



TERMS OF SERVICE

These Hubble Terms of Service (the "Agreement") are made and entered into as of the Order Date of the first Order Form (the "Effective Date") executed between the insightsoftware.com entity identified in Section 26 below, ("insightsoftware.com") and the entity described in such Order Form ("Customer"). The terms and conditions of this Agreement shall govern the Hubble Services (as defined in Sections 1 and 37 below) to be provided by insightsoftware.com under any Order Form submitted by Customer and accepted by insightsoftware.com. Each Order Form shall be interpreted as though the provisions of this Agreement are set forth in their entirety within such Order Form, and each Order Form, any previously executed Order Forms and this Agreement shall be considered one, fully integrated document and agreement. To the extent there is any inconsistency with or conflict between the terms of this Agreement and those contained in an Order Form, this Agreement will control and take precedence unless otherwise agreed in writing in such Order Form by specific reference to the provisions of this Agreement that will be modified or changed. Capitalized terms are as defined within Section 37 of the Agreement or in the Order Form.

- 1. Hubble Services.** Subject to the terms of this Agreement and the relevant Order Form(s), insightsoftware.com hereby grants to Customer and its Affiliates the right to access and use the Hubble Services made available to Customer and its Affiliates pursuant to the terms set out in this Agreement and the applicable Order Form(s) for the duration of each Subscription Period. Hubble Services are purchased on the basis of a set number of User subscriptions and, subject to any amendment in accordance with the terms of subsequent Order Form(s), may be accessed by no more than the specified number and type of Users. User subscriptions are for designated Users and cannot be shared or used by more than one User unless it has been reassigned in its entirety to another User and the prior User no longer has any right of access to the Hubble Services and Software. Customer shall be solely responsible for ensuring Users compliance with the terms of this Agreement and applicable Order Form(s) and Customer shall be fully liable for any acts or omissions of all Users.
- 2. Required Hubble Accelerator.** The Hubble Services require the implementation and use of a Hubble Accelerator which will be in the form of a Physical Appliance or a Virtual Appliance as specified on the Order Form. Customer acknowledges and agrees that the Hubble Accelerator is required as a part of the Hubble Services. Within thirty (30) days from Order Date of the first Order Form (or any subsequent Order Form that requires any additional Hubble Accelerator(s)), Customer shall make the Hubble Accelerator available for use by insightsoftware.com or its contractors to enable activation of the Hubble Services.

Unless a Virtual Appliance is used, Customer must purchase the Physical Appliance directly from insightsoftware.com's designated Hardware Supplier. Customer acknowledges and agrees that the Hardware Supplier may provide insightsoftware.com and insightsoftware.com may provide the Hardware Supplier with certain information regarding the Customer's purchase of the Physical Appliance or the Hubble Services, including, but not limited to, order date, shipping address and other contact information, shipment tracking information, delivery date, returns, claims for damaged goods, and non-payment of or delinquent accounts. Customer shall contract directly with and pay the Hardware Supplier for the Physical Appliance including all associated costs including, but not limited to, shipping costs, sales tax, VAT, custom fees, duties, import/export taxes or any other fees required by law for the delivery of the Physical Appliance to Customer. In addition, Customer is responsible for the following:

- (a) Validating the accuracy and completeness of any and all information provided to the Hardware Supplier by insightsoftware.com;
 - (b) Tracking and receipt of any Physical Appliance order;
 - (c) Installing any Physical Appliance within a suitable rack-mounted server cabinet within Customer's own data center (or managed data center)
 - (d) Connecting the Physical Appliance or Virtual Appliance to Customer's network; and
 - (e) Cooperating with insightsoftware.com to complete any necessary configuration of the Physical Appliance or Virtual Appliance once installed.
- 3. License Grants.** Included as a part of the Hubble Services, insightsoftware.com grants to Customer and its Affiliates a limited non-exclusive, non-transferable, license to permit the designated Users to use the Software installed on the Hubble Accelerator (including associated Documentation) in object code only as a part of the Hubble Services, solely for Customer's internal business or governmental operations, for the relevant Subscription Period. This license includes only the rights expressly granted in this Agreement, which include the right to:
 - (a) Install and use the Software for use by no more than the number of Users and User Types designated in the relevant Order Form(s);
 - (b) Make a reasonable number of copies of the Software and Documentation for backup, archival and disaster recovery purposes only; and
 - (c) Copy and distribute the Documentation solely to designated Users.

Customer hereby grants to insightsoftware.com and its affiliates a worldwide, limited license for the Term to host, copy, transmit and display Customer Data as necessary for insightsoftware.com to provide the Hubble Services pursuant to this Agreement.

- 4. Ownership and Intellectual Property Rights.** The Hubble Services, including without limitation the Content, the Software, the Documentation, and all intellectual property and/or proprietary rights relating to or embodied therein, and including all copies thereof, are owned by insightsoftware.com, its affiliates or suppliers and are protected by applicable intellectual property laws and international treaty provisions. insightsoftware.com reserves all rights not expressly granted to Customer in Sections 1 and 3 above and no license

or rights are granted by implication, estoppel or otherwise. Customer may not remove, add to, or alter, any of the trademarks, trade names, logos, patent or copyright notices or proprietary markings which are displayed in connection with the Hubble Services or which are in the Software or Documentation. Customer may not adopt, use or register any trademark, trade name or other marketing name of insightsoftware.com or any of its affiliates or third party suppliers, nor use any confusingly similar trademark, trade name or other marketing name. With respect to any suggestions or recommendations by Customer to insightsoftware.com regarding proposed additional features, functionality, performance options or other modifications to insightsoftware.com's proprietary products or services, Customer hereby grants insightsoftware.com an irrevocable, worldwide, non-exclusive, royalty-free, perpetual right and license to develop, use and exploit such suggestions or recommendations, including without limitation the integration of such features and functionality, in whole or in part, into the insightsoftware.com's proprietary products and services without the need to account for the same to Customer. Customer acknowledges that any and all products and services incorporating such new features, functionality, or performance shall be the sole and exclusive property of insightsoftware.com and all such recommendations shall be free from any confidentiality restrictions that might otherwise be imposed upon insightsoftware.com pursuant to this Agreement or other agreement between the parties.

5. **License Restrictions and Limitations of Use.** The Software and Hubble Services may be used by Customer and its Affiliates only to process data and produce reports that are greater than fifty percent (50%) derived from data within the third party ERP suite database specified on the Order Form. Further, the Software may be used solely for the purpose of utilizing the Hubble Services provided under this Agreement and for no other purpose. Customer agrees not to and shall not permit any third party (except as expressly provided for in relation to Affiliates) to (a) modify, adapt, alter, translate, or create derivative works from the Hubble Services, Software, Content or Documentation; (b) merge the Software with other software; (c) license, sublicense, sell, resell, transfer, distribute or otherwise transfer, or commercially exploit or make available the Software, Documentation, Content or Hubble Services to any third party; (d) use the Software or Hubble Services to process the data of or otherwise benefit third parties; (e) reverse engineer, remanufacture, decompile, disassemble, or otherwise attempt, in whole or in part, to derive the source code for the Software; or (k) otherwise use or copy the Hubble Services, Software, Content or Documentation except as expressly allowed under this Agreement.
6. **License Key.** A License Key provided by insightsoftware.com activates the Hubble Services and Software provided under this Agreement. The License Key is time-sensitive and deactivates the Hubble Services upon a date corresponding with the beginning of the next Billing Period plus seven (7) days. Customer's Hubble Services will be initiated by a thirty (30) day License Key pending payment of the Subscription Fee for the initial Billing Period. insightsoftware.com agrees to provide and/or activate the License Key for each subsequent Billing Period within forty-eight (48) hours of receiving payment of the Subscription Fee for the relevant Billing Period. insightsoftware.com is not liable for costs or damages associated with the expiry of the License Key caused by a failure of Customer to timely a) remit the Subscription Fees or b) install the License Key properly as provided to it by insightsoftware.com.
7. **Service Level Commitment.** insightsoftware.com shall provide the Hubble Services to Customer using commercially reasonable efforts to make the Hubble Services available 24 hours a day, 7 days a week, except for: (a) planned downtime or (b) any unavailability caused by circumstances beyond insightsoftware.com's reasonable control, including events qualifying as Force Majeure under Section 35, unavailability as a result of Customer's or its Affiliates' acts or omissions or Internet service provider failures or delays. The Hubble Services will be provided under the terms of this Agreement as further modified by the published Hubble Service Level Agreement in effect at the beginning of each Subscription Period and which is incorporated by reference into this Agreement.
8. **Services.** In certain regions, insightsoftware.com offers consulting services and training services related to the Hubble Services (together, the "Professional Services") which may be purchased by the Customer or its Affiliates by the execution of an Order Form or statement of work incorporating the terms and conditions set forth in the separate Professional Services Terms and Conditions. Customer agrees that an Affiliate may contract separately for Professional Services by executing an Order Form for such Professional Services.
9. **Customer Responsibilities.** Customer shall have sole responsibility for the accuracy, quality, integrity, legality, completeness and appropriateness of the Customer Data, and for ensuring that Customer's use of the Hubble Services to process Customer Data complies with the terms of any third party software or database license terms. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Hubble Services and shall notify insightsoftware.com promptly of any such unauthorized access or use. Customer shall use the Hubble Services only in accordance with any relevant terms of use or other instructions published by insightsoftware.com and any applicable laws and government regulations. Customer shall also provide insightsoftware.com with all necessary cooperation as reasonably required by insightsoftware.com to provide the Hubble Services, including but not limited to obtain and maintain all necessary licenses, consents and permissions to necessary for insightsoftware.com or its contractors and agents to perform their obligations under this Agreement. Customer shall ensure that its network and systems comply with the relevant specifications provided by insightsoftware.com from time to time and shall be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to insightsoftware.com's data center and for any problems, conditions, delays, or delivery failures relating thereto.

Customer shall not use the Hubble Services to access, store, distribute or transmit any material that: (a) is infringing, defamatory, harmful, threatening, obscene, harassing or otherwise unlawful or offensive; (b) violates third-party privacy or other rights; (c) facilitates, promotes or depicts illegal activity; or (e) is otherwise illegal or causes damage or injury to any person or property. insightsoftware.com reserves the right, without liability or prejudice to its other rights, to disable Customer's access to any material that breaches the provisions of this clause. Customer shall not attempt to gain unauthorized access to the insightsoftware.com related systems or networks, introduce into such systems or networks any malicious code, or interfere with or disrupt the integrity or performance of the Hubble Services in any manner. Customer shall not create Internet "links" to the Hubble Services or "frame" or "mirror" any Content on any other server or wireless or Internet-based device or access the Hubble Services in order to (i) build a competitive product or service,

(ii) build a product using similar ideas, features, functions or graphics of the Hubble Services, or (iii) copy any ideas, features, functions or graphics of the Hubble Services. A violation of any part of this Section shall constitute a material breach of this Agreement.

10. **Customer Records.** insightsoftware.com and its third party suppliers reserve the right to audit Customer's use of the Hubble Services and Software no more frequently than once annually at their own expense. All audits shall be conducted during regular business hours at Customer's facilities and shall not unreasonably interfere with Customer's business activities. insightsoftware.com shall schedule any such audits at least fifteen (15) days in advance.
11. **Fees and Payment Terms.** Customer agrees to pay insightsoftware.com the Subscription Fees for each Billing Period in advance as specified in each Order Form. All Subscription Fees under this Agreement and the relevant Order Forms are due and payable in the currency specified on the Order Form upon receipt of the invoice, unless otherwise provided for on the Order Form. Without prejudice to any other right and remedies of insightsoftware.com, any invoice remaining unpaid for more than thirty (30) days from the date of invoice shall accrue interest on a daily basis on such due amounts at the rate of the lesser of 1½% per month or the highest rate allowed by law, whether before or after judgment.
12. **Suspension of Service.** If any amounts, fees or charges payable by Customer are thirty (30) days or more overdue, insightsoftware.com may, without limiting its other rights and remedies, suspend the Hubble Services, and access to the Software and/or Documentation until such amounts are paid in full (together with any interest accrued).
13. **Taxes.** Customer shall be solely responsible for all taxes, including any interest and penalty, related to items or services provided to it by insightsoftware.com under this Agreement including, by way of example and not limitation, import duties and fees, sales, use, property, excise, value added, and gross receipts. Notwithstanding anything to the contrary in this Section, insightsoftware.com shall be solely responsible for all taxes based on its own personal property and net income.
14. **Warranty.** insightsoftware.com warrants to Customer that the Hubble Services will be provided substantially in accordance with the Documentation for the relevant Subscription Period. The entire liability of insightsoftware.com and the exclusive remedy of Customer for breach of this warranty is to terminate this Agreement in accordance with Section 20 and receive payments in accordance with Section 22. INSIGHTSOFTWARE.COM'S THIRD PARTY SUPPLIERS MAKE NO DIRECT WARRANTIES, EXPRESS OR IMPLIED, TO CUSTOMER UNDER THIS AGREEMENT. INSIGHTSOFTWARE.COM DOES NOT WARRANT THAT THE USE OF THE HUBBLE SERVICES AND SOFTWARE SHALL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE FOREGOING WARRANTIES ARE EXCLUSIVE OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, COURSE OF PERFORMANCE OR FITNESS FOR A PARTICULAR PURPOSE.
ANY WARRANTIES RELATED TO THE HUBBLE ACCELERATOR (EXCLUSIVE OF THE SOFTWARE) ARE BETWEEN CUSTOMER AND ITS HARDWARE SUPPLIER OR THE HARDWARE MANUFACTURER AND INSIGHTSOFTWARE.COM PROVIDES NO WARRANTY WITH REGARD TO THE HUBBLE ACCELERATOR HARDWARE. ANY RECOMMENDATIONS MADE BY INSIGHTSOFTWARE.COM REGARDING THE NUMBER OF HUBBLE ACCELERATORS REQUIRED BY CUSTOMER TO USE THE HUBBLE SERVICES ARE ESTIMATES ONLY, BASED ON TYPICAL CONFIGURATIONS AND USAGE. MANY FACTORS NOT WITHIN THE CONTROL OF INSIGHTSOFTWARE.COM, SUCH AS PROCESSING VOLUMES, INTERNAL NETWORK INFRASTRUCTURE AND CAPACITY, AND USER BEHAVIOR CAN AFFECT THE PERFORMANCE OF THE HUBBLE ACCELERATOR AND THE HUBBLE SERVICES. INSIGHTSOFTWARE.COM MAKES NO WARRANTY AS TO THE ADEQUACY OR CAPACITY OF THE HUBBLE ACCELERATOR TO ATTAIN SOME OR ALL OF THE PERFORMANCE OBJECTIVES OF CUSTOMER.
15. **Infringement Indemnification – insightsoftware.com.** insightsoftware.com shall defend Customer and to pay any judgments, costs and expenses, or amounts paid in settlement to which insightsoftware.com agrees, which Customer may sustain as the result of any claim by a third party that use of the Hubble Services in accordance with this Agreement infringes or misappropriates such third party's (i) duly issued patent existing or issued prior to the Effective Date, or (ii) copyright, or trade secrets existing as of the Effective Date. In the event of a claim for indemnification, Customer must: (a) notify insightsoftware.com in writing of the suit or claim within ten (10) days after receiving notice; (b) give insightsoftware.com sole authority to defend or settle the suit or claim (provided that insightsoftware.com may not settle any claim unless it unconditionally releases Customer of all liability); and (c) reasonably cooperate and assist insightsoftware.com (at insightsoftware.com's expense) with defense of the suit or claim. The obligations under this Section do not apply to the extent a claim against Customer arises from Customer's breach of the terms of this Agreement or use other than permitted under this Agreement.

If the Hubble Services become or in insightsoftware.com's opinion are likely to become the subject of a suit or claim of infringement of a third party's intellectual property rights, insightsoftware.com will, at insightsoftware.com's option and expense:

- (a) Procure for the Customer the right to continue to use the Hubble Services as furnished;
- (b) Modify the Hubble Services to make them non-infringing, provided that the Hubble Services still substantially conform to the applicable Documentation; or
- (c) If insightsoftware.com is not reasonably able to do either (a) or (b), terminate this Agreement and the related Order Form(s) for the Hubble Services. In the event that this Agreement and Order Form(s) are terminated under this subsection (c), insightsoftware.com will pay Customer, as Customer's sole and exclusive remedy, an amount equal to the prepaid Subscription Fees calculated commencing with the termination date.

16. **Indemnification – Customer.** Customer agrees to defend insightsoftware.com and to pay any judgments, costs and expenses, or amounts paid in settlement to which Customer agrees, which insightsoftware.com may sustain as the result of any claim by a third party alleging that the Customer Data, or Customer's use of the Hubble Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law. In the event of a claim for indemnification, insightsoftware.com must: (a) notify Customer in writing of the suit or claim within ten (10) days after receiving notice; (b) give Customer sole authority to

defend or settle the suit or claim (provided that Customer may not settle any claim unless it unconditionally releases insightsoftware.com of all liability); and (c) reasonably cooperate and assist Customer (at Customer's expense) with defense of the suit or claim. The foregoing represents the sole liability of Customer to insightsoftware.com under this Section.

17. **Limitations of Liability.** EXCLUSIVE OF (A) THE INDEMNITIES IN SECTIONS 15 AND 16, (B) THE CONFIDENTIALITY OBLIGATIONS IN SECTION 18, OR (C) LIABILITY DUE TO PERSONAL INJURY OR DEATH CAUSED BY NEGLIGENCE (OR ANY OTHER LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED BY LAW), INSIGHTSOFTWARE.COM'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF THE FEES PAID BY CUSTOMER TO INSIGHTSOFTWARE.COM OR ITS AUTHORIZED RESELLER FOR THE TWELVE MONTHS PRECEDING THE RELEVANT ACT OR OMISSION AND, IN THE AGGREGATE, THE TOTAL AMOUNTS PAID BY CUSTOMER UNDER THIS AGREEMENT. EXCEPT FOR A BREACH OF THE CONFIDENTIALITY OBLIGATIONS IN SECTION 18 OR ANY BREACH OF INSIGHTSOFTWARE.COM'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, NOR ANY DAMAGES FOR LOSS OF GOODWILL, PROFITS, DATA, (OR USE THEREOF), OR BUSINESS INTERRUPTION ARISING OUT OF EITHER PARTY'S ACT OR FAILURE TO ACT, WHETHER SUCH DAMAGES ARE LABELED IN TORT, CONTRACT, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR PURPOSES OF THIS AGREEMENT, ANY DAMAGES, FINES OR EQUITABLE REMEDIES PAYABLE TO THIRD PARTIES (INCLUDING AMOUNTS DUE UNDER AN INDEMNIFICATION OBLIGATION SET FORTH HEREIN) SHALL BE CONSTRUED AS DIRECT DAMAGES. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF ANY EXCLUSIVE REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE. The allocations of liability in this Section 17 represent the agreed and bargained for understanding of the parties and each party's compensation hereunder reflects such allocations.

INSIGHTSOFTWARE.COM'S THIRD PARTY SUPPLIERS DISCLAIM ANY AND ALL DIRECT LIABILITY TO CUSTOMER AND ITS AFFILIATES UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL AND CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA AND OTHER SUCH DAMAGES.

18. **Confidentiality.** Each party to this Agreement, prior to or after the Effective Date, may receive or has received or may have access to or have accessed certain proprietary or non-public information (the "Disclosed Information") of the other party in connection with this Agreement. The disclosing party shall be the "Discloser" and the receiving party shall be the "Recipient." For purposes of this Agreement, "Confidential Information" is defined as:

- a) Disclosed Information in printed, written, graphic, photographic or other tangible form marked as "Confidential," "Proprietary," "Private," "Restricted," or "Trade Secret" by Discloser;
- b) Disclosed Information in any form, that, due to either the circumstance of disclosure or the nature of the information itself, would put a reasonable recipient on notice as to its confidential nature;
- c) Disclosed Information relating to unreleased products or services;
- d) the terms and conditions of this Agreement;
- e) any benchmarking results or other reports regarding availability, performance or functionality of the Hubble Services performed by or on behalf of Customer; and
- f) Customer Data and the Software.

The Recipient will use the same care to avoid disclosure, publication or dissemination of such Confidential Information as it uses with its own similar confidential information which it does not wish to disclose, publish or disseminate, but such standard of care shall, in no event be less than a reasonable standard of care. The Confidential Information, including any trade secret, confidential and/or proprietary information contained therein within the Confidential Information, is not to be disclosed to any persons other than the employees of the Recipient. However, Confidential Information may be disclosed to counsel, consultants, subcontractors or agents of the Recipient (if any) who have a need to know, have been instructed that it is Confidential Information, and who are under an obligation of nondisclosure requiring at least a reasonable standard of care. All Confidential Information remains the property of the Discloser and, except as otherwise provided in this Agreement, all Confidential Information is provided by the Discloser on an "as is" basis. The obligations of Recipient with respect to any particular portion of Confidential Information shall terminate (or shall not attach), as the case may be, when any of the following occurs:

- a. It was in the public domain at the time of the Discloser's communication thereof to the Recipient;
- b. It entered the public domain through no fault of the Recipient subsequent to the time of the Discloser's communication thereof to the Recipient;
- c. It was in the Recipient's possession free of any obligation of confidence at the time of the Discloser's communication thereof to the Recipient;
- d. It was independently developed by the Recipient; or
- e. Its disclosure is required by law, valid subpoena, or court or government order, provided, however, that the Recipient provides prompt notice of such required disclosure order and, at Discloser's request and expense, cooperate in obtaining a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

Recipient may at any time independently develop information similar to, or products and services that compete with products or services identified in, the disclosed information. The parties stipulate and agree that a breach of the confidentiality obligations by the Recipient may cause immediate and irreparable monetary damage to the Discloser and shall entitle the Discloser to apply for injunctive relief in addition to all other remedies. This confidentiality provisions in this Agreement shall supersede the terms of any prior confidentiality agreement entered into by the parties as of the Effective Date.

19. **Term.** This Agreement commences on the Effective Date and remains in effect until the expiration of the final Subscription Period unless earlier terminated as set forth in Section 20 (the "Term").

20. **Termination for Cause.** Either party may terminate this Agreement, upon written notice, for any material breach (including the failure to pay Subscription Fees when due) that the breaching party fails to cure within thirty (30) days following written notice specifying the breach. If the breach is incapable of cure, the termination shall be effective upon notice to the breaching party. Either party may terminate this Agreement 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.
21. **Renewal of Subscription Period.** Each Subscription Period shall automatically renew for additional periods equal to one (1) year unless a party gives the notice to the other party of non-renewal at least thirty (30) days before the end of the relevant Subscription Period. The pricing for any subsequent Subscription Period will remain the unchanged for the same Hubble Services unless insightsoftware.com provides Customer written notice of a pricing increase for the next Subscription Period at least sixty (60) days prior to the expiration of the then current Subscription Period.
22. **Refund or Payment upon Termination.** Upon any termination for cause by Customer, insightsoftware.com shall refund Customer any prepaid fees covering the remainder of the Subscription Period after the effective date of termination. Upon any termination for cause by insightsoftware.com, Customer shall pay any unpaid fees covering the remainder of the Term after the effective date of termination.
23. **Export Restrictions.** Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in exporting, transmitting or providing access to the Hubble Services and Software, including but not limited to, compliance with any relevant U.S., UK or EU export embargo, prohibition or restrictions. Customer represents and warrants that it (i) is not named on any U.S., UK or other government list of persons or entities prohibited from receiving exports and (ii) is not located in, under the control of, or a national or resident of any U.S., UK or EU embargoed country.
24. **U.S. Government Rights.** If the Hubble Services are being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then, as a commercial item, the Government's rights in the Hubble Services, Software and Documentation will be only as set forth (i) in this Agreement or (ii) as provided in FAR 12.212 (Computer Software) and (for Department of Defense use or disclosure) DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation), whichever set of rights provided in (i) or (ii) are the more restrictive.
25. **Survival.** The following sections shall survive the termination of this Agreement for any cause: 4, 15 through 37.
26. **Contracting Party, Notices, Governing Law and Dispute Resolution.** Who Customer is contracting with under this Agreement, who Customer should direct notices to under this Agreement, what law will apply in any dispute arising out of or in connection with this Agreement, and how the dispute will be adjudicated, depend on where Customer is domiciled. The United Nations Convention on Contracts for the International Sale of Goods specifically does not apply.

If Customer is domiciled in:	Customer is contracting with:	Notices should be addressed to:	The governing law is:	Dispute Resolution: Any action or proceeding arising from or relating to this Agreement shall be resolved as follows:
United States of America, Canada, Mexico	insightsoftware.com, inc.	5613 DTC Parkway, Suite 950, Greenwood Village, CO 80111 Attn: Legal	Colorado, without regard to its conflict of laws provisions, and controlling United States federal law	Submitted to a panel of three (3) arbitrators appointed and operating under the Federal Arbitration Act and the Commercial Rules of Arbitration of the American Arbitration Association
United Kingdom	insightsoftware.com ltd.	53 - 55 Uxbridge Road, Ealing, London W5 5SA Attn: Legal	English	Submitted to a panel of three (3) arbitrators appointed and operating under the Arbitration Act 1996 as amended who shall apply the Rules of Conciliation and Arbitration of the International Chamber of Commerce
A country other than as specifically listed herein	insightsoftware.com international	Unit 8 Parklands Office Park, Southern Cross, Bray, County Wicklow, Ireland Attn: Legal	Irish	Submitted to a panel of three (3) arbitrators appointed and operating under the Arbitration Act 2010 as amended who shall apply the Rules of Conciliation and Arbitration of the International Chamber of Commerce

In all cases, the parties shall each select one arbitrator and those two arbitrators shall select a third neutral arbitrator. The written decision of the arbitrators shall be final, binding, and convertible to a court judgment in any appropriate jurisdiction. The arbitration will be confidential, conducted in English and the party not initiating the arbitration will choose its location. Nothing in this Section shall be construed to reduce either party's right to seek injunctive relief.

27. **Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. Customer may not transfer or assign this Agreement without the prior written approval of insightsoftware.com, and any assignment or transfer without consent is void.
28. **Counterparts.** This Agreement and the Order Form(s) may be executed and delivered by original signature or facsimile, and in one or more counterparts, each of which will be deemed to be an original copy and all copies of which, when taken together, will be deemed to constitute one agreement.
29. **Headings.** The section headings contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation of this Agreement.

30. **Severability.** Wherever possible each provision of this Agreement is to be interpreted in such a manner as will be effective and valid under applicable law, but if any provision of this Agreement is invalid under applicable law, that provision will be ineffective only to that limited extent, without invalidating the remainder of that provision or other provisions of this Agreement.
31. **Amendment.** This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party.
32. **Construction.** In the event that any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms and the singular and plural each include the other.
33. **Waiver.** Neither party shall be deemed, by any act or omission, to have waived any of its rights or remedies under this Agreement unless the waiver is in writing and signed by a duly authorized representative of the waiving party. Waiver as to one event shall not be construed as waiver of any right or remedy as it relates to any other event.
34. **Customer Reference Program.** Upon Customer's express written consent and approval, Customer may be asked to participate in the insightsoftware.com Reference Program. The insightsoftware.com Reference Program involves participating in pre-arranged calls, from time to time, with prospects of insightsoftware.com with the purpose of describing Customer's use of and the benefits received from the Hubble Services. Further, insightsoftware.com is hereby granted permission by Customer to identify Customer as one of its customers for marketing purposes.
35. **Force Majeure.** Except for the obligation to make payments, neither party is responsible for any losses resulting if the fulfillment of any terms or provisions of this Agreement is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence that party is unable to prevent, including but not limited to revolution or other disorders, wars, acts of enemies or terror, strikes, epidemics, natural disasters, the introduction of viruses or material breaches of network security by third parties, or other similar "acts of God."
36. **Entire Agreement.** This Agreement together with its Order Form(s) and any other document referred to herein, constitutes the entire agreement and understanding of the parties relative to the subject matter of this Agreement. Each of the parties acknowledges and agrees that they have not relied upon any promise, representation, warranty, agreement, covenant, assurance, statement, understanding or undertaking (whether written or not) of any person (whether party to this Agreement or not), other than those expressly set forth in this Agreement. Each party agrees that it shall have no remedies in respect of any such promise, representation, warranty, agreement, covenant, assurance, statement, understanding or undertaking (whether made innocently or negligently) that is not set out in this Agreement. This Agreement replaces and supersedes any and all prior oral or written agreements, representations and discussions relating to such subject matter.

37. **Definitions.**

"Affiliates" means any entity, whether incorporated or not, which directly or indirectly is and remains controlled by the entity identified as "Customer" on the Order Form. Control in an Affiliate requires ownership of more than fifty percent (50%) of the: (i) voting stock of a company with voting stock; or (ii) equity interest in any other enterprise. Customer shall remain responsible for insuring each Affiliate's compliance with the terms of this Agreement and Customer shall be liable for the acts and omissions of any Affiliates under this Agreement or the Services Agreement. In the event an Affiliate ceases to comply with this definition, this Agreement will terminate solely as it relates to the former Affiliate.

"Billing Period" means the agreed upon intervals for which insightsoftware.com will invoice Customer for the Hubble Services, as specified on the Order Form(s).

"Content" means the information, documents, products and services contained in or made available via the Hubble Services, other than Customer Data.

"Customer Data" means all electronic data or information submitted by Customer and its Affiliates through the use of the Hubble Service and the Software. Customer shall retain all ownership and any other rights to its Customer Data except for those rights granted to insightsoftware.com herein. insightsoftware.com is not obligated to retain Customer Data after termination of this Agreement.

"Documentation" means works of authorship, expressed in any medium and made generally available, relating to the Hubble Services and Software and comprising either (i) instructions for its respective use, or (ii) descriptions of its operational and/or design characteristics including any physical, administrative and technical safeguards. Documentation is currently provided on the insightsoftware.com hosted web site.

"Hardware Supplier" means the third party designated supplier of the Hubble Accelerator which insightsoftware.com may change from time to time in its sole discretion.

"Hubble Accelerator" means either the Physical Appliance or the Virtual Appliance as defined below and which is required for use of the Hubble Services.

"Hubble Services" mean the online, web-based applications and cloud-based platform provided by insightsoftware.com and all Software contained on the Hubble Accelerator that are included on a mutually executed Order Form.

"License Key" means a per computer machine readable code that permits Customer to access the Hubble Services and use the Software licensed under this Agreement for the number of Users specified on one or more executed Order Forms. The Customer cannot use the Hubble Services or the Software without a License Key.

“Order Form” means the form evidencing an order for the Hubble Services and any subsequent orders for any of the foregoing submitted online or in written form. Each Order Form shall be in a form approved by insightsoftware.com and shall specify, among other things, the Order Date, the products/services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties.

“Physical Appliance” means the required hardware to be purchased by Customer from insightsoftware.com’s designated Hardware Supplier that meets insightsoftware.com’s specifications as set forth in the Hubble Requirements Document. insightsoftware.com may in the future, in its sole discretion, modify the server configuration and/or components for the Physical Appliance. Title for the Physical Appliance shall pass to Customer as specified in the purchase contract with the Hardware Supplier.

“Software” means the products licensed by insightsoftware.com to Customer and which are downloaded on to the Hubble Accelerator after its delivery and prior to connecting to the Hubble Service, including any subsequent releases of such products.

“Subscription Fee” means the fee specified on an Order Form(s) for use of the Hubble Services, which may also include usage-based fees.

“Subscription Period” means the period for which Customer has committed to subscribe to the Hubble Services as indicated on the Order Form(s).

“User” means an individual authorized to access the Hubble Services under this Agreement who is either an employee, vendor, customer or independent contractor engaged by Customer who require access to the Hubble Services to perform their tasks.

“User Types” means various Users listed on the Order Form that have different rights of access to and use of the Hubble Services.

“Virtual Appliance” means the required hardware to be purchased by or otherwise arranged for by Customer and which conforms to insightsoftware.com’s specifications as set forth in the Hubble Requirements Document. insightsoftware.com may in the future, in its sole discretion, modify the server configuration and/or components for the Virtual Appliance.

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