

TERMS & CONDITIONS

ARTICLE 1

Services

1.1. Software Services.

- (a) Client Work Order (or Schedule). STI shall make available to the Client services (“Software Services” and/or “Services”) relating to those specific modules of its SmartTouch Platform product (the “Product”) as are described on Client Work Order to this Agreement on the terms and conditions of this Agreement, and on the price, delivery dates and specifications described on Client Work Order. The Product is hosted by STI and the Software Services may include software licensed by STI from third parties.
- (b) Changes to Software Services. In the event Client wishes to add additional modules or applications of the Product or request enhancements to the Product, the parties hereto will agree on revised terms, which will be reflected in a new Client Work Order, which shall be given a separate designation (e.g., Client Work Order-1) and executed and attached to this Agreement.

ARTICLE 2

Provisions Relating to Software Services

2.1. Product, Set-up and Client Enhancements.

- (a) Product. “Product” will include one or more of the following applications:
- (i) SmartTouch CRM,
 - (ii) Email Campaigns,
 - (iii) Marketing Automation & Lead Nurturing,
 - (iv) Internet Form Hub, Online Registrations and Survey Reports,
 - (v) Advanced Reporting
- (b) Set-up. STI shall perform certain one-time set-up services as part of the Software Services as set forth on Client Work Order.
- (c) Enhancements, Adapters and Modifications. Any enhancements, adapters, or modifications requested by the Client shall be described in Client Work Order, together with the price thereof.

2.2. Right to Access Product

- (a) Right to Access. Subject to the terms of this Agreement and Client Work Order, STI grants Client a limited, non-transferable, non-exclusive right to access and use the Product and certain third-party software licensed to STI via a Web browser and related documentation as described on Client Work Order. The Product is made available to Client as a hosted service. STI will host and retain physical control over the Product and make such computer programs and code available only through the Internet for access, use and operation through a Web browser (e.g., Google Chrome, Internet Explorer, Mac Safari, etc.). No provision under this Agreement shall obligate STI to deliver or otherwise make available any copies of computer programs or code from the Product, whether in object code or source code form.
- (b) User Subscriptions. Unless otherwise specified in Client Work Order, (i) Software Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the subscription term at the same pricing as that for the pre-existing subscriptions, (iii) the number of User subscriptions may be decreased during the subscription term, and the increase or decrease shall take effect at the start of the following month and the monthly prepayment described in Section 3.2(c) shall reflect such change. All such additional User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Software Services.
- (c) License Restrictions. Except as may be expressly provided elsewhere in this Agreement or except to the extent applicable law precludes such activities from being prohibited by contract, Client shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Product; modify, translate, or create derivative works based on the Product or authorize any third party to do so; rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Product; use the Product for timesharing or service bureau purposes or otherwise for the benefit of a third party; obfuscate, remove or alter any of the logos, trademarks, internet links, patent or copyright notices, confidentiality or proprietary legends or other notices or markings that are on or in the Product or the related documentation; or send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs.

- (d) **Ownership.** Client retains all right, title and interest in and to any and all information provided, inputted or uploaded to the Product by Client, or by STI on Client's behalf. STI shall retain all right, title and interest in and to the Product, Software Services, the documentation for the Product, and all adapters, modifications and/or enhancements to the Product, regardless of the source of inspiration for any such enhancement or modification and regardless of whether Client has paid for or provided input regarding such modifications and/or enhancements. Client acknowledges that STI will retain all right, title and interest in and to (i) transactional and performance information related to use of the Product which STI may collect, use and disclose for its business purposes (including software use optimization and its own product marketing) and (ii) STI's general know how, design tools, methodologies, research, processes, applications, third-party software, third-party fonts, or other means that may be used to conceive, design, assemble, manage or deliver the Software Services, and improvements or modifications to the foregoing. Custom developed documents, designs, computer programs, computer documentation and other tangible materials authored or prepared for Client by STI ("Deliverables") as required by Client Work Order are hereby licensed, solely for Client's internal use, for the term of this Agreement. STI retains ownership and may reuse any Deliverables.

2.3. Use Restrictions

- (a) **Prohibited Uses.** Client may not use the Software Services for spamming, chain letters, junk mail or distribution lists to contact any person who has not given specific permission to be included in such list. Client agrees not to transmit, or permit Client's employees to transmit, through the Software Services any unlawful, harassing, libelous, abusive, threatening, vulgar, obscene or otherwise objectionable material of any kind. Client agrees to only use the Software Services for lawful purposes, in compliance with all applicable laws including, without limitations, copyright, trademark, anti-spamming, privacy, obscenity and defamation laws. Unlawful activities may include (without limitation) storing, distributing or transmitting any unlawful material, attempting to compromise the security of any networked account or site, or making direct threats of physical harm.
- (b) **Certain Limitations.** Unless otherwise provided in Client Work Order, (i) disk storage space for any Client shall be limited to 1000 megabytes, (ii) a Client may not have more than 250,000 records at any one time in Classic - however, there is no record limit in NextGen, and (iii) a Client may send an unlimited amount of e-mails per month. Notwithstanding the following, STI may agree to send unlimited e-mails to its own STI Smart Directory, or to 3rd party databases provided by Client. Such agreement must be detailed in the Attached Addendum A.

2.4. Uptime and Support

- (a) Uptime. The Product will be available 99.7% of the time, except for any unavailability caused by circumstances beyond STI's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving STI employees), or Internet service provider failures or delays. In addition, the Product may be unavailable during planned downtime (of which STI shall give at least 8 hours notice and which shall be scheduled to the extent practicable during the weekend hours from 6:00 p.m. Central time Friday to 3:00 a.m. Central time Monday). Incidents submitted outside of standard business hours are responded to on the next business day.
- (b) STI will provide Client support Monday-Friday during the hours of 8:30 A.M. to 5:30 P.M. Central time in accordance with STI's then current support policy, which may be acquired from Client's STI contact. Support provided pursuant hereto will not require STI to provide upgrades, enhancements, or modifications, except that Client will receive all such upgrades, enhancements and modifications made available to all Clients using the Software Services.
- (c) Unless otherwise provided on Client Work Order, Client support shall be subject to the following:

 - (i) User questions will be answered via email or phone within 24 hours of submission during business hours;
 - (ii) STI will address within 8 hours of submission bugs that impact mission-critical features (access to the Product, ability to access records, notes, history, tasks and reports. All non-level 1, mission-critical bugs will be addressed and STI will report back a diagnostic within 24-72 hours of submission Monday- Friday; and
 - (iii) STI will assume no support obligations for third-party applications included in or used with the Product, including but not limited to any hosting services or POP email, but will provide a telephone number to call for support of such third-party applications.

2.5. Data Backup, Encryption, Passwords and Security

- (a) Data Backup. STI shall use all reasonable efforts to protect Client's data behind a secure firewall system, to conduct daily data backups, and to store weekly full-system backup in a separate, fire-safe facility.
- (b) Encryption. STI will use 256-bit encryption for all communications to and from the Product.

- (c) Passwords. Client will choose or be given all applicable passwords to use in connection with the Software Services. Client is responsible for maintaining the confidentiality of Client's passwords and account (including, if applicable, the passwords and accounts of each user accessing the Software Services by means of an account established by Client). Furthermore, Client is responsible for any and all activities that occur under Client's account (including, if applicable, the accounts of each user accessing the Software Services by means of an account established by Client). Each password may be used by one individual named person only. Passwords may not be used concurrently or shared by more than one individual named person.
- (d) Security. Client shall not (i) make the Software Services available to anyone other than Users, (ii) interfere with or disrupt the integrity or performance of the Software Services or third-party data contained therein, or (iii) attempt to gain unauthorized access to the Software Services or their related systems or networks, Client shall notify STI immediately of any unauthorized use of its account (including, if applicable, the passwords and accounts of each user accessing the Software Services by means of an account established by Client) or any other breach of security. Client shall use commercially reasonable efforts to prevent unauthorized access to or use of the Software Services. STI will not be liable for any loss or damage arising from Client's failure to comply with these requirements.
- (e) Client Responsibility. Client shall be responsible for (i) Users' compliance with this Agreement and (ii) the accuracy, quality, integrity and legality of data submitted by Client and of the means by which Client acquired such data.

2.6. Warranty

STI represents, warrants, and covenants that the Product will perform substantially in accordance with any user instructions, manuals, or technical requirements documents that are generally provided by STI in connection with the Product. In the event of a breach of the foregoing warranty, STI's sole obligations, and Client's sole remedy, shall be, at STI's option, to use commercially reasonable efforts to correct the Product or replace the Product free-of-charge, provided, however, that if STI is unable to correct any substantial non-conformance within 60 days, Client may terminate the Agreement with respect to the Software Services.

ARTICLE 3

Additional General Provisions Relating to Services

3.1. Confidential Information.

By reason of the relationship hereunder, each party will have access to certain information and materials concerning the other party's technology business, plans, and customers that are confidential and of substantial value to such party, which value would be impaired if such information were disclosed to third parties ("Confidential Information"). Confidential Information of STI shall include, without limitation, information specifically designated as confidential, the features and functions of the Software Services that are not available to the general public via the public internet (including screen shots of the same), future product plans, any documentation or specifications provided to Client, the commercial terms (including pricing) of this Agreement but not the mere existence of this Agreement, any Schedules, statements of work, addenda or amendments to this Agreement, performance and security test results (whether conducted by STI or Client), and any other proprietary, financial or business information supplied to Client by STI. Each party agrees that it will not and will ensure that its employees, agents and contractors will not make use of (except in furtherance of the Agreement), disseminate, or in any way disclose any Confidential Information of the other party to any person, firm or business, except for any purpose the disclosing party may hereafter authorize in writing. Each party agrees that it will treat all Confidential Information with the same degree of care as it accords to its own Confidential Information, and each party represents that it exercises reasonable care to protect its own Confidential Information. Notwithstanding the foregoing, "Confidential Information" shall not include: (i) information previously known to the receiving party without reference to Confidential Information, (ii) information which is or becomes publicly known through no act or omission of the receiving party, (iii) information which has been independently developed by the receiving party without reference to the disclosing party's Confidential Information, (iv) information received from a third party under no confidentiality obligation with respect to the Confidential Information, (v) information required to be disclosed pursuant to administrative or court order, government or regulatory requirement or arbitration or litigation arising out of this Agreement.

3.2. Billing and Payment

- (a) **Fees.** During the term of this Agreement, Client agrees to pay STI the fees associated with use of the Software Services reflected on the Schedule(s). Except as otherwise provided in this Agreement or the Schedule(s), fees are nonrefundable.
- (b) **Taxes.** All payments, fees and other charges payable by Client to STI under this Agreement are exclusive of all applicable federal, state, local and foreign taxes, levies and assessments. Client agrees to bear and be responsible for the payment of all such taxes, levies and assessments imposed on Client or STI arising out of this Agreement, excluding any tax based on STI's net income. If Client is required by any applicable law to deduct or withhold amounts otherwise payable to STI hereunder, Client agrees to pay the required amount to the

relevant governmental authority and pay to STI, in addition to the payment to which STI is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by STI free and clear of all taxes equals the full amount STI would have received had no such deduction or withholding been required.

- (c) **Invoices.** STI shall invoice Client for all amounts due hereunder. If not otherwise specified in the Schedule, Client will make monthly prepayments, and invoices will be issued monthly in advance. Alternatively, Client may set up automatic payment by credit card with the approval of STI.
- (d) **Delinquencies.** All invoices shall be paid within 30 days of their date. In the event that any payment is past due, or if a credit card company refuses for any reason to pay the amount billed to it and that amount remains unpaid thirty (30) days following the billing cycle, Client's account is delinquent, and STI reserves the right to suspend Client's access to the Software Services until such amounts are paid in full. Client agrees that, in the case of a suspension of Software Services, STI may impose a charge to restore archived data from delinquent accounts. Unpaid charges (except those charges under reasonable and good faith dispute, provided that any undisputed amount is paid) are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection.
- (e) **Adjustments.** To dispute an invoice, Client must contact STI in writing no later than thirty (30) days after the billing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit.
- (f) **Pro Rata Amounts.** Unless otherwise provided in writing in Client Work Order, fees will be due on a pro rata monthly amount based on the date the logins are provided Client users.

3.3. Term and Termination

- (a) **Term.** This Agreement will be in effect with respect to the Software Services for the period set forth in the Schedule(s), and will renew automatically upon the same terms and conditions, including fees set forth in the Schedule(s), for an additional period equal to the subscription period or one (1) year (whichever is shorter) unless Client or STI requests change or termination thirty (30) days prior to the expiration of the initial term set forth in the Schedule(s). After initial term set forth in the Schedule(s), Client must give forty-five (45) days written notice of termination.
- (b) **Termination.** Client or STI may terminate this Agreement for cause: (i) upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of the 30-day period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Additionally, any Software Services account which is suspended for more than thirty (30) days due to delinquent payments may be terminated, without notice to Client and without any obligation on the part of STI to maintain, store or return any Client's data or data residing in Client's instance of the Software Services.

- (c) **Effect of Termination on Software Services.** If Client terminates this Agreement for cause pursuant to this Section 3.3, STI shall refund to Client the prorated amount of the fees prepaid by Client that were to apply to the remainder of the unexpired term, as calculated from the termination date through the remainder of the unexpired term. Upon termination of this Agreement for any reason, (i) the license to use the Software Services will terminate, and Client, and any user accessing the Software Services by means of such Client's account, if applicable, will cease to use or have access to the Product; and (ii) except where such termination is due to delinquent or fraudulent payment, or false or fraudulent submission of contact information, Client may request a copy of the most recent back-up of Client's data. Fees may apply to retrieve data from back-ups. STI may, but is not obligated to, delete archived data, but will not do so until thirty (30) days after the termination of this Agreement. Delinquent accounts must be brought to good standing in order to receive data. In the event of a termination by STI for cause, STI shall have no obligation to refund any fees paid by Client, and Client shall pay any remaining fees for the remainder of the subscription term.
- (d) **Non-exclusivity.** The termination of this Agreement for any breach by a party shall not be deemed to be the exclusive remedy for any such breach, and, subject to any other provision of this Agreement limiting liability for a breach, shall not preclude the exercise of any other remedy permitted by law.
- (e) **Survival.** Each provision of this Agreement reasonably intended by its terms to survive termination or expiration of this Agreement shall so survive.

3.4. Publicity

Client agrees that STI can disclose the fact that Client is a client of STI. During the term of this Agreement, Client grants STI the right to reference Client, along with Client's logo, on the customer section of STI's public web site. With permission from client, STI can also use client information for the following purposes: case studies and multi-media needs.

3.5. Disclaimer and Limitation of Liability

- (a) Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE SOFTWARE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND STI DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. STI DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SOFTWARE SERVICES IS DONE AT CLIENT'S RISK AND CLIENT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CLIENT'S COMPUTER SYSTEM OR NETWORK, OR LOSS OF DATA THAT RESULTS FROM CLIENT'S USE OF THE SOFTWARE SERVICES.
- (b) Limitation of Liability. STI'S TOTAL LIABILITY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, LIABILITY ARISING OUT OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE), WILL BE LIMITED TO THE FEES PAID BY CLIENT TO STI FOR THE SOFTWARE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT OF INJURY THAT GAVE RISE TO THE LIABILITY. NEITHER PARTY SHALL BE LIABLE IN ANY EVENT FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, THE COST OF ANY SUBSTITUTE PROCUREMENT), WHETHER OR NOT FORESEEABLE AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (c) Exceptions. The foregoing limitations of liability do not apply to fees owed by Client hereunder, or to indemnification for third party claims described in Section 3.6 below.

3.6. Indemnification

- (a) **STI Indemnity.** STI shall, at its expense, defend or at its option, settle any claim, action or allegation brought against Client that the Product, the Material or any Deliverable infringes any valid copyright, patent, trade secret, or any other proprietary right of any third party and shall pay any final judgments awarded or settlements entered into; provided that Client give prompt written notice to STI of any such claim, action or allegation of infringement and give STI the authority to proceed as contemplated herein. STI will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and Client may not settle or compromise such claim, action or allegation, except with prior written consent of STI. Client shall assist and provide information as STI may reasonably require in settling or opposing such claims. In the event any infringement claim, action or allegation is brought or threatened relating to the Product, STI may, at its sole option and expense (i) procure for Client the right to continue use of the Product or infringing part thereof; or (ii) modify or amend the Product or infringing part thereof; or (iii) replace the Product or infringing part thereof with other software having substantially the same or better capabilities; or (iv) terminate this Agreement and refund to Client the prorated amount of the fees prepaid by Customer that were to apply to the remainder of the unexpired term, as calculated from the termination date through the remainder of the unexpired term. The foregoing obligations will not apply to the extent the infringement arises as a result of (w) any use of the Product in a manner other than as specified in this Agreement; (x) any use of the Product in combination with other products, equipment, devices, software, systems or data not supplied by STI to the extent such claim is directed against such combination; or (y) any alteration, modification or customization of the Product made by any party other than STI or STI's authorized representative if such infringement would not have occurred without such modification or combination. This Section 3.6 states the entire liability of STI with respect to infringement of any patent, copyright, trade secret or other intellectual property right.
- (b) **Client Indemnity.** Client shall, at its expense, defend or at its option, settle any claim, action or allegation brought against STI or any of its affiliates or any of the officers, directors managers, employees or agents that arises out of (a) any data or other information supplied by Client to or through the Software Services, or (b) any Client use of the Software Services in violation of this Agreement, or in violation of applicable law. Client shall pay any final judgments awarded or settlements entered into, provided that STI give prompt written notice to Client of any such claim, action or allegation of infringement and give Client the authority to proceed as contemplated herein. STI shall assist and provide information as Client may reasonably require in settling or opposing such claims.

3.7. Export Control.

Each party shall comply with all United States and foreign export control laws or regulations applicable to its performance under this Agreement. Client acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U. S. Department of Treasury's List of Specially Designated Nationals or the U. S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice.

3.8. Miscellaneous

- (a) No Third-party Beneficiaries. This Agreement is between STI and Client, and is not for the benefit of any third party, whether directly or indirectly (including, if applicable, any user accessing the Software Services by means of an account established by Client).
- (b) No Waiver. The failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder.
- (c) Invalid Provision. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.
- (d) No Assignment. Client may not assign, transfer, or sublicense this Agreement except with STI's prior written consent.
- (e) Governing Law; Jurisdiction. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF. EACH PARTY AGREES TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS LOCATED IN TRAVIS COUNTY, TEXAS, AND WAIVES ANY RIGHT IT MAY OTHERWISE HAVE TO CHALLENGE THE APPROPRIATENESS OF SUCH FORUMS, WHETHER ON THE BASIS OF THE DOCTRINE OF FORUM NON CONVENIENS OR OTHERWISE. IN NO EVENT SHALL THIS AGREEMENT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

- (f) Injunctions. It is agreed that in the event of any breach by a party of the confidentiality provisions set forth in Section 3.1, the disclosing party would be irreparably and immediately harmed, and money damages would not be sufficient remedy. Accordingly, it is agreed that such disclosing party shall be entitled to injunctive relief, specific performance and/or any other appropriate equitable remedy for any such breach or threatened breach. Such remedies shall not be deemed to be the exclusive remedy for a breach of such provisions but shall be in addition to all other remedies available to such disclosing party at law or in equity.
- (g) Dispute Resolution.
- (i) The parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Agreement. If a claim or controversy should arise, senior management of the parties shall meet at least once and will attempt in good faith to resolve the dispute. For such purpose, either party may request the other to meet within fifteen (15) days at a mutually agreed upon time and place. If the parties are not able to conduct a meeting within said fifteen (15) day period or to resolve the dispute within fifteen (15) days after their first negotiating meeting (or such longer period of time as may be mutually agreed upon), either party may refer the claim or controversy to nonbinding mediation conducted by a mutually agreed upon mediator (herein referred to as the "Mediator") by sending a written mediation request to the other party. In the event that such a request is made, the parties agree to participate in the mediation process. The parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the Mediator at any time be unable or unwilling to serve, the parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.
- (ii) In the event that either party fails to participate in the mediation, the other party may pursue such remedies as are otherwise available to it at law or in equity.
- (iii) In the event that the mediation is unsuccessful, either party may pursue such remedies as are otherwise available to it at law or in equity.
- (iv) The obligation to mediate shall not prevent STI from terminating access to the Software Services for any breach by Client of this Agreement, or any party from seeking any injunctive or other temporary relief from a court to prevent or remediate a violation or breach of this Agreement which relates to such party's Confidential Information or intellectual property, or in the case of STI, any use restrictions on the Software Services.
- (h) Integration. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous or contemporaneous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all modifications must be in writing signed by both parties, except as otherwise provided herein.



- (i) No Agency, Etc. Except as specifically provided herein, no agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other party in any respect whatsoever.
- (j) Attorneys' Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.
- (k) Counterparts. This Agreement may be executed in one or more counterparts and may be exchanged by facsimile or electronically scanned copy, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.
- (l) Warranties. Each party hereto represents and warrants that this Agreement has been duly executed and delivered, and that the performance by it under this agreement does not violate any other agreement of such party.
- (m) Notice. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is confirmed by the receiver, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. Notices shall be sent, in the case of STI to:

DemandGen Partners/DBA SmartTouch Interactive

8500 Shoal Creek Building 4 Suite 100
Austin, Texas 78757
Phone: 512-582-5900
accounting@smarttouchinteractive.com

ARTICLE 4

Data Protection Addendum (GDPR)

4.1 Roles of the Parties

For the purposes of the General Data Protection Regulation (EU) 2016/679 ("GDPR"), the Client acts as the Data Controller and STI acts as the Data Processor. Each party shall comply with its respective obligations under GDPR.

4.2 Processing of Personal Data

STI shall process Personal Data only on documented instructions from the Client, including with regard to transfers of Personal Data to a third country or an international organization, unless required to do so by Union or Member State law. STI shall inform the Client if, in its opinion, an instruction infringes GDPR or other Union or Member State data protection provisions.

4.3 Data Subject Rights

STI shall assist the Client, insofar as possible, to fulfill its obligation to respond to requests for exercising the data subject's rights under GDPR, including rights of access, rectification, erasure, restriction, portability, and objection.

4.4 Security

STI shall implement appropriate technical and organizational measures as required by Article 32 GDPR, including encryption, access controls, and regular testing, to ensure a level of security appropriate to the risk.

4.5 Personal Data Breaches

STI shall notify the Client without undue delay, and in no case later than 48 hours after becoming aware, of a personal data breach. The notification shall include sufficient information to allow the Client to meet any obligations to report or inform data subjects under Articles 33 and 34 GDPR.

4.6 Sub-processors

STI shall not engage another processor without prior written authorization of the Client. Where STI engages a sub-processor, it shall impose the same data protection obligations as set out in this Addendum. STI shall remain fully liable to the Client for the performance of the sub-processor's obligations.

4.7 International Transfers

Any transfer of Personal Data outside the European Economic Area (EEA) shall only take place where adequate safeguards, such as the Standard Contractual Clauses (SCCs) approved by the European Commission, are in place.



4.8 Data Retention and Deletion

Upon termination of the Agreement, STI shall, at the choice of the Client, delete or return all Personal Data and delete existing copies, unless Union or Member State law requires storage of the Personal Data.

4.9 Supervisory Authority

The Client acknowledges the data subjects' right to lodge a complaint with a supervisory authority in the EU/EEA where they reside, work, or where an alleged infringement of GDPR has taken place.

4.10 Data Protection Officer

Where required by law, STI shall appoint a Data Protection Officer (DPO) and/or EU Representative. STI shall provide the Client with up-to-date contact information for such DPO or representative.



ARTICLE 5

Privacy Policy (Aligned with the EU-U.S. Data Privacy Framework Program)

5.1 Introduction

SmartTouch Interactive (“STI”) is committed to protecting the privacy of individuals and maintaining compliance with applicable data protection laws, including the EU-U.S. Data Privacy Framework (DPF) Principles. This Privacy Policy outlines our practices for handling personal data collected, used, and transferred in connection with our services. STI adheres to the EU-U.S. Data Privacy Framework (DPF) Principles as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union to the United States. You can learn more about the DPF program and view our certification at the U.S. Department of Commerce’s DPF website: <https://www.dataprivacyframework.gov>.

SmartTouch Interactive is subject to the investigatory and enforcement powers of the U.S. Federal Trade Commission (FTC).

5.2 Data Analysis

Collection: We collect personal data from clients and their customers, including identifiers (e.g., name, email, phone, address, IP), marketing preferences, and interaction data. **Use:** Data is processed for CRM, marketing automation, campaign reporting, and customer relationship management. **Transfer:** Data may be shared with trusted service providers (sub-processors) under contract, limited to purposes consistent with this Policy.

5.3 Notice to Customers

- a. Individuals are notified at the time of data collection regarding what personal data is collected, why it is collected, and how it will be used.
- b. Notices are reviewed for accuracy and provided at registration forms, client campaigns, and onboarding processes.
- c. STI may also be required to disclose personal information in response to lawful requests by public authorities, including to meet national security or law enforcement requirements.
- d. The Privacy Policy is publicly available on our website at www.smarttouchinteractive.com/privacy.

5.4 Opt-Out / Opt-In

Individuals may opt-out of receiving marketing communications at any time by using unsubscribe links or contacting privacy@smarttouchinteractive.com. Where sensitive data (e.g., health, financial, or children’s data) is collected, opt-in consent will be obtained before processing. STI maintains an internal suppression system to respect opt-out/opt-in choices across all campaigns.

5.5 Onward Transfer

All onward transfers of personal data to third parties are governed by written contracts requiring compliance with DPF Principles. STI remains liable for the processing of personal data it transfers to third parties acting on its behalf.

5.6 Access Rights

Individuals may request access to their personal information, as well as correction, amendment, or deletion of inaccurate or unlawfully processed data. Requests should be submitted to privacy@smarttouchinteractive.com, and responses will be provided within 30 days.

5.7 Security

STI implements technical and organizational measures, including encryption, role-based access controls, secure backups and firewalls, regular audits, and employee training, to protect personal information.

5.8 Data Integrity and Purpose Limitation

Personal data is processed only for purposes disclosed at collection and consistent with the DPF Principles. STI ensures that data is accurate, complete, current, and reliable for its intended use.

5.9 Enforcement and Dispute Resolution

- a. Individuals may raise privacy concerns by contacting our Customer Service Department at support@smarttouchinteractive.com. In compliance with the EU-U.S. DPF, SmartTouch Interactive commits to refer unresolved complaints concerning our handling of personal data received in reliance on the EU-U.S. DPF to [ANA DPF Dispute Resolution](#), an alternative dispute resolution provider based in the United States. If you do not receive timely acknowledgment of your DPF Principles-related complaint from us, or if we have not addressed your DPF Principles-related complaint to your satisfaction, please visit [ANA DPF Dispute Resolution](#) for more information or to file a complaint. The services of ANA DPF Dispute Resolution are provided at no cost to you. <https://www.ana.net/content/show/id/accountability-dpf-consumers>
- b. STI may also be required to disclose personal information in response to lawful requests by public authorities, including to meet national security or law enforcement requirements.
- c. If unresolved, individuals may seek binding arbitration under the DPF. <https://www.ana.net/content/show/id/accountability-dpf-consumers>
- d. National security-related complaints may be directed to the U.S. Department of State Ombudsperson.



5.10 Assessment

STI conducts annual compliance reviews through internal self-assessment procedures. These reviews verify compliance with this Privacy Policy, complaint handling, and alignment with DPF Principles. Independent audits may be conducted when appropriate.

5.11 Training

All employees receive general training on this Privacy Policy and their responsibilities under DPF. Employees with access to personal data receive enhanced training on data handling, security protocols, and complaint resolution. Employee policies are updated regularly to reflect evolving privacy obligations.

5.12 Contact Information

For questions, concerns, or requests related to this Privacy Policy, please contact:

SmartTouch Interactive – Privacy Office
8500 Shoal Creek Building 4 Suite 100
Austin, Texas 78757
Email: support@smarttouchinteractive.com
Phone: +1 512-582-5900

ARTICLE 5

Privacy Policy (Aligned with the EU-U.S. Data Privacy Framework Program)

5.1 Introduction

SmartTouch Interactive (“STI”) is committed to protecting the privacy of individuals and maintaining compliance with applicable data protection laws, including the EU-U.S. Data Privacy Framework (DPF) Principles. STI adheres to the DPF Principles as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union to the United States. You can learn more about the DPF program and view STI’s certification at the U.S. Department of Commerce’s website: <https://www.dataprivacyframework.gov>. SmartTouch Interactive is subject to the investigatory and enforcement powers of the U.S. Federal Trade Commission (FTC).

5.2 Data Analysis

Collection: STI collects personal data from clients and their customers, including identifiers (e.g., name, email, phone, address, IP), marketing preferences, and interaction data. **Use:** Data is processed for CRM, marketing automation, campaign reporting, and customer relationship management. **Transfer:** STI may disclose personal information to trusted third-party service providers (sub-processors) who perform functions on our behalf, such as hosting, analytics, or campaign delivery. These parties are authorized to process personal information only as necessary to provide services to STI and under written contracts requiring compliance with the DPF Principles. If STI does not share personal data with third parties for unrelated purposes, STI will explicitly state so within applicable client or program documentation.

5.3 Notice to Customers

- a. Individuals are notified at the time of data collection regarding what personal data is collected, why it is collected, and how it will be used.
- b. Notices are reviewed for accuracy and provided at registration forms, client campaigns, and onboarding processes.
- c. The Privacy Policy is publicly available on our website at www.smarttouchinteractive.com/privacy.
- d. STI may also be required to disclose personal information in response to lawful requests by public authorities, including to meet national security or law enforcement requirements.

5.4 Opt-Out / Opt-In and Choice

STI provides individuals with clear choices regarding the collection and use of their personal data.

- Individuals may opt-out of receiving marketing communications at any time by using unsubscribe links or contacting privacy@smarttouchinteractive.com.
- Individuals may limit the use and disclosure of their personal data by contacting STI to withdraw consent for specific uses, such as marketing, data sharing, or profiling.
- Where sensitive data (e.g., health, financial, or children’s data) is collected, STI will obtain explicit opt-in consent before processing.

STI maintains an internal suppression system to respect all opt-out and opt-in requests across campaigns and communication channels.

5.5 Onward Transfer and Liability

STI may transfer personal data to third parties acting as agents, contractors, or service providers for limited and specified purposes. Such transfers are governed by written contracts requiring third parties to provide the same level of privacy protection as required by the DPF Principles. STI remains liable under the DPF Principles if its third-party agents process personal data in a manner inconsistent with those Principles, unless STI proves it is not responsible for the event giving rise to the damage. If STI does not transfer personal data to third parties, this section will be revised to explicitly reflect that no such transfers occur.

5.6 Access Rights

Individuals have the right to access personal information STI holds about them and to request correction, amendment, or deletion where data is inaccurate or unlawfully processed. Requests should be submitted to privacy@smarttouchinteractive.com, and STI will respond within 30 days.

5.7 Security

STI implements technical and organizational measures, including encryption, role-based access controls, secure backups, firewalls, regular security audits, and employee training, to protect personal information from unauthorized access, disclosure, alteration, or destruction.

5.8 Data Integrity and Purpose Limitation

Personal data is processed only for purposes consistent with the DPF Principles. STI ensures that personal information is accurate, complete, current, and reliable for its intended use. Data retention is limited to the time necessary to fulfill the purposes for which it was collected or as required by law.

5.9 Enforcement and Dispute Resolution

- a. Individuals may raise privacy concerns or complaints by contacting STI's Privacy Office at privacy@smarttouchinteractive.com.
- b. Unresolved complaints will be referred to the ANA DPF Dispute Resolution Program, an independent third-party dispute resolution mechanism designated by STI.
- c. If the complaint remains unresolved through these channels, the individual may invoke binding arbitration under the DPF program. This option is available only after the individual has followed all other available dispute resolution procedures and in accordance with Annex I of the DPF Principles.
- d. STI may also be required to disclose personal information in response to lawful requests by public authorities, including to meet national security or law enforcement requirements.

5.10 Assessment

STI conducts annual internal self-assessment reviews to verify compliance with this Privacy Policy and DPF Principles. These reviews assess complaint handling, data security, and onward transfer practices. Independent third-party audits may also be conducted as needed.

5.11 Training

All employees receive privacy and data protection training appropriate to their roles. Employees who handle personal data receive enhanced instruction on data security, privacy principles, and incident response procedures. Employee policies are reviewed and updated regularly to reflect evolving regulatory requirements.

5.12 Contact Information

SMARTTOUCH®
INTERACTIVE
SmartTouch Interactive – Privacy Office
8500 Shoal Creek Building 4 Suite 100
Austin, Texas 78757
Email: privacy@smarttouchinteractive.com
Phone: +1 512-582-5900