

**CX Index**

**End User Agreement**

**CX INDEX™**

## **End User Agreement**

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## **Access and Use Rights**

This End User Agreement (“EUA”) is a legal agreement between CX Index and the Client. CX Index hereby grants to Client a nonexclusive, nontransferable, worldwide, revocable, right to access and use CX Index during the subscription period and solely for Client’s internal business use and within Client’s own business unit for the quantities for which Client has paid the applicable subscription fee. Client has no right to receive a copy of the object or source code version of CX Index. Client agrees that CX Index shall have the right to use anonymized user data (i.e., data that is not identifiable to any specific individual) for its own business and reporting purposes. Such right shall survive any termination of this EUA. CX Index may track Client’s usage of the product usage for purposes including but not limited to, information security, preventing unauthorised use of the product, accurate billing and ensuring application stability and scalability. The access and use of CX Index is subject to payment of the subscription fee and the fulfilment of all requirements stipulated in this EUA. Client acknowledges and agrees that CX Index may leverage third-party software, including but not limited to open-source software or freeware.

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Client shall not remove or obscure any copyright notices or proprietary legends contained within CX Index or Documentation (defined below).

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This EUA grants the Client a limited right to use CX Index only for the subscribed period. The applicable subscription fee includes standard Support for the licensed CX Index. Standard Support consists of installing generally available upgrades (major and minor, as provided to all Clients from time to time), as described in the Documentation (defined below).

## **Subscription Fees**

Client shall pay the subscription fee for CX Index in the amounts, currency, and under the payment terms stipulated on the applicable purchasing vehicle, including but not limited to order, quote, proposal, or any portal or marketplace where CX Index is legally being offered for subscription.

## **Term and Termination**

If Client fails to comply with any term(s) of this EUA, Client's rights under this EUA will terminate automatically without notice from CX Index. Upon termination and regardless of cause, (i) Client shall destroy all copies of CX Index and Documentation (defined below) in Client's possession (as applicable); and (ii) no refund or credit of any fees will be issued by CX Index to Client.

## **Limited Warranty**

CX Index warrants that CX Index will substantially conform in all material respects to the documentation located at the Documentation Address ("Documentation") during the subscribed period. Suppose CX Index fails to fulfil or do not comply with the warranty outlined in this section. In that case, the Client must inform CX Index in writing and provide information and materials to allow CX Index to reproduce the noncompliance. Client's exclusive remedy under the provision will be to have CX Index at Feedback Analytics Limited (DBA CX Index)'s expense and sole option to either: (a) repair the non-conforming portion of CX Index; (b) modify or repair the non-conforming portion of CX Index with other service offering comparable functionality; or (c) if CX Index is unable to correct the warranty issues after a commercially reasonable period of time, Client may terminate CX Index and CX Index will refund any prepaid, unused fees covering the remainder of the subscribed period. If refunded, Client's access to CX Index will be terminated. This warranty does not apply to problems caused by (i) abuse, misuse, alteration, neglect, accident, unauthorised repair or installation or acts or omissions by any party other than Feedback Analytics Limited (DBA CX Index); (ii) Client's hardware, software, networks, or systems; (iii) Client's failure to promptly install or allow an installation of a revision, update or release provided by Feedback Analytics Limited (DBA CX Index); (iv) use of CX Index not in accordance with the Documentation.

THIS SECTION SETS OUT CX INDEX'S ENTIRE OBLIGATION AND LIABILITY AND CLIENT'S SOLE REMEDY FOR ANY BREACH OF THE WARRANTY SET FORTH IN THIS SECTION.

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## **Limitation of Liability**

NEITHER PARTY NOR ITS AFFILIATES, OFFICERS, EMPLOYEES, AND AGENTS, OWNERS AND SUPPLIERS, SHALL HAVE ANY LIABILITY TO THE OTHER PARTY WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR PUNITIVE LOSS, DAMAGE, OR EXPENSES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, DATA, REVENUE, PROFITS, OR USE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF THEY ARE FORESEEABLE.

TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, EXCEPT FOR ANY LIABILITIES THAT CANNOT BE LIMITED BY LAW, IN NO EVENT SHALL THE CUMULATIVE AMOUNT OF FEEDBACK ANALYTICS LIMITED (DBA CX INDEX)'S LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY IN TORT OR BY STATUTE OR OTHERWISE) TO CLIENT ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE CX INDEX , THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER , AND RELATED CONTENT THROUGH CX INDEX OR OTHERWISE ARISING OUT OF THE USE OF CX INDEX , OR

OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT, AND EVEN IF CX INDEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR ANY AND ALL CLAIMS SHALL NOT IN THE AGGREGATE EXCEED THE FEES PAID BY CLIENT TO CX INDEX PURSUANT TO THE TERMS OF THIS EUA DURING THE PREVIOUS 12 MONTHS, WITH RESPECT TO CX INDEX .

### **Indemnity by Client**

Client will defend CX Index and its affiliates from and against any and all third-party claims, actions, suits, proceedings arising from or related to Client's or any authorised user's violation of this EUA (a "Claims Against Feedback Analytics Limited (DBA CX INDEX)"), and will indemnify CX Index and its affiliates for all reasonable attorney's fees incurred and damages and other costs finally awarded against CX Index or its affiliates in connection with or as a result of, and for amounts paid by CX Index or its affiliates under a settlement or final judgement that Client approves of in connection with a Claim Against CX Index CX Index must provide Client with prompt written notice of any Claims Against CX Index and allow Client the right to assume the exclusive defence and control of the claim and cooperate with any reasonable requests assisting Client's defence and settlement of such matter.

### **Indemnity by CX INDEX**

CX Index will defend Client from and against any and all third-party claims, actions, suits, proceedings arising from or related to any claims that CX Index violate a United States patent or copyright of a third party (a "Claims Against Client"), and will indemnify Client for all reasonable attorney's fees incurred and damages and other costs finally awarded against Client in connection with or as a result of, and for amounts paid by Client under a settlement or final judgement that CX Index approves of in connection with a Claim Against Client. Client must provide CX Index with prompt written notice of any Claims Against Client and allow CX Index the right to assume the exclusive defence and control of the claim and cooperate with any reasonable requests assisting CX Index's defence and settlement of such matter.

### **Controlling Law and Severability**

This EUA shall be governed by the laws of the Republic Of Ireland, excluding conflict of law provisions. If, for any reason, a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this EUA shall continue in full force and effect. This EUA shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods. Any dispute resolution proceedings, whether in arbitration or court, will be conducted only on an individual basis and not in a class or representative action or as a named or unnamed member in a class, consolidated, representative or private attorney general legal action, unless both CX Index and Client specifically agrees to do so in writing following the initiation of the arbitration. If Client is an agency or other part of a government entity, different terms or modifications to this EUA may apply.

### **Complete Agreement**

This EUA constitutes the entire agreement between the parties concerning the access and use of CX Index and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this EUA will be binding unless in writing and signed by CX Index. No dealer, agent, affiliate or employee of CX Index is authorised to amend this EUA.

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