



INTRADIEM TERMS OF SERVICE

JUNE 15, 2022

1. Grant of Rights and Services.

1.1 Intradiem will provide the following Services in accordance with this Agreement:

- **Hosted Service** is the delivery of the Intradiem "Contact Center Operations" solution in a "Software as a Service" model as further defined within an individual Order.
- Intradiem hereby grants to Customer a nonexclusive, non-transferable, limited, revocable, worldwide license and right to (i) access and use the Hosted Service during the term specified on the applicable Order (the "**Service Term**") solely for Customer's internal business operations, as further described on the applicable Order; and (ii) install and run the Intradiem Programs on the Remote Integration Server to facilitate Customer's access to and use of the Hosted Service.

1.2 Intradiem may, from time to time during the applicable Term, modify, update or enhance the Hosted Service and Documentation. Such modifications, updates and enhancements will be designed to reflect changes in technology, industry practices, patterns of system use, provided, however, changes to the Hosted Services will not result in a material reduction in the functionality, level of performance or availability of the applicable Hosted Service during the applicable Term. Customer must accept all patches, bug fixes, updates, maintenance and service packs (collectively, "**Patches**") necessary for the proper function and security of the Hosted Service. Except for emergency or security related maintenance activities, Intradiem will coordinate with Customer to schedule the application of Patches, where possible, based on Intradiem's next available standard maintenance window.

1.3 Customer shall only use the Hosted Services and related services for its own internal purposes. All its Users must be employees of Customer or agents working only on behalf of Customer and only for its benefit. Customer agrees to take full responsibility for the acts and omissions of anyone that has access to the Hosted Service that is not an employee of Customer. In no event and under no circumstances will Customer allow or facilitate access to the Hosted Service to a competitor of Intradiem via this Agreement and will immediately take steps to stop such prohibited access and report the incident to Intradiem if such prohibited access occurs. Customer is responsible for (i) identifying and authenticating all Authorized Users, (ii) approving access by such Authorized Users to the Hosted Service, (iii) controlling against access by unauthorized individuals, and (iv) maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating Customer's Authorized User usernames, passwords and accounts with Intradiem, Customer accepts responsibility for the timely and proper termination of user records in Customer's local (intranet) identity infrastructure or on Customer's local computers. Intradiem is not responsible for any harm caused by Authorized Users or unauthorized users accessing the Hosted Service via the acts or omissions of Customer or its Authorized Users

1.4 Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Customer Data and Customer Applications.

1.5 Intradiem may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use such information in an aggregated and anonymized form for product support and development purposes. The information described in clauses (i) and (ii) are, collectively, the "**Service Analyses**." Intradiem may make the Service Analyses publicly available so long as no Customer Data or Confidential Information is made publicly available. Intradiem retains all intellectual property rights in and to the Service Analyses.

2 Warranties.

2.1 **Intradiem Hosted Service Limited Warranty.** Intradiem warrants that, during the applicable Term, the Hosted Service will substantially conform to the then current documentation. This limited warranty only covers problems identified in a written notice delivered to Intradiem during the Term. Customer's sole and exclusive remedy, and Intradiem's entire liability for breach of this limited warranty, shall be correction of the warranted nonconformity in the Hosted Service or, if such correction of the warranted nonconformity is commercially impractical, Intradiem may, at Intradiem's option, terminate access to the non-conforming Hosted Service

2.2 This limited warranty shall not be valid to the extent the warranty nonconformity was caused by Customer's abuse, misuse, accident, alteration, or unauthorized modification of the Hosted Service.

2.3 Intradiem Services Limited Warranty. Intradiem warrants that any Services will be performed in a workmanlike and professional manner consistent with generally accepted industry practices. For any breach of this services warranty, Customer's exclusive remedy, and Intradiem's entire liability, shall be the re-performance of such deficient Services; and if Intradiem fails to re-perform such Services as warranted, Customer shall be entitled to recover the Services Fees paid to Intradiem for such deficient Services. Customer must identify in a written notice to Intradiem any deficiencies in such Services within ninety (90) days of completion of such deficient Services in order to receive the above warranty remedies.

2.4 Customer Warranty. Customer warrants that (i) Customer is authorized, and has the right and license, to provide the Customer Applications and Customer Data; (ii) in connection with Intradiem's provision of Services under this Agreement, Intradiem is authorized to access and use such Customer Data and Customer Applications to the extent necessary to provide the Services.

2.5 Disclaimer. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, THE FOREGOING WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. INTRADIEM DOES NOT WARRANT THAT (I) THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT INTRADIEM WILL CORRECT ALL ERRORS, (II) THE SERVICES WILL OPERATE IN COMBINATION WITH CUSTOMER DATA OR CUSTOMER APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED OR APPROVED BY INTRADIEM, OR (III) THE SERVICES WILL MEET CUSTOMER REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. CUSTOMER ACKNOWLEDGES THAT INTRADIEM DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. INTRADIEM IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. INTRADIEM IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER DATA, CUSTOMER APPLICATIONS, OR THIRD-PARTY CONTENT.

3 Intellectual Property

3.1 Intradiem's Intellectual Property and Ownership Rights. As between Customer and Intradiem, Intradiem and its licensors own all right, title, and interest in and to the Intradiem Programs, the Documentation, Intradiem's Confidential Information, the Hosted Service, and all Intellectual Property rights therein. Furthermore, unless otherwise specified in the applicable SOW, Intradiem owns the deliverables provided in connection with any Professional Services (including any Intellectual Property used, created or developed by Intradiem or its employees or subcontractors in connection with the delivery of Professional Services). Notwithstanding the foregoing, Customer owns all right, title and interest in and to any deliverables designated as 'works-made-for-hire' in the applicable Statement of Work, and any enhancements or improvements to, or derivative works of, any such deliverables.

3.2 Suggestions. If Customer provides Intradiem with any suggested improvements to the Hosted Service (or any of the Services), then Customer grants Intradiem a nonexclusive, perpetual, irrevocable, royalty free, worldwide license, with rights to transfer, sublicense, sell, use, reproduce, display, and make derivative works of such suggested improvements. Notwithstanding the foregoing, nothing in this Section (Suggestions) grants Intradiem a license to use any improvements covered by a registered patent owned by Customer.

3.3 Restrictions. Customer will not (i) reverse assemble, reverse engineer, decompile, or otherwise attempt to derive source code from any of the Intradiem Programs; (ii) reproduce, modify, create, or prepare derivative works of any of the Intradiem Programs or Documentation; (iii) develop or assist a third party in developing a product which is substantially similar to the product which Customer is licensing from Intradiem (iv) distribute or display any of the Intradiem Programs or Documentation other than to Customer's Authorized Users to the extent permitted under this Agreement; (v) share, sell, rent, or lease or otherwise distribute access to the Hosted Service to any third party, or use the Hosted Service to operate any time-sharing, service bureau, or similar business; (vi) create any security interest in the Hosted Service; (vii) alter, destroy or otherwise remove any proprietary notices or labels on or embedded within or on the Hosted Service, the Intradiem Programs or the Documentation; or (viii) disclose the results of any Hosted Service or program benchmark test to any third parties without Intradiem's prior written consent.

3.4 Customer Data. As between Intradiem and Customer, Customer owns all Intellectual Property rights in and to the Customer Applications, the Customer Data and Customer's Confidential Information. Intradiem has the right to use Customer Applications and Customer Data solely (i) to fulfil its obligations to Customer under this Agreement, and (ii) for internal use in order to maintain, evaluate, and improve the Services. Nothing in this Agreement transfers or conveys to Intradiem any ownership interest in or to the Customer Data or Customer's Confidential Information.

4. Indemnification.

4.1 Intellectual Property Indemnification. Intradiem will indemnify, defend and hold harmless Customer from and against any and all losses, costs, expenses (including attorneys' fees and expenses), claims, liabilities, or damages of any kind incurred or suffered by Customer that result from or arise out of any claims from or liability to a third party alleging that Customer's use of the Services (in whole or in part) in accordance with this Agreement infringe any Intellectual Property rights of any third party.

4.2 Remedies. If Intradiem determines that the Services are likely to, or if one or more of the Services are determined, in a final, non-appealable judgment by a court of competent jurisdiction to, infringe the Intellectual Property rights of a third party, Intradiem will, at Intradiem's option and expense, either: (a) replace such Service with a functionally equivalent service; (b) modify such Service to make it non-infringing with a functionally equivalent service; or (c) procure the right for Customer to continue using such Service. If none of the foregoing options are available to Intradiem on commercially reasonable terms, Intradiem may terminate the affected Order(s) and refund the unearned portion of the fees paid to Intradiem by Customer for the affected Service(s). The infringement indemnity set forth in Section 7.1 above and the remedies set forth in this Section 7.2 are Customer's sole and exclusive remedies and Intradiem's entire liability with respect to intellectual property infringement.

4.3 Exclusions. Notwithstanding the foregoing, Intradiem will have no obligation for claims of infringement to the extent such claims result or are alleged to result from: (i) any unauthorized modification of the Services by any third party if such infringement would have been avoided in the absence of such modifications; (ii) Customer's failure, within a reasonable time frame, to implement any replacement or modification of Services provided by Intradiem which would have avoided the infringement; or (iii) any combination, operation, or use of the Services with any programs or equipment not supplied or approved by Intradiem.

4.4 Customer Indemnification. Customer will indemnify, defend and hold Intradiem harmless from and against any and all losses, costs, expenses, including reasonable attorneys' fees, claims, liabilities, or damages of any kind incurred or suffered by Intradiem that result from or arise out of any claims from or liability to a third party alleging that Intradiem's access to or use of the Customer Data or Customer Applications solely to provide the Services under this Agreement infringes any Intellectual Property rights of any third party. The foregoing indemnity constitutes Intradiem's sole and exclusive remedy and Customer's entire liability with respect to intellectual property infringement.

4.5 Indemnification Process. If a claim that may give rise to indemnification is commenced (a "Claim"), the indemnified party will provide prompt written notice of the Claim to the indemnifying party (a "Claim Notice"). The indemnifying party, at its sole expense, will take control of the defense. The failure to notify the indemnifying party shall not relieve the indemnifying party from any liability under this Section, except to the extent it has been materially prejudiced by such failure. The indemnified party shall have the right to participate in any proceedings in such manner as it may deem appropriate at its own cost and expense. The indemnifying party shall keep the indemnified party reasonably apprised of the continuing status of the Claim. Furthermore, the indemnifying party shall not agree to any settlement that involves anything other than the payment of money without the indemnified party's prior written consent. The indemnified party shall cooperate with the indemnifying party in the defense and settlement of any such claim or action.

5. Limitation of Liability.

5.1 NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUE, LOST PROFITS, LOSS OF DATA, OR BUSINESS INTERRUPTION. EITHER PARTY'S MAXIMUM LIABILITY FOR ALL DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT IN THE AGGREGATE ARE LIMITED TO THE TOTAL AMOUNTS ACTUALLY PAID TO INTRADIEM FOR THE SERVICES UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED IN CONTRACT, BREACH OF WARRANTY OR TORT OR OTHERWISE. THE FOREGOING LIMITATIONS AND EXCLUSIONS DO NOT APPLY TO EITHER PARTY'S INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS, OR TO CUSTOMER'S OBLIGATIONS TO PAY FEES AND EXPENSES WHEN DUE AND PAYABLE.

6. General Terms.

6.1 Protection of Customer Data, Personal Information, and Confidential Information. Intradiem will implement and maintain commercially reasonable and appropriate technical, administrative and physical safeguards and security methods designed to prevent any unauthorized release, access to or publication of Customer Data or Confidential Information. Further, to the extent that Intradiem engages any subcontractor to facilitate its obligations hereunder, Intradiem shall use commercially reasonable measures to ensure that such subcontractor implements and complies with reasonable security measures in handling any Customer Data, Personal Information, or Confidential Information.

6.2 Notice. Intradiem will promptly notify Customer, as reasonably practicable under the circumstances, not to exceed 72 hours from the time of confirmation by Intradiem, of unauthorized access, use, or disclosure of Customer Data, Confidential Information or Personal Information within Intradiem's custody and control. Each Party will reasonably cooperate with the other with respect to such unauthorized access, use, or disclosure, including its containment and investigation. Upon confirmation of any vulnerability or breach of Intradiem's security, Intradiem will modify its processes and security program as necessary to remediate the vulnerability or breach, at Intradiem's sole cost and expense.

6.3 Successors and Assigns. This Agreement and any Orders under this Agreement and the rights and obligations created hereunder and thereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns. Neither party may assign this Agreement without the written consent of the other party, except to a related entity or the successor of all or substantially all the assignor's business or assets to which this Agreement relates. Notwithstanding the foregoing, neither party to this Agreement is permitted to assign this Agreement to a party that is a direct or indirect competitor of the other party.

6.4 Survival. Obligations and rights under this Agreement or any Order or Statement of Work that by their nature would reasonably continue beyond the termination or expiration of this Agreement or any Order or Statement of Work (including those in the following Sections entitled "Indemnification, Performance & Warranties", "Intellectual Property", "Proprietary Rights") will survive the termination or expiration of this Agreement or such Order or Statement of Work.

6.5 Entire Agreement. This Agreement, together with Customer's agreement with an Intradiem reseller furnishing Services, if any ("Underlying Agreement") constitutes the final, complete, and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior written and oral negotiations and agreements, and all contemporaneous oral negotiations and agreements, between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The Parties do not intend that the provisions of this Agreement be explained, supplemented, or qualified through evidence of trade usage or any prior course of dealings or any course of performance under any prior agreement. In entering into this Agreement, neither Party has relied upon any statement, estimate, forecast, projection, representation, warranty, action or agreement of the other Party except for those expressly contained in this Agreement. Customer acknowledges that any pre-printed terms and conditions on, referenced in or attached to Customer's purchase orders will be of no force or effect. There are no conditions precedent to the effectiveness of this Agreement other than any expressly stated in this Agreement. Except as otherwise expressly set forth in this Agreement and/or any Order, neither party's failure to insist upon strict performance of any provision of this Agreement and/or an Order shall be construed as a waiver of any of its rights under this Agreement or any Order. Neither the course of conduct between parties nor trade practice shall act to modify any provision of this Agreement or any Order.