



Data Services Agreement

This agreement is made by and between _____ hereinafter called "Client" and Intelligent Contacts, Inc, hereinafter called "IC, the parties agree as follows:

1. Definitions

- a. "IC Equipment" means IC's computer hardware, not including stored data, and other tangible equipment.
- b. "IC Offering" means any software or content produced by or for IC that incorporates the Services in whole or in part.
- c. "IC Technology" means IC's proprietary technology, including IC's Internet operations design, Content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), trade secrets and any related intellectual property rights throughout the world (whether owned by IC or licensed to IC from a third party) and also including any derivatives, improvements, enhancements or extensions of IC Technology conceived, reduced to practice, or developed, during the term of this agreement solely by IC.
- d. "IC Website" means the IC website located at www.IntelligentContacts.com, www.PaymentNexus.com, IC Back Office web application, and any successor website or any affiliated website that utilizes the Services in any way whatsoever.
- e. "Content" means all activities, pictures, digital images, graphics, music, video, audio, code, text and other creative output of IC or IC made available to Users through the Service.
- f. "Content Distribution Center" is any facility operated by IC or by a third party providing services to IC where IC proxy servers are hosted for the purpose of receiving and processing IC data, or where IC data may be cached for purpose of faster or more reliable availability to Users.
- g. "IP Rights" collectively means all patents, trademarks, trade names, copyrights, trade secrets, know-how, data rights, including all applications therefor, and all proprietary rights under the laws of the United States, any other jurisdiction or any treaty.
- h. "IC Technology" means IC's proprietary technology, including the Services, hosted communications systems, APIs, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, trade secret, know-how and any related IP Rights throughout the world (whether owned by IC or licensed to IC from a third party) and also including any derivatives, improvements, translations, enhancements or extensions of IC Technology conceived, reduced to practice, or developed during the Term by IC.
- i. "Services" means IC's provision of an endpoint to its User Interface of the IC Back Office web application more fully described at <https://www.IntelligentContacts.com>
- j. "User" means any person or entity that uses the IC Offering.

2. License

Commencing on the effective date of this agreement and during the term of this Agreement, IC hereby grants to IC the limited, nonexclusive and nontransferable license to receive the Services as described above and use the content and engagement data on the IC Website or in the IC Offering as applicable. Neither the license, nor information received from the IC website may be resold or distributed to third parties. Client agrees to use the license and information provided under the license in compliance with all federal, state, and local regulations.

3. Term

- a. The term of this Agreement will commence on the Effective Date and with an initial term of twelve (12) months. The Agreement will automatically renew for a further twelve (12) months unless earlier terminated by one of the parties in accordance with the termination provisions below.
- b. Either party may terminate this agreement with a 30 day notice to the other.
- c. This Agreement may be terminated immediately as provided in Sections 7 (Force Majeure) and 9 (Breach).

4. Payment terms

- a. Client shall complete the client profile on the IC website and maintain a credit card, debit card, or bank account in the IC Website for service payments.
- b. Payment for any services with a recurring monthly fee as identified in Appendix A will be due and payable on the first of each month and shall be automatically charged to the method of payment identified.
- c. Payment for any services where fees are earned “per hit”, “per record”, or “per search” shall be automatically charged to the method of payment identified in Appendix A or active payment method in the IC Website at the time the completed file is delivered to the IC website for Client download.
- d. Bills/invoices shall be delivered via e-mail to the address listed as the billing contact in the IC Website.
- e. Client agrees to maintain account in good standing and keep payment method updated within the IC website. In the event of payment method failure, services will be temporarily suspended until the account is current. In the event of non-payment for a period of more than ten (10) calendar days (after written notice and with the right to cure), such non-payment will constitute a breach as described in Section 12 and IC will have the right to terminate this Agreement immediately.

5. Rights Reserved.

IC warrants that it has all right, title and ownership, including all Intellectual Property rights, in and to the technology and data necessary to grant the license herein, and that the technology and data do not infringe the Intellectual Property rights of a third party. Nothing stated herein shall be deemed to grant, transfer, assign or set over unto Client any right, title, interest or ownership of the IC technology or data, all of which is hereby expressly reserved by IC. Client agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code, trade secrets or know-how in or underlying any software or technology of IC.

6. IP Infringement.

Notwithstanding anything to the contrary in this Agreement, the Parties shall indemnify and hold each other harmless from and against any and all claims, actions, liabilities and damages, including costs and attorney fees, arising out of or in connection with an assertion that the IC technology or data infringes any intellectual property right of a third party.

7. Force Majeure.

In the event of any delay in performance by either party due to any cause arising from or attributable to acts, events, non-happenings, omissions, accidents or acts of God beyond the reasonable control of such party, the party affected thereby shall be under no liability for loss or injury suffered by the other party as a result thereof and the performance of such obligation by the party affected thereby shall be suspended during such delay and upon cessation of the cause of such delay, this Agreement shall again become fully operative and such affected party shall immediately rectify such delay in performance, provided that, if such delay pertains to a material obligation of the party affected by such event of *force majeure* and such delay shall exceed 6 (six) months, either party shall be entitled to terminate this Agreement by written notice to the other.

8. Confidentiality

- a. Each party agrees that the contents of this Agreement are confidential and shall not be disclosed to any third party without the prior written permission of the other party.
- b. IC agrees that Client will upload confidential account data including personally identifiable information to the IC website. IC will use reasonable care to protect Client’s Confidential Information from unauthorized dissemination and utilize the information exclusively in conjunction with providing the requested services.
- c. Each party agrees that all business, technical, financial and other information that it obtains from the other is the confidential property of the disclosing party (“Confidential Information” of the disclosing party). Except as expressly and unambiguously allowed herein, the receiving party will hold in confidence and

not use or disclose any Confidential Information of the disclosing party and shall similarly bind its employees in writing.

- d. Upon termination of this Agreement or upon request of the disclosing party, the receiving party will return to the disclosing party or destroy (and certify such destruction) all Confidential Information of such disclosing party, all documents and media containing such Confidential Information and any and all copies or extracts thereof.
- e. The receiving party shall not be obligated under this Section with respect to information the receiving party can document: (i) is or has become readily publicly available without restriction through no fault of the receiving party or its employees or agents; or (ii) is received without restriction from a third party lawfully in possession of such information and lawfully empowered to disclose such information; or (iii) was rightfully in the possession of the receiving party without restriction prior to its disclosure by the other party; or (iv) was independently developed by employees or consultants of the receiving party without IC to such Confidential Information; or (v) is required to be disclosed by law or order of court of competent jurisdiction.

9. Breach.

Should any party ("the defaulting party") commit a material breach of any of the provisions of this Agreement, then the other party ("the aggrieved party") shall give the defaulting party ten (10) days written notice or such longer period as may reasonably be required in the circumstances, to remedy the breach. If the defaulting party fails to remedy the material breach within such period, the aggrieved party shall be entitled to terminate this agreement against the defaulting party. The foregoing is without prejudice to such other rights as the aggrieved party may have at law or in equity. Should the Agreement be terminated due to a material breach by IC, then Client, representing the aggrieved party, shall be entitled to a prorated refund of any license fees prepaid during that current year of the Agreement. If the Agreement is terminated due to a material breach by Client, then any license fees already paid to IC will be forfeited by Client.

10. General.

- a. This Agreement together with its Appendices and other attachments (if any) is the entire agreement between the parties regarding the subject matter hereof. It supersedes all prior oral or written communications, representations, undertaking and agreements of the parties relating thereto and prevails over any conflicting or additional terms of any quote, order, acknowledgement, purchase order or similar communication between the parties.
- b. The terms of this Agreement, including pricing schedule and service offerings, may be modified or amended by posting an updated listing on the IC website. Electronic acknowledgement of updated listing shall constitute acceptance of the updated terms, services, and pricing.
- c. Neither party shall be entitled to assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement to any affiliate, parent, or subsidiary company, or any entity that acquires all or substantially all of the assets or is otherwise a successor interest, provided that the other party is not prejudiced thereby.
- d. This Agreement does not constitute a partnership or agency between the parties and each party shall not assume or create any obligation or liability on behalf of the other party to this Agreement in any manner whatsoever.
- e. No waiver will be deemed effective unless set forth in writing and signed by the party charged with such waiver, and no waiver of any right arising from any breach will be deemed to be a waiver or authorization of any other breach or of any other right arising under this Agreement.
- f. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions hereof shall be unaffected thereby and remain valid and enforceable as if such provision had not been set forth herein. The parties agree to substitute for such provision a valid provision that most closely approximates the intent of such severed provision.
- g. Each party warrants to the other party that it has power, authority and legal right to sign and perform this Agreement and that this Agreement has been duly authorized by all necessary actions and constitutes valid and binding obligations on it in accordance with the terms of this Agreement.

- h. This Agreement shall be construed and governed by the laws of the State of Texas.
- i. All attachments and appendices to this Agreement are hereby incorporated into and made a part of this Agreement.
- j. Sections 5, 8, and 10 shall survive expiration or termination of this Agreement for any reason.

WHEREFORE, the parties hereby execute and deliver this Agreement effective on the date first appearing below.

Client: _____

Intelligent Contacts, Inc.

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____