisions that by their nature would survive, Sections 3 (Confidential Information), 4 (Proprietary Rights), 5 (Limitation of Liability), and 6 (Disclaimer of Warranties) shall survive termination, cancellation or expiration of one or more Service Contract(s). References herein to "include," "includes," or "including," shall mean "including without limitation," and referenced to "and" or "or" shall mean "and/or." In any legal action or arbitration or other proceeding arising out of or related to or for the enforcement of

the Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled from the non-prevailing Party. Nothing contained herein shall be deemed to create any third party beneficiary rights in any party. Service Contracts entered into by Customer prior to May 01, 2016, shall be subject to additional terms of use found online at [www.NICEinContact.com/Terms/Term](http://www.NICEinContact.com/Terms/Term), [www.NICEinContact.com/Terms/Payment](http://www.NICEinContact.com/Terms/Payment), and [www.NICEinContact.com/Terms/911](http://www.NICEinContact.com/Terms/911), which are incorporated by reference.

## 10. Definitions.

- 10.1 "**Associated Companies**" means any underlying carrier, cloud services provider, or other infrastructure provider of NICE inContact.
- 10.2 "**Cause**" means any material breach of the terms of the Agreement, including without limitation, Customer's failure to pay any invoice by the Past Due Date.
- 10.3 "**Confidential Information**" means any data or information in any form which is disclosed to either Party ("**Recipient**") by or on behalf of the other Party ("**Discloser**") and that either (i) relates to Discloser's proprietary products and service offerings, information technology, internal operations, business plans, forecasts, customer information, marketing information, trade secrets and/or financial performance, or (ii) is identified as proprietary or confidential in writing at the time of disclosure (or is so identified at the time of oral disclosure and subsequently confirmed in writing), and includes any copies of the disclosed information or any work product created by Recipient to the extent the work product contains or is based on the disclosed information or data. The terms of this Agreement will also be deemed to be Confidential Information of NICE inContact.
- 10.4 "**Documentation**" means materials concerning the NICE inContact Software which NICE inContact distributes generally to end users licensed to use the NICE inContact Software, including without limitation, manuals, descriptions, user and/or installation instructions, diagrams, printouts, listings, flowcharts and training materials, together with any modifications and updates of such materials provided by NICE inContact to Customer. "**Documentation**" does not include software code.
- 10.5 "**Domestic**" means traffic originating and terminating within the forty-eight contiguous United States and Washington, D.C.
- 10.6 "**Go-Live Date**" means the date that NICE inContact first provides Services for use to Customer.
- 10.7 "**Metadata**" means information resulting from use of the Services that may include agent name, phone, text, email, skills and work performance metrics, information related to Customer's registered devices or computers, technical, aggregate statistics and traffic patterns, all of which may be used by NICE inContact to invoice, support, improve, and enhance its Services. "**Metadata**" shall also include automatic number identification ("**ANI**"), caller identification, point of contact information, contact types such as chat, text, email or other work items.
- 10.8 "**Minimum Technology MRC**" means the minimum monthly amount Customer is required to pay for Services for the duration of the Service Term. The Minimum Technology MRC does not include telephony or other usage charges.
- 10.9 "**MRC**" means monthly recurring charges.
- 10.10 "**Network Connectivity**" means those services that either: (i) enable or facilitate phone calls, SMS/text messages, or data transmission; (ii) provide a connection to the internet; or (iii) colocation services. "**Network Connectivity**" may include fixed, defined, and in some cases, dedicated communications routes for voice and/or data transmission between NICE inContact Software and a customer's data center, office or individual stations or phones.
- 10.11 "**NICE inContact Intellectual Property**" means all ideas, designs, concepts, object and source code, know-how and functionalities related to the NICE inContact products and Services, including but not limited to NICE inContact Software, Documentation, solutions overview, business requirements documents, statements of work, functional requirements guides, and implementation workbooks.
- 10.12 "**NICE inContact Marks**" means NICE inContact trademarks, service marks, copyrights, patents, trade dress, logos, and product and service names.
- 10.13 "**NICE inContact Software**" means the NICE inContact software applications, including any periodic maintenance updates and revisions, used by Customer as part of the Services provided by NICE inContact pursuant to the Agreement, including, without limitation, agent, supervisor and reporting applications, web service applications, interactive voice response ("**IVR**") and script development tools, database connectors and such future software applications as may be necessary for the effective use of NICE inContact Services. From time to time third party software and services may be included and identified as software applications used by Customer as part of the Services and therefore the NICE inContact Software. "**NRC**" means non-recurring charges.
- 10.14 "**Order Form**" means a document for ordering Services, which if accepted by NICE inContact in its sole discretion, forms a binding part of the Agreement, regardless of whether such document makes reference to these Terms. "**Order Form(s)**" may include, but not be limited to, addenda, purchase orders, and e-mails.

**10.15 “Party” or “Parties”** means NICE inContact and Customer, as the case may be.

**10.16 “Past Due Date”** means thirty (30) days from the invoice date on the Customer’s invoice.

**10.17 “Person”** means any natural person or legal entity, regardless of form.

**10.18 “Representatives”** means, with respect to any Person, the officers, directors, employees, users, agents, successors and assigns of such Person.

**10.19 “Service Contract”** includes any single, multiple, or a combination of any NICE inContact written agreement(s) such as Service Contract(s), dedicated services order(s), addenda, Order Form(s), and master service agreement(s).

**10.20 “Service(s)”** means products and related services listed on any Service Contract, with the exception of hardware. These items may include telecom carrier services, long distance, inbound voice, chat, text, email, automatic call distribution (“ACD”), IVR, inStudio, workforce and quality management, outbound dialer, and customer survey and reporting.

**10.21 “Service Term”** means the time period specified in the Service Contract. “Service Term” also means each renewal period subsequent to the initial Service Term.

**10.22 “Third Party Marks”** means trademarks, service marks, copyrights, patents, trade dress, logos, and product and service names of any third party provider.