

LICENSE, USE, AND REVENUE AGREEMENT

This LICENSE, USE, AND REVENUE AGREEMENT (“**Agreement**”) is made and entered into as of this ____ day of _____, 2017 (“**Effective Date**”) by and between:

- IN-TELLIGENT LLC (“**In-telligent**”), located at 15255 South 94th Avenue, Suite 547, Orland Park, Illinois, 60462; and
- CITY OF CORAL GABLES, located at 405 Biltmore Way, Coral Gables, Florida 33134 (“**Lessee**,” “**Licensee**,” or “**City**”).

I. RECITALS

WHEREAS, Lessee desires to create and provide relevant information and critical alerts (“**Alerts**”) to its employees, visitors and other subscribers (collectively the “**Users**”) in certain communities managed, and/or otherwise controlled by Lessee (collectively, the “**Community**” or “**Communities**”); and

WHEREAS, In-telligent possesses and maintains a proprietary mobile application platform (the “**Platform**”) and a web-based, password-protected application (the “**Portal**”) which can be utilized by Lessee to provide Alerts to Users, which can be utilized by Users to provide relevant information to Lessee, and which contains other information gathering and notification systems which are customizable by the Users (the “**Purposes**”). The Platform and the Portal are hereinafter collectively referred to as the “**Product**”.

WHEREAS, Lessee desires to utilize the Platform and the Portal and In-telligent desires to provide licensed access to the Platform and Portal.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party to the other, the Parties intending to be legally bound, agree as follows:

II. AGREEMENT

1. Recitals Incorporated. The foregoing Recitals shall be considered a part of this Agreement, and the recitals shall be binding on the Parties.

2. Binding on Related Individuals and Entities. The provisions of this Agreement shall be binding upon, and inure to the benefit of, the Parties, as well as their respective heirs, administrators, executors, successors, assigns, agents, representatives, officers, directors, shareholders, servants, employees, attorneys, successors, parents, subsidiaries, divisions, and affiliates.

3. Term.

3.1. This Agreement commences on the Effective Date and continues for a term of five (5) years (the “**Term**”), with automatic one-year Term extensions, unless either Party

gives written notice of termination to the other Party not less than ninety (90) days before the end of the then current term.

- 3.2 Notwithstanding the foregoing, either Party may terminate this Agreement (A) upon the occurrence of any material breach of this Agreement, which breach is not cured within thirty (30) days after receipt of written notice of said material breach; or (B) in the event either Party is declared bankrupt or insolvent, or makes an assignment for the benefit of its creditors, or if a receiver is appointed or any proceedings are commenced, voluntarily or involuntarily, by or against either Party under any bankruptcy or similar law and not dismissed within sixty (60) days. Additionally, the City may terminate this Agreement for convenience at any time by providing thirty (30) days written notice to the Professional.

4. Obligations of In-telligent.

- 4.1. Availability of Product. Pursuant to and limited by the terms set forth in this Agreement, In-telligent will grant Lessee a non-exclusive, non-transferable, non-sublicensable, temporary right and limited license to access and use the Portal, without modification, in order to generate Alerts and tailor content for Users within a geolocationally-controlled community organized by Lessee. The Product will be accessed by the Users via the Platform, a mobile device application, or “app”, downloaded to the User’s mobile device. Additionally, In-telligent will create a web-based page interface, to be embedded on the City’s Mobile App, to display City alerts from the In-telligent app without users having to leave the City’s app.
- 4.2. Customer Service / Technical Support / Training. In-telligent will provide customer service and technical support to the Lessee via a telephone help desk (the “**Help Desk**”) for problems with the Product, and will use commercially reasonable efforts to staff the Help Desk from 8:00 AM until 8:00 PM CST on each business day during the Term. In-telligent will further provide initial training to Lessee and/or its designated Operators (as defined in Section 5.1 below) regarding the operation of the Product and use of the Portal.

5. Obligations of Lessee.

- 5.1. Authorized Users. Lessee will designate individuals to act as Lessee’s In-telligent operators (the “**Operators**”). The actions and/or omissions of the Operators shall be the sole responsibility of Lessee. Access to the Portal on behalf of Lessee will be limited to the designated Operators, and it shall be the sole responsibility of Lessee to ensure that access to the Portal is secure and limited to the Operators, and that the Operators are trained as to the use of and restrictions upon the Portal.
- 5.2. Lessee Responsibility for Alert Content and Management. Lessee is solely responsible for the preparation and distribution of the Alerts, including all aspects of the content of each Alert created by the Lessee and distributed via the Product by the Lessee’s Operators. In-telligent is not responsible for training or instructing Lessee or its Operators as to A) the content of Alerts, B) the decision whether to send Alerts, and C) whether any scenario is a critical emergency.

- 5.3. Receipt and Use of Communications from Users. Lessee acknowledges that, in addition to providing Alerts to the Users, the Product allows for Users to communicate with Lessee regarding critical and other relevant information. Lessee further acknowledges that it (through its Operators) will use commercially reasonable efforts to receive said communications from Users and will use commercially reasonable efforts to prepare and distribute Alerts, if warranted reflecting the content of said information.
- 5.4. Promotion of the Platform. Lessee acknowledges that by providing the services associated with the Product to Lessee free of charge, In-telligent is undertaking significant risk and is investing significant resources, amounts, and costs in the development and maintenance of the Product. Accordingly, Lessee will cooperate with In-telligent to promote the download and use of the Platform by the Users within the Community.
- 5.5. Security of Information. Lessee acknowledges and agrees that it may become aware of identifying, personal, business, or financial information for Users and for In-telligent through the use of the Product, and further acknowledges, agrees, and warrants that it will maintain the confidentiality and security for any and all such information of which it may become aware through the use of the Product. Lessee is solely responsible for all employees, agents, representatives, and Operators that use or have access to the Product or to their computer systems upon which the Product is being utilized by Lessee, and for ensuring that such individuals maintain privacy and security measures with regard to the Product, the Users, the Alerts, and the information utilized and maintained within the Product. Lessee agrees that it is solely responsible for its computer systems and for taking any measures that are necessary to maintain the privacy and security of any information as outlined in this Section.

6. Proprietary Rights.

- 6.1. Ownership. All right, title, and interest, including but not limited to any copyright interests and any other Intellectual Property Rights (defined below) in and to the Platform, the Portal, the Product, any software and other digital products produced or provided by In-telligent under this Agreement (collectively, “**Work Product**”) shall be the property of In-telligent. For the purposes of this Agreement, “**Intellectual Property Rights**” means any patent, trademark, registered design, trade secret, or any application for registration of the same, any copyright or related rights (including copyright in the HTML source code), database right, design right, rights in trade, business, or domain names, rights in trade dress, rights in inventions, rights in confidential information, user lists or know-how or any similar or equivalent rights in any part of the world.
- 6.2. Lessee License. During the Term and provided the Lessee is in compliance with all of the terms and conditions of this Agreement, the Lessee shall have the nonexclusive, nonassignable, royalty-free right and license to use the Work Product (for software, use shall be by machine-readable form only) throughout the Lessee’s organization subject to any and all limitations set forth in this Agreement.

- 6.3. *In-telligent Limited Logo and Trademark License.* Subject to the terms and conditions in this Agreement, Lessee grants In-telligent a non-exclusive, non-transferable, non-sublicensable right and license to use its name and affiliated descriptive marks and logos on In-telligent's website and in its presentation and/or advertising materials.
- 6.4. *No Implied License.* Except for the limited rights and license expressly granted hereunder, no other license is granted, no other use is permitted and In-telligent shall retain all right, title, and interest in and to the Product (and all patent rights, copyright rights, trade secret rights, and all other intellectual property and proprietary rights embodied therein).
7. **Revenue Sharing.** Licensee shall be entitled to fifty percent (50%), paid quarterly, of In-telligent's net revenue attributed to the Licensee's users use of the application. For purposes of this agreement, net revenue equals the advertising revenue generated by In-telligent after deduction of all taxes, fees, and direct expenses incurred by In-telligent in the collection and determination of said revenue. For the purpose of this Agreement and this specific Subsection, direct expenses shall include only the expenses directly incurred by In-telligent in generating said revenue and shall exclude In-telligent's general operating expenses. Lessee acknowledges that, just like the Product, In-telligent's system for developing, tracking, and computing Inventory Revenue is proprietary, and therefore, subject to the requirements of Florida's Public Records Law, Florida Statutes Chapter 119, all terms of this Revenue Sharing Program, including the percentages and amounts allotted to the licensee, must be kept strictly confidential by Lessee.
8. **Restrictions.** Except and only to the extent expressly specified in this Agreement, Lessee shall not (a) use any portion of the Product or its exposure to the Product to create any software, content, or documentation that is similar to the Product, (b) disassemble, decompile, reverse engineer, or otherwise try to discover any source code or underlying structures, ideas or algorithms of the Product, (c) sell, encumber, lease, sublease, rent, loan, sublicense, transfer, or distribute the Product, the Confidential Information, or any portion thereof, (d) copy (except for the creation of a back-up copy and only to the extent that such creation is expressly authorized by applicable statutory law, and in such instance, subject to In-telligent's retention of any and all proprietary rights markings on the Product), adapt, merge, create derivative works of, translate, localize, port, or otherwise modify the Product, (e) use the Product in an automated process, (f) use the Product, or allow the transfer, transmission, export, or re-export of all or any part of the Product or any product thereof, in violation of any laws or regulations of the United States or any other relevant jurisdiction, (g) provide, disclose, divulge, or make available to, or permit use of the Product or any portion thereof by any third party without In-telligent's prior written consent, or (h) permit any third party to engage in any of the foregoing proscribed acts.
9. **Confidentiality.** As a result of this Agreement and the relationship between the Parties, In-telligent and Lessee may view and/or have access to certain confidential and proprietary information about the other, including but not limited to information regarding each Party's respective business, designs, intellectual property, employees, computers and networks, marketing, clients, finances, operations, and other confidential

information (“**Confidential Information**”). Subject to the requirements of Florida’s Public Records Law, Florida Statutes Chapter 119, the Parties agree to hold such Confidential Information in strict confidence, to take all reasonable precautions to protect such Confidential Information, and not to make any use of such Confidential Information except to operate the Product and conform to this Agreement.

- 10. FLORIDA PUBLIC RECORDS LAW, FLORIDA STATUTES CHAPTER 119.** Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. In-telligent acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. In-telligent also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, In-telligent agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

IF IN-TELLIGENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO IN-TELLIGENT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, cityclerk@coralgables.com, 405 Biltmore Way, First Floor, Coral Gables, FL 33134.

- 11. Sovereign Immunity.** In-telligent acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by In-telligent against the City other than claims arising out of this Agreement. Specifically, In-telligent acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. In-telligent acknowledges that this Agreement in no way estops or affects the CITY’s exercise of its regulatory authority. In addition, the CITY retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. In-telligent acknowledges that it has no right and will not make claim based upon any of the following:
- a. Claims based upon any alleged breach by the CITY of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the CITY. All obligations of the CITY are only as set forth in this Agreement;
 - b. Claims based upon negligence or any tort arising out of this Agreement;
 - c. Claims upon alleged acts or inaction by the City, its commissioners, attorneys, administrators, consultants, agents, or any CITY employee;
 - d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the CITY and In-telligent.

12. **Representations and Warranties.** THIS IS THE FULL EXTENT OF WARRANTIES PROVIDED UNDER THIS AGREEMENT, AND IN-TELLIGENT MAKES NO OTHER REPRESENTATIONS OR WARRANTIES. THESE WARRANTIES ARE IN LIEU OF ANY OTHER EXPRESS AND ALL IMPLIED OR STATUTORY WARRANTIES OF ANY KIND. **PLEASE NOTE: WITHOUT LIMITING THE FOREGOING, IN-TELLIGENT BEARS NO RESPONSIBILITY FOR SENDING OR DETERMINING THE CONTENT OF ANY ALERT. DUE TO THE NUMEROUS FACTORS THAT COULD IMPACT THE DELIVERY OF AN ALERT OR ANNOUNCEMENT, IN-TELLIGENT DOES NOT AND CANNOT GUARANTEE THAT THE ALERT OR ANNOUNCEMENT WILL REACH ITS INTENDED AUDIENCE. IN-TELLIGENT BEARS NO RESPONSIBILITY AND DISCLAIMS ANY LIABILITY FOR THE FAILURE OF AN ALERT OR ANNOUNCEMENT TO REACH ANY PERSON.**
13. **Indemnification and Liability Limitations.**
- 13.1. *Lessee's Defense and Indemnification of In-telligent.* Lessee shall defend, indemnify, and hold harmless In-telligent (as well as its subsidiaries, owners, members, affiliates, officers, agents, partners, and employees) from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by In-telligent as a result of any claim, judgment, or adjudication against In-telligent related to or arising from, directly or indirectly, the use of the Product by Lessee and/or its Operators, the content of the Alerts or information used to form the Alerts, or any violation of this Agreement. Any obligation pursuant to this paragraph is subject to the statutory limitations set forth in Section 768.28, Florida Statutes.
- 13.2. *Limitation on Liability.* In no event will In-telligent be liable for any indirect, incidental, special, consequential, punitive, or similar damages to Lessee, including, but not limited to, lost profits and loss of data.
14. **Non-Exclusive.** The Parties acknowledge and agree that the procurement of services under this Agreement and Lessee's limited use and license will be on a non-exclusive basis, and that In-telligent may make the Product available to any other entities or third parties at its sole discretion. The Parties further acknowledge that Lessee is currently using, and reserves the right to use, one or more additional alert platforms to disseminate information to the community. Nothing in this Agreement shall be construed to limit the City's ability to continue using other providers and/or platforms concurrently with the City's use of In-telligent's platform.
15. **General Provisions.**
- 15.1. *Notice.* Any notice required or permitted by this Agreement shall be in writing and shall be delivered during normal business hours of the Party receiving the notice by: (a) personal delivery; (b) trackable delivery; (c) facsimile; or (d) electronic mail.

- 15.2. Assignment. Lessee shall not assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of In-telligent.
- 15.3. Severability. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid, or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.
- 15.4. Interpretation. Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be interpreted or construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.
- 15.5. Governing Law; Forum; Legal Fees. This Agreement shall be governed by the laws of the State of Illinois without reference to conflicts of law provisions. Lessee irrevocably consents to the personal jurisdiction of the federal and state courts located in Chicago, Illinois, for any matter arising out of or relating to this Agreement. If a lawsuit or proceeding is commenced by either Party to enforce this Agreement, such Party shall be entitled to receive its reasonable attorneys' fees, expert witness fees, and costs incurred in connection with such proceeding, in addition to any other relief to which such prevailing Party may be entitled.
- 15.6. Entire Understanding. This Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the Parties with respect to the subject matter hereof. No waiver or modification of this Agreement will be binding upon either Party unless executed in writing and signed by a duly authorized representative of each Party and no failure or delay in enforcing any right will be deemed a waiver. This Agreement will not be modified, amended, or in any way altered except by an instrument in writing signed by the Parties.
- 15.7. Counterparts. This Agreement may be executed in two or more counterparts and by facsimile, digital or other electronic signatures.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the later of the dates set forth below.

IN-TELLIGENT LLC

LESSEE

Signature

Signature

Print Name

Print Name

Title

Title

Date

Date