

ECI API AGREEMENT



Last Modified: January 1, 2019

Thanks for choosing to use ECI's API for Lasso. By accepting this ECI API Agreement (the "**Agreement**"), either by accessing or using the API, You are entering into a legally binding Agreement with ECI Software Solutions Canada Inc. ("**ECI**" or "**we**") that is governed by the terms below. We may periodically update these terms and will post the updated Agreement at www.LassoCRM.com and update the "Last Modified" date above to reflect the most recent version. We encourage you to review these terms periodically.

If You are entering into this Agreement on behalf of a company, organization or another legal entity (an "**Entity**"), You are agreeing to this Agreement for that Entity and representing to ECI that You have the authority to bind such Entity and its affiliates to this Agreement, in which case the terms "**Client**", "**You**", "**Your**" or a related capitalized term herein shall refer to such Entity and its affiliates.

IF YOU DO NOT ACCEPT SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT ACCESS NOR USE THE API.

1. DEFINITIONS

1.1 For purposes of this Agreement, capitalized terms shall have the meanings set forth below. Capitalized terms utilized in this Agreement and not defined in this Agreement have the meaning set forth in ECI's CRM Software Subscription Agreement & Terms of Use available at www.LassoCRM.com (the "**Terms of Use**").

1.1.1 "**API**" means an API and any accompanying or related documentation, source code, executable applications and other materials made available by ECI.

1.1.2 "**Applications**" mean web or other software services or applications owned by or licensed to Client that utilize or interact with the API and are authorized to be connected to the CRM Software Service pursuant to this Agreement.

1.1.3 "**Intellectual Property Rights**" means patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights.

1.1.4 "**Malicious Software**" means any software which may disrupt computer operations, gather sensitive information or gain access to private computer systems. It may appear in the form of code, scripts, active content or other software, and includes, but is not limited to, viruses, worms, trojan horses and spyware.

2. PURPOSE AND LICENSE

2.1 Subject to Client's compliance with the provisions this Agreement, including the restrictions set forth in Section 3, ECI grants to Client a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term (as defined in Section 10.1) to: (a) use and make calls to the API solely for use by Client in connection with the CRM Software Service; and (b) use, reproduce, distribute, and transmit Client Data to the extent necessary to format and display it through the CRM Software Service.

2.2 ECI shall have a royalty-free, fully paid-up, worldwide, transferable, sub-licensable, irrevocable and perpetual license to implement, use, modify, commercially exploit and incorporate into the CRM Software Service or the API any suggestions, enhancement requests, recommendations or other feedback ECI receives from Client.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Client must comply with all restrictions set forth in this Agreement and the Terms of Use in all uses of the API and Client Data. If ECI believes, in its sole discretion, that Client has violated or attempted to violate any term, condition or the spirit of this Agreement or the Terms of Use, the license afforded Client pursuant to this Agreement may be temporarily or permanently revoked, with or without notice to Client.

3.2 In order to permit Client to use and access the API, ECI will provide API credentials (a "**Token**") to Client's email address as set out in Section 11.6. Client may not share its Token with any third party, shall keep such Token and all login information secure and shall use the Token as Client's sole means of accessing the API.

3.3 Client may not use the API to create or utilize services or products that are the same or materially similar to those products or services offered by the API or the CRM Software Service.

- 3.4 Client shall not, under any circumstances, repackage or resell the API or CRM Software Service, or any part thereof. Client is not permitted to use the API, CRM Software Service or any Client Data in any manner that does or could potentially undermine the security of the CRM Software Service, the API, Client Data or any other data or information stored or transmitted using the CRM Software Service. In addition, Client shall not, and shall not attempt to: (a) interfere with, modify or disable any features, functionality or security controls of the API or CRM Software Service; (b) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the API or CRM Software Service; or (c) reverse engineer, decompile, disassemble or derive source code, underlying ideas, algorithms, structure or organizational form from the API or CRM Software Service.
- 3.5 Client acknowledges that Client is solely responsible, and that ECI has no responsibility or liability of any kind, for the content, development, operation, support or maintenance of any application, device, system, network or software connected to the API ("**Client Systems**"). Without limiting the foregoing, Client will be solely responsible for (a) the technical installation and operation of the Client Systems; (b) creating and displaying information and content on, through or within the Client Systems; (c) ensuring that the Client Systems do not violate or infringe the Intellectual Property Rights of any third party; (d) ensuring that its Applications do not contain or introduce Malicious Software into the API, CRM Software Service, any Client Data or other data stored or transmitted using the CRM Software Service; and (f) ensuring that the Client Systems are not designed to or utilized for the purpose of spamming any person.
- 3.6 Client will respect and comply with the technical and policy-implemented limitations of the API and the restrictions of this Agreement in its use of the API. Without limiting the foregoing, Client shall not violate any explicit rate limitations on calling or otherwise utilizing an API.
- 3.7 Client shall not make any modifications to any Client Data, other than as reasonably necessary to modify the formatting of such Client Data in order to display it in a manner appropriate for the CRM Software Service.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Client hereby represents, warrants and covenants that:

- 4.1.1 to the extent the Applications transmit Client Data outside the CRM Software Service, it has, as required by any applicable law, regulation or policy, notified its users of the CRM Software Service and API that their Client Data will be transmitted outside the CRM Software Service and that ECI is not responsible for the privacy, security or integrity of such Client Data;
- 4.1.2 its use of the API will not, without appropriate prior user consent or except to the extent required by applicable law: (a) modify the content of Client Data in a manner that adversely affects the integrity of Client Data; or (b) disclose Client Data to any third party;
- 4.1.3 It will comply with all applicable local, state, provincial, national and international laws and regulations, including, without limitation, all applicable export control laws, and maintain all licenses, permits and other permissions necessary to develop, implement and use the API;
- 4.1.4 its use of the API does not and will not introduce any Malicious Software into the CRM Software Service, the API, any Client Data or other data stored or transmitted using the CRM Software Service;
- 4.1.5 it has all rights and consents necessary to connect the Client Data to the API, and to transfer and disclose the Client Data in such manner; and
- 4.1.6 its use of the API does not and will not violate any rights of any third party who is the owner of any data, system, device, hardware or software to which the API is connected.

5. PAYMENT

5.1 The fees applicable to Client's license to use the API and payment terms are set out in the Client Authorization Form or as set out in a signed amendment to the Client Authorization Form. Payment obligations are non-cancelable and fees paid are non-refundable. Client will pay all state, provincial and federal taxes and duties, if applicable.

6. MODIFICATIONS

6.1 Client acknowledges and agrees that ECI may modify this Agreement and the API, from time to time in its sole discretion (a "**Modification**").

6.2 If ECI is aware that a Modification to the API will result in a need for Client to make changes to its product(s) or service(s) that integrate with the API (a “**Breaking Change**”) or if the Modification is to this Agreement, ECI will provide thirty (30) days’ prior written notice to Client at the electronic mail address set out in Section 11.6 prior to implementing the Breaking Change.

6.3 For any Modification to the API other than a Breaking Change, Client is responsible to remain informed of such Modifications and ECI may make reasonable efforts to notify Client of such Modifications by electronic mail to the electronic mail address set out in Section 11.6. Client further acknowledges and agrees that such Modifications may be implemented at any time and without any notice to Client.

6.4 Client shall, within thirty (30) days from the date of first notice of any Modification(s) (or such shorter period of time specified in the notice of the Modification(s)) (the “**Conformance Period**”), comply with such Modification(s) by implementing and using the most current version of the API. Client acknowledges that a Modification may have an adverse effect on the CRM Software Service or any interactions with any third party systems, device, hardware or software, including but not limited to changing the manner in which the CRM Software Service communicates with the API or displays or transmits Client Data. ECI shall have no liability of any kind to Client with respect to such Modifications or any adverse effects resulting from such Modifications. **Client’s continued access to or use of the CRM Software Service or API following the Conformance Period shall constitute binding acceptance of the Modification(s) at issue.**

7. OWNERSHIP

7.1 Each of Client and ECI shall maintain all rights, title and interest in and to all its respective Intellectual Property Rights. The rights granted to Client to use the API under this Agreement does not convey any additional rights in the API or CRM Software Service, or in any Intellectual Property Rights associated therewith.

7.2 Subject only to limited rights to access and use the API as expressly stated herein, all rights, title and interest in and to the API and all hardware, software and other components of or used to provide the API or CRM Software Service, including all related Intellectual Property Rights, will remain with and belong exclusively to ECI.

8. DISCLAIMER OF WARRANTIES

8.1 ALL ASPECTS OF THE API, INCLUDING ALL SERVER AND NETWORK COMPONENTS, ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, AND ECI EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ACKNOWLEDGE THAT ECI DOES NOT WARRANT THAT THE API OR CRM SOFTWARE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE, AND NO INFORMATION OR ADVICE OBTAINED BY YOU FROM ECI OR THROUGH THE CRM SOFTWARE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

9. LIMITATION OF LIABILITY

9.1 UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) WILL ECI OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE TO THE CLIENT OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA, BUSINESS INTERRUPTION, LOSS OF GOODWILL, OR FOR ANY TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR ANY OTHER LOSS OR DAMAGES INCURRED BY CLIENT OR SUCH THIRD PARTY IN CONNECTION WITH THIS AGREEMENT OR THE API, REGARDLESS OF WHETHER ECI HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

9.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ECI’S AGGREGATE LIABILITY TO CLIENT OR ANY THIRD PARTY ARISING OUT THIS AGREEMENT SHALL IN NO EVENT EXCEED THE LESSER OF: (A) THE TOTAL AMOUNT OF FEES RECEIVED BY ECI FROM CLIENT UNDER THIS AGREEMENT IN THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION FIRST AROSE; OR (B) US\$10,000.00. ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN ONE (1) YEAR OF THE FIRST EVENT OR OCCURRENCE GIVING RISE TO THE CLAIM.

9.3 The limitations set forth in this Section 9 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

9.4 CLIENT WILL INDEMNIFY AND HOLD ECI HARMLESS AGAINST ANY CLAIM BROUGHT BY A THIRD PARTY AGAINST ECI ARISING FROM OR RELATED TO ANY BREACH BY CLIENT OF AN OBLIGATION, REPRESENTATION, WARRANTY, COVENANT OR OTHER PROVISION OF THIS AGREEMENT.

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10. TERM AND TERMINATION

- 10.1 This Agreement shall commence on the Effective Date and will remain in effect until terminated pursuant to this Section 10 (the “Term”).
- 10.2 Either party may terminate this Agreement:
- 10.2.1 for any reason upon ninety (90) days’ written notice;
 - 10.2.1 upon written notice if the other party materially breaches this Agreement and does not cure such breach (if curable) within thirty (30) days after written notice of such breach; or
 - 10.2.2 immediately upon written notice if the other party becomes insolvent or files or has filed against it a petition in bankruptcy.
- 10.3 Any termination of this Agreement shall also terminate the licenses granted to Client hereunder.
- 10.4 Upon termination of this Agreement for any reason, Client shall cease using the API immediately.
- 10.5 Sections 3 through 5, 7 and 8 through 11 shall survive termination of this Agreement.

11. MISCELLANEOUS

- 11.1 Client may not, directly or indirectly, by operation of law or otherwise, assign all or any part of this Agreement or Client’s rights under this Agreement or delegate performance of Client’s duties under this Agreement without ECI’s prior consent. This Agreement will be fully binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.
- 11.2 This Agreement is the entire understanding and agreement of the parties, and supersedes any and all previous and contemporaneous understandings, agreements, proposals or representations, written or oral, between the parties, as to the subject matter hereof.
- 11.3 ECI’s failure to enforce at any time any provision of this Agreement does not constitute a waiver of that provision or of any other provision of this Agreement.
- 11.4 If any provision in this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 11.5 The parties are independent contractors, and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship among the parties.
- 11.6 All notices to be provided by a party to the other party may be delivered by electronic mail to the following electronic mail addresses: (a) if to ECI, clientservices@LassoCRM.com; and (b) if to Client, to the email address specified on the most recent Client Authorization Form ECI has received from Client. Receipt is deemed on the day after an electronic mail is sent.
- 11.7 Except for applications for injunctive relief, any dispute or claim arising out of or relating to this Agreement will be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre pursuant to its applicable Rules. The place of arbitration shall be Vancouver, British Columbia, Canada and the language of the arbitration shall be English. The number of arbitrations shall be one (1).
- 11.8 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the applicable federal laws of Canada therein without giving effect to principles of conflict of laws.