

LICENSE AND SUPPORT TERMS & CONDITIONS

This insightunlimited License and Support Terms & Conditions (the "Agreement") is made and entered into as of the Order Date of the first Order Form ("Effective Date") executed between the insightsoftware.com entity identified in Section 23 below, ("insightsoftware.com") and the entity described in such Order Form ("Customer"). The terms and conditions of this Agreement shall govern the Software and Support (as defined in Section 7 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 were 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 that Order Form by specific reference to the provisions of this Agreement that will be modified or changed. Capitalized terms are as defined within the Agreement or in Section 35 below. This Agreement supersedes and replaces any insightsoftware.com license agreement contained within the Software.

1. **Grant of License from insightsoftware.com to Customer.** Subject to the terms and conditions contained in this Agreement, insightsoftware.com grants to Customer and its Affiliates a limited non-exclusive, non-transferable, license to the Software in object code only, including associated Documentation, listed on one or more Order Form(s). 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 designated in the Order Form;
- (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 Users.

Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by insightsoftware.com regarding future functionality or features of the Software. Customer may only use the Software that Customer has licensed from insightsoftware.com under this Agreement, even though, upon download, the Software may contain additional applications or modules.

2. **Third Party Hosting.** Customer may, at its option and expense, allow a third party to host the Software on its computers on Customer's behalf. Customer is responsible for ensuring that the hosting entity complies with the terms and conditions of this Agreement and Customer is fully responsible to insightsoftware.com for the acts and omissions of such hosting entity as it relates to its compliance with the terms of this Agreement. Customer is liable for any additional License Fees due to insightsoftware.com in the event the hosting entity exceeds the number of Users licensed or otherwise exceeds the scope of the license granted by this Agreement.

3. **Ownership and Intellectual Property Rights.** The Software, all intellectual property and/or proprietary rights relating to or embodied therein and all copies of the Software, are owned by insightsoftware.com or its suppliers and are protected by applicable patent and copyright laws and international treaty provisions. insightsoftware.com reserves all rights not expressly granted to Customer in Section 1 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 in the Software. Customer may not adopt, use or register any trademark, trade name or other marketing name of insightsoftware.com or any of its affiliates, 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 a 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.

4. **License Restrictions.** Customer agrees not to and shall not permit any third party to (a) modify, adapt, alter, translate, or create derivative works from the Software or Documentation; (b) merge the Software with other software; (c) sublicense, distribute or otherwise transfer the Software to any third party; (d) rent, lease, loan the Software to or on behalf of third parties; (e) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software; or (f) otherwise use or copy the Software or Documentation except as expressly allowed under this Agreement.

5. **Delivery, License Key and Shipping.** insightsoftware.com will provide to Customer one copy of the Software in electronic (downloadable) form and a License Key to access the Software. insightsoftware.com may, in its sole discretion, provide the License Key on a temporary basis with a specific date upon which the Software will cease to operate. If a temporary License Key is provided, insightsoftware.com will provide Customer a permanent License Key upon receipt of the License Fee and first year Support Fee for the Software. The License Key may only be used on one computer server and as otherwise permitted under Section 1 of this Agreement. The Software is deemed accepted by Customer upon delivery. Customer has no right to return the Software.

6. **Licenses for Additional Products and Users.** Customer may license additional insightsoftware.com software products or additional Users for the Software by entering into a written Order Form signed by both parties. Upon receipt and acceptance of an Order Form, insightsoftware.com will deliver to Customer, pursuant to the terms of this Agreement, the additional Software and/or License Key for

additional Users. insightsoftware.com shall invoice Customer for the additional Software and Support Fees (as defined in Section 7 below) as provided for herein.

7. **Software Maintenance and Support.** insightsoftware.com offers maintenance and support services for the Software ("Support"), and will provide such Support under the terms of this Section. insightsoftware.com shall provide Customer with Support for the Software commencing on the Effective Date for a period of twelve (12) months (the "Initial Support Period"). Thereafter, Support shall automatically renew for Supported Programs for successive twelve (12) month terms ("Renewal Term(s)") unless either party provides written notice of non-renewal at least sixty (60) days prior to expiration of the Initial Support Term or any subsequent Renewal Term. Non-renewal of Support does not terminate the licenses granted under this Agreement.

Support will be provided under the terms of this Agreement as further modified by the published Service Level Policies in effect at the beginning of each Renewal Term. The "Service Level Policies" set out insightsoftware.com's standard service levels and are incorporated into this Agreement by reference.

Support Fees initially will be as specified in the Order Form and will be calculated for each Renewal Term based on the then-current list price of the Software multiplied by the then-current rates for Support (the "Support Fee"). If Customer fails to remit any Support Fees, insightsoftware.com shall have no duty to provide Support under this Agreement. Support Fees included in any Order Form represent the incremental Support Fee for that specific Order and are in addition to any other Support Fees listed on any other previous Order Form(s) or invoiced to Customer.

Notwithstanding anything to the contrary in this Agreement, all Renewal Terms shall be coterminous with the relevant anniversary of the Effective Date of this Agreement (the "Coterminous Date"), and Support Fees for any additional Software or Users licensed after the Effective Date shall be prorated from the effective date of the Order Form to the Coterminous Date.

Once Support has been cancelled by Customer for the Software, it can be reinstated only if the Software is still a Supported Program and Customer pays a reinstatement fee equal to the Support Fees that would have been payable for the period of time during which Support was cancelled for such Software.

8. **Services.** In certain regions, insightsoftware.com offers consulting services and training related to the Software ("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 a separate Professional Services Agreement. Customer agrees that an Affiliate may contract separately for Services under a separate Professional Services Agreement by executing a Services Order Form for such Services.

9. **No Support or Services Associated with License.** Unless Support or Services are purchased by Customer on an Order Form executed by the parties, insightsoftware.com is not responsible to provide Customer with any New Releases, technical help, installation, customization, training or other services.

10. **Customer Responsibilities.** Customer is responsible for determining that Customer's use of the Software complies with the terms of any third party software or database license terms. Customer is responsible for undertaking the proper supervision, control and management of its use of the Software and any New Releases, including, but not limited to: (a) assuring proper Supported Environment configuration, Software installation and operating methods; (b) installing and operating the Software and any New Releases in conformity with any instructions received from insightsoftware.com; and (c) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction. Customer is responsible for maintaining a procedure external to the Software for reconstruction of lost or altered files, data and programs.

Customer is required to notify insightsoftware.com prior to transferring any Users or the Software outside of the use location specified on the Order Form ("Use Location"). Additional License and Support Fees may be due upon the transfer of the Software or Users outside the Use Location. Such additional amounts due will be billed and payable in accordance with the terms of this Agreement. In no event, however, will a transfer of Software or Users result in a refund of License or Support Fees to the Customer.

11. **Customer Records.** insightsoftware.com reserves the right to audit Customer's use of the Software no more frequently than once annually at insightsoftware.com's 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.

12. **Fees and Payment Terms.** Customer agrees to pay insightsoftware.com the fees specified in the Order Form(s) for the Software ("License Fees") and the Support Fees (collectively, "Fees").

All Fees under this Agreement and the 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. Any invoice remaining unpaid for more than thirty (30) days from invoice date shall accrue interest at the rate of the lesser of 1½ % per month or the highest rate allowed by law.

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 personal property and net income.

14. **Warranty.** insightsoftware.com warrants to Customer that the unmodified Software will contain no Defects for a period of ninety (90) days after delivery, provided that the Software is properly installed and used by Customer in accordance with the Documentation. The entire liability of insightsoftware.com and the exclusive remedy of Customer for breach of the warranty is limited, at insightsoftware.com's option, to: (a) replacement of the Software; (b) repair of the Software; or (c) termination of this Agreement and refund of the License Fees paid by Customer. INSIGHTSOFTWARE.COM DOES NOT WARRANT THAT THE USE OF THE PRODUCTS SHALL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. 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, TO THE MAXIMUM EXTENT PERMITTED BY LAW.

15. **Infringement Indemnification.** insightsoftware.com agrees to 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 the Software by itself and in unmodified form infringes or misappropriates such third party's (i) duly issued patent existing or issued prior to the initial delivery date of the applicable Software, or (ii) copyright, or trade secrets existing as of the delivery date of the applicable Software. The indemnity provided herein shall not apply if the alleged infringement arises from: (a) the use of other than Supported Program(s); (b) the use of Software that has been modified or merged with other programs by the Customer and the claim arises from such modification or merger; or (c) the use of the Software in combination with other software or hardware not provided under this Agreement or approved by insightsoftware.com in its Documentation and such combination gives rise to the alleged infringement.

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; and
- (c) Reasonably cooperate and assist insightsoftware.com (at insightsoftware.com's expense) with defense of the suit or claim.

16. **Remedies for Infringement.** If the Software becomes or in insightsoftware.com's opinion is likely to become the subject of a suit or claim of infringement of an intellectual property right, insightsoftware.com will, at insightsoftware.com's option and expense:

- (a) Procure for the Customer the right to continue use of the Software as furnished;
- (b) Replace or modify the Software to make it non-infringing, provided that the Software still substantially conforms to the applicable Documentation; or
- (c) If insightsoftware.com is not reasonably able to do either (a) or (b), terminate this Agreement and/or the related Order Form(s) to the extent it relates to the infringing Software. In the event that this Agreement and/or Order Form(s) is terminated under this subsection (c), Customer must cease to use the infringing Software, and insightsoftware.com will pay Customer, as Customer's sole and exclusive remedy, an amount equal to the License Fees paid for the infringing Software less a proportional adjustment for the time the Software was used by the Customer through the termination date equal to the ratio of the time elapsed since the delivery date to five (5) years.

17. **Limitations of Liability.** EXCEPT FOR (A) THE INTELLECTUAL PROPERTY INDEMNITY UNDER SECTION 15, (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 RELEVANT SOFTWARE OR SUPPORT SERVICES GIVING RISE TO THE LIABILITY. 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.

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 nonpublic 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;
- d) the terms and conditions of this Agreement; and
- e) 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 and Termination.** This Agreement remains in effect unless earlier terminated as set forth in this section. Customer may terminate this Agreement in its entirety at any time upon thirty (30) days written notice to insightsoftware.com. Either party may terminate this Agreement, upon written notice, for any material breach (including the failure to pay License 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. In the event of termination of this Agreement for any cause, the license to use the Software shall be immediately revoked and all Software and supporting materials will be returned to insightsoftware.com within ten (10) days or destroyed and an affidavit supplied to insightsoftware.com certifying destruction. Termination of this Agreement, or any portion of it, shall not limit either party from pursuing other remedies available to it, including injunctive relief. Such termination shall not relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement.
- 20. **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 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. or UK 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.
- 21. **U.S. Government Rights.** If the Software is 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 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.
- 22. **Survival.** The following sections shall survive the termination of this Agreement for any cause: 3, 15 through 35.
- 23. **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, will be 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.

24. **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.
25. **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.
26. **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.
27. **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.
28. **Amendment.** This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party.
29. **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.
30. **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.
31. **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 insightsoftware.com Software and Services. Further, insightsoftware.com is hereby granted permission by Customer to identify Customer as one of its customers for marketing purposes.
32. **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."
33. **Third Parties.** No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
34. **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.
35. **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.

"Defect" means a reproducible defect in the Software when operated on a Supported Environment that causes the Software not to operate substantially in accordance with the Documentation.

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

"License Key" means a per computer machine readable code that permits Customer to 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 Software without a License Key.

"New Release" means a Major Release of, or Service Pack for, the Software that is made generally available by insightsoftware.com in its sole discretion and which is provided at no additional charge to those customers subscribing to Support. A New Release shall not include any release, option or future product that insightsoftware.com licenses separately. "Major Release" and "Service Pack" are defined in the Service Level Policies.

"Order Form" means the form evidencing an order for the Software and Support 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.

"Smart Set" means a grouping of report templates for a specific ERP module or business area.

"Software" means the products licensed by insightsoftware.com to Customer that are listed on an executed Order Form(s) and all New Releases related thereto.

"Supported Environment(s)" means the technical environment that adheres to the insightsoftware.com published minimum technical requirements (MTRs) for the specific Support Program as published on insightsoftware.com's Community Portal™ or any successor website.

"Supported Program(s)" shall mean all versions of the Software for which Support is offered pursuant to the then current Service Level Policies in effect.

"User" means an individual authorized to access the Software under this Agreement who is either an employee or an independent contractor(s) engaged by Customer who require access to the Software to perform their tasks and who are under an obligation of confidentiality at least as protective as the terms of Section 18.

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