



PROFESSIONAL SERVICES TERMS & CONDITIONS

This Professional Services Terms & Conditions (the "Agreement") is made and entered into as of the Effective Date of the first Order Form executed between the insightsoftware.com entity as identified in Section 15 below, ("insightsoftware.com") and the entity described in such Order Form ("Customer"). CUSTOMER SHOULD READ CAREFULLY THE TERMS OF THIS AGREEMENT BEFORE SIGNING AN ORDER FORM. BY SIGNING AN ORDER FORM, CUSTOMER CONFIRMS THAT IT HAS READ AND ACCEPTED THIS AGREEMENT. The terms and conditions of this Agreement shall govern the Services to be provided by insightsoftware.com under any Order Form submitted by Customer and accepted by insightsoftware.com; and supersede the consulting and training services provisions in any agreement executed between insightsoftware.com as identified in Section 15 below and Customer prior to the execution of an Order Form pursuant to this Agreement. Each Order Form shall be interpreted as though the provisions of this Agreement were set forth in their entirety within such Order Form, and each Order Form shall be considered one, fully integrated document and agreement (if any) executed by the parties. In the event of a conflict between this Agreement and an Order Form, this Agreement shall control.

- 1. Services; Order Form.** insightsoftware.com agrees to provide the services or training ("Services") set forth on any Order Form executed by the parties. An Order Form is a form evidencing an order for any Services submitted online or in written form by Customer and approved by insightsoftware.com and which shall specify, among other things, the order effective date, the Services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties. In certain cases, the Order Form may incorporate by reference a Statement of Work executed by the parties that further details the Services to be performed under the Order Form. insightsoftware.com may, in its sole discretion, subcontract some or all of the Services to qualified subcontractors. Where the Order Form provides for insightsoftware.com to write reports on behalf of the Customer, insightsoftware.com will use commercially reasonable efforts to create the requested reports but it does not guarantee that all requested reports can be created or that created reports will meet all of Customer's requirements.
- 2. Affiliates.** The parties agree that an Affiliate also may contract for Services under this Agreement by executing an Affiliate Order Form for such Services. "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.
- 3. Deliverables.** If the Services are to result in the generation and/or delivery of project deliverables ("Deliverables"), all such Deliverables are subject to the terms of this Agreement. Customer represents and warrants that it will not transport, export, or re-export any Deliverable, in whole or in part, in violation of the import or export control laws or regulations of the United States or any other applicable country.
- 4. Change Orders.** In the event of actual or anticipated changes to the agreed scope, schedule, responsibilities, assumptions or any other aspect of the Services or Deliverables described in any Order Form or Statement of Work, a party may submit a proposed Change Order. The parties agree to negotiate in good faith with respect to all Change Order proposals, including changes in prices, delivery schedule, and Deliverables. No Change Order (or other amendment of or change to an Order Form or Statement of Work hereunder) shall be effective unless signed by authorized representatives of both parties.
- 5. Project Managers.** insightsoftware.com and Customer will each designate an individual in the Order Form to act as a primary point of contact between the parties with respect to the Services and Deliverables provided hereunder ("Project Managers"). Such Project Managers will have the authority to process Change Orders as agreed by the parties. Any other decision or change must comply with the amendments section of this Agreement.
- 6. Fees.** Customer agrees to pay insightsoftware.com the fees for the Services as set forth in each Order Form or Statement of Work ("Services Fees"). Such Services Fees are exclusive of any applicable sales, use or other taxes, fees or duties. Unless otherwise agreed in an Order Form or Statement of Work, insightsoftware.com shall have the right to invoice Customer on a monthly basis for the Services provided in the preceding month. Unless otherwise agreed to by the parties in the Order Form, for engagements providing for pre-paid fixed price Services (either as a pre-paid Services package or as blocks of pre-paid consulting/training hours), Customer has six (6) months from the effective date of the Order Form or Statement of Work that identifies these Services to use them. After the six-month period, any such unused prepayment will be deemed forfeited by Customer and insightsoftware.com will have no obligation to perform such Services or refund any prepaid amounts to the Customer. Customer agrees to reimburse insightsoftware.com for all actual and reasonable travel and living expenses that insightsoftware.com incurs in connection with delivering the Services and providing the Deliverables, including, but not limited to, trips to Customer's site. Invoices will reasonably describe the Services billed including the number of hours expended for time and material based Services and a summary of reimbursable expenses. Upon written request, insightsoftware.com will provide copies of receipts, or other appropriate supporting documentation for any travel and expenses incurred. Alternatively, if agreed in an Order Form or Statement of Work, insightsoftware.com will charge a per diem for expenses. All fees and reimbursed expenses are due and payable in the currency specified on the Order Form thirty (30) days from the invoice date unless otherwise provided for on the Order Form. Any invoice remaining unpaid for more than thirty (30) days from the invoice date shall accrue interest at the rate of the lesser of 1½ % per month or the highest rate allowed by law.

Unless otherwise indicated on an Order Form or Statement of Work, insightsoftware.com will perform the Services on a time and materials basis. In some instances, insightsoftware.com may provide Customer with an estimated fee. While this is insightsoftware.com's good faith estimate of the cost and quantity of Services required to provide the Deliverables and accomplish the contemplated objective, the actual cost may be more or less than the amount.

insightsoftware.com reserves the right to discontinue the provision of Services under this Agreement in the event that Customer fails to make a timely payment of fees and expenses due for the Services, or fails to comply with its or any of its representatives' performance or participation requirements. However, Customer will remain liable for any and all payment obligations arising under this Agreement, including but not limited to payment for all services rendered to date.
- 7. Customer Obligations.** In order for insightsoftware.com to complete the Services, if onsite work is required, Customer shall make available, at no charge to insightsoftware.com, office space and access to office services (such as copiers, fax machines, and network access) and relevant technical data, computer systems (including access to one PC per insightsoftware.com consultant), programs, files, documentation, test data, sample output, or other information and resources reasonably required by insightsoftware.com for the performance of the Services. Specifically, Customer shall provide insightsoftware.com one PC per consultant with an appropriate user login and password with sufficient administration and super user access rights to perform the Services. For all remote or on site Services, Customer shall (i) provide an appropriate user login and password with sufficient administration and super user access rights for each insightsoftware.com consultant performing Services, (ii) make available the appropriate Customer personnel

required to keep the project within scope, schedule and cost for all meetings, teleconferences, and decision points; and (iii) for report writing, provide report specifications in sufficient detail for insightsoftware.com to complete the Services.

8. **Relationship of Parties.** Each party will be and act as an independent contractor and not as an agent or partner of, joint venturer with the other party for any purpose related to this Agreement or the transactions contemplated hereunder, and neither party will by virtue of this Agreement have any right, power or authority to act or create any obligation, expressed or implied, on behalf of the other party.

9. **Ownership; Confidentiality.** "Intellectual Property Rights" means all worldwide (a) patents, patent applications, and patent rights; (b) rights associated with works of authorship including copyrights, copyright applications, copyright restrictions, mask work rights, mask work applications, and mask work registrations; (c) rights relating to the protection of trade secrets and confidential information; (d) moral rights; (e) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; and (f) divisions, continuations, renewals, reissues, and extensions of the foregoing (as applicable) now existing or hereafter filed, issued, or acquired.

Except for Customer's right to use the Deliverables as specified herein and excluding any Customer data contained in any Deliverable, all right, title and interest in and to any and all Deliverables (including but not limited to, Deliverables provided to Customer during the pre-sales process), including all Intellectual Property Rights pertaining thereto, will be owned by insightsoftware.com. Further, Customer agrees to assign and does hereby irrevocably assign to insightsoftware.com all right, title and interest worldwide in and to the Deliverables, and all Intellectual Property Rights related to the Deliverables, including without limitation, copyrights, trademarks, trade secrets, patents, moral rights, contract and licensing rights, and all extensions and renewals thereof. Except for the license rights granted to Customer in this Agreement, Customer retains no rights to use the Deliverable, and agrees to not challenge the validity of insightsoftware.com's ownership in the Deliverable.

Subject to Customer's compliance with the terms of this Agreement, and upon payment of the fees for the relevant Deliverable, insightsoftware.com hereby grants to Customer a royalty-free, non-exclusive, non-transferable license to use the Deliverables solely for its own internal purposes. insightsoftware.com reserves all of the rights not explicitly granted in this Agreement.

Customer agrees to take appropriate action by instruction or agreement with its employees, agents, and contractors who are permitted access to the Deliverables to fulfill its' obligations under this Agreement. The Confidentiality provisions of the applicable license or cloud services agreement between the parties is incorporated by reference into this Agreement.

10. **Customer Security Regulations/Work Policy.** insightsoftware.com (including its subcontractors) will comply with Customer's reasonable security policies in performing their activities at Customer sites or in connection with Customer systems. Unless otherwise agreed to by both parties, insightsoftware.com's personnel (including its subcontractors) will observe the working hours, working rules, and holiday schedules of Customer while working on Customer's premises.

11. **Warranty.** insightsoftware.com warrants that the Services will be performed (a) consistent with generally accepted industry standards, and (b) with reasonable skill and care and in a professional, timely, diligent and workmanlike manner by skilled, knowledgeable personnel in the subject matter of the applicable Services. For any breach of the foregoing warranty, Customer's sole remedy and insightsoftware.com's sole obligation is, at insightsoftware.com's sole option, to: (i) re-perform the Services that were not as warranted at no additional charge to Customer, or (ii) refund the amounts paid by Customer for the Services that were not as warranted, provided insightsoftware.com has received written notice from Customer within thirty (30) calendar days after completion of any Services that Customer alleges were not performed consistent with the warranties above.

FOR PURPOSES OF THIS AGREEMENT, ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, COURSE OF PERFORMANCE OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED.

12. **CONSEQUENTIAL DAMAGES WAIVER AND LIMITATION OF LIABILITY.** FOR PURPOSES OF THE SERVICES PROVIDED UNDER THIS AGREEMENT, EXCEPT FOR ANY BREACH OF INSIGHTSOFTWARE.COM'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY OR ITS SUBCONTRACTORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF REVENUES OR PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY AGREES TO TAKE REASONABLE ACTION TO MITIGATE ITS DAMAGES.

FOR PURPOSES OF THE SERVICES PROVIDED UNDER THIS AGREEMENT, UNDER NO CIRCUMSTANCES SHALL THE TOTAL LIABILITY OF INSIGHTSOFTWARE.COM FOR ALL CLAIMS OF ANY KIND WHATSOEVER, AND UNDER ANY THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO INSIGHTSOFTWARE.COM DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EARLIEST EVENT GIVING RISE TO THE CLAIM.

The limitations set forth in this Section 12 shall apply even if any exclusive remedy in this Agreement fails of its essential purpose. The allocation of liability in this Section 12 represents the agreed and bargained for understanding of the parties and each party's compensation hereunder reflects such allocations

13. **TERM AND TERMINATION.** The term of the Services shall be set forth in the Order Form or Statement of Work. Either party may terminate any Order Form or Statement of Work hereunder if the other party materially breaches the same and fails to cure such breach within thirty (30) calendar days after receipt of written notice reasonably describing the breach. Termination shall not relieve Customer from paying all amounts accrued under this Agreement prior to termination and shall not limit insightsoftware.com from pursuing any other available remedies.

14. **Survival.** The following sections shall survive the termination of this Agreement for any cause: 9, 12, 15 through 24.

15. **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, Central and South America (excluding Chile)	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.	4th Floor, International House 7 High Street Ealing, London W5 5DB	English	Submitted to a panel of three (3) arbitrators appointed and operating under the Arbitration Act 1996 as

		Attn: Legal		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 conducted in English, will be confidential 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.

16. **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.
17. **Counterparts.** This Agreement 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 of this Agreement and all of which, when taken together, will be deemed to constitute one agreement.
18. **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.
19. **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.
20. **Amendment.** This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.
21. **Construction.** In the event that an 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.
22. **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.
23. **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 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."
24. **Entire Agreement.** This Agreement together with its schedules and the exhibits constitute the entire agreement and understanding of the parties relative to the subject matter of this Agreement. The parties have not relied upon any promises, representations, warranties, agreements, covenants, or undertakings, other than those expressly set forth in this Agreement. Any purchase order or other Customer-generated document submitted with an Order Form or a Customer payment is for Customer's internal use only and its terms shall not alter, amend or supersede the terms of this Agreement. This Agreement replaces and supersedes any and all prior oral or written agreements, representations and discussions relating to its subject matter.

[END OF DOCUMENT]