

## EINSIGHTS TERMS OF SERVICE

These Insights Terms of Service (“**Terms of Service**”) are entered into between Insights Pte. Ltd., a Singapore corporation, having its registered office at Level 19, 1 O’Connell Street, NSW - 2000 (“**Einsights**”) and the company that has either submitted a written order form or completed the online signup process for Insights Services (“**Customer**”). By signing the written order form or checking the “I Accept Insights’ Terms of Service” as part of the online signup process, Customer consents to be bound by the terms contained in this Agreement (as defined in Section 1(a)).

CUSTOMER’S USE OF THE SERVICES INCLUDES THE ABILITY TO ENTER INTO AGREEMENTS AND MAKE PURCHASES ELECTRONICALLY. CUSTOMER THEREFORE ACKNOWLEDGES THAT ELECTRONIC ASSENT CONSTITUTES FORMAL ACCEPTANCE OF THE AGREEMENT FOR EACH ELECTRONIC PURCHASE OR TRANSACTION ENTERED INTO BY CUSTOMER. IF CUSTOMER DOES NOT AGREE WITH THE TERMS CONTAINED IN THE AGREEMENT, CUSTOMER MUST ABANDON THE SIGNUP PROCESS AND MAY NOT USE THE SERVICES.

IF THE INDIVIDUAL ENTERING INTO THE AGREEMENT IS DOING SO ON BEHALF OF AN ENTITY, THE INDIVIDUAL REPRESENTS TO EINSIGHTS THAT HE OR SHE HAS THE LEGAL AUTHORITY TO BIND THAT ENTITY TO THIS AGREEMENT.

**Customer now desires to access or otherwise use the Insights Services, and Insights will permit Customer do so, subject to the terms of the Agreement:**

### 1) DEFINITIONS

- a) “**Agreement**” means these Terms of Service, any Order Form, any Documentation and any additional policies or materials available on the Insights website ([www.Einsights.com](http://www.Einsights.com)) that are specifically incorporated by reference herein.
- b) “**Content**” means the audio and visual information, data (excluding Customer Data), documents, software, products and services contained or made available to Customer in the course of using the Services.
- c) “**Customer Data**” means any data, information or material provided or submitted by Customer to Insights in the course of using the Services.
- d) “**Documentation**” refers to any supporting or technical documentation (both in printed or electronic form) provided by Insights in conjunction with the Services.
- e) “**Insights Services**” or “**Services**” mean the hosted data integration, aggregation and reporting capabilities specified in the applicable Order Form.
- f) “**Insights Technology**” means Insights’ proprietary technology, including Insights Services, Content, Documentation, software (in source and object form), software tools, scripts, parses, hardware, algorithms, products, processes, user interfaces, objects, know-how, techniques, designs, trade secrets and any related intellectual property rights throughout the world (whether owned by Insights or licensed to Insights from a third party), and also including any derivatives, improvements, enhancements or extensions of any of the foregoing conceived, reduced to practice, or developed before, during or after the term of this Agreement.
- g) “**Fees**” means all license fees or additional fees for Services, as specified in an Order Form.
- h) “**Intellectual Property Rights**” mean unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world
- i) “**Order Form(s)**” means the initial form evidencing the subscription for the Insights Services, whether submitted through the online signup process at [www.einsights.com](http://www.einsights.com) or mutually agreed to in writing by Insights and Customer, and any subsequent forms entered into by Insights and Customer specifying, among other things, the Services selected, which shall include the type of service offerings or functionality desired by Customer, the number of initial or additional User Licenses, as applicable, and the amount of additional storage, if any. The Order Form shall also specify the term and billing period of the Order Form, the applicable Fees for the Services selected, and any other charges as agreed to between the parties. Each Order Form shall be incorporated into this Agreement, and shall be subject to the terms contained herein. In the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail.
- j) “**User(s)**” means Customer and anyone Customer authorizes to use the Services by supplying user information to Insights, and who Insights subsequently provides a User License.
- k) “**User License(s)**” shall have the meaning set forth in Section 3(b).

### 2) LICENSE GRANT AND RESTRICTIONS; ACCEPTABLE USE POLICY

- a) **License to Access and Use Services.** Subject to the terms and conditions of this Agreement, Insights hereby grants Customer a non-exclusive, non-sub licensable, non-transferable, worldwide right to use the Services, solely for Customer's own internal purposes. All rights not expressly granted to Customer are reserved by Insights and its licensors, as applicable.
  - b) **License Restrictions.** Customer shall not, and shall not allow any third party to:
    - i) decompile, disassemble, or otherwise reverse engineer the Insights Technology, or reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Insights Technology;
    - ii) distribute, sell, sublicense, transfer, rent, lease or use the Insights Technology (or any portion thereof) for time sharing, hosting, service provider or like purposes, except as expressly permitted under this Agreement;
    - iii) remove any product identification, proprietary, copyright or other notices contained in the Insights Technology; or
    - iv) modify any part of the Insights Technology, create a derivative work of any part of the Insights Technology or incorporate the Insights Technology into or with other software, except to the extent expressly authorized in this Agreement or otherwise in writing by Insights.
  - c) **Acceptable Use Policy:** This Acceptable Use Policy ("AUP") is intended to protect the Services, employees and customers of Insights, and the Internet community as a whole, from improper, inappropriate, abusive or illegal activity. When using the Services, Customer is required to comply with this AUP at all times. Customer acknowledges and agrees that it will be responsible for violations of this AUP, including any violation by Customer's Users.
    - i) Customer will not use the Insights Technology or any data or information that is accessed or delivered through or derived therefrom to take any action, or assist others in taking any action that:
      - (A) infringes any copyright, trademark, trade secret, patent or other intellectual property right;
      - (B) constitutes an illegal threat made against any person or organization;
      - (C) violates export control laws or regulations;
      - (D) is obscene, pornographic, indecent, or defamatory;
      - (E) constitutes an attempt to deceive or defraud others;
      - (F) constitutes unauthorized or unsolicited transmission of advertising, junk or bulk email, or other form of unauthorized solicitation or spam;
      - (G) sends or stores material containing software viruses, worms, Trojan horses or other harmful computer code files, scripts, agents or programs; or
      - (H) interferes with or disrupts the integrity, security or performance of the Insights Services or data contained therein.
    - ii) Insights reserves the right to immediately deny access to the Insights Services and/or terminate this Agreement in the event Customer violates any of the restrictions or policies set forth in this Section 2.
    - iii) Insights will cooperate with appropriate law enforcement and other governmental agencies and other parties involved in investigating claims of illegal or inappropriate activity, and shall have no liability to Customer or any third party for any actions taken in connection with such cooperation. Employees and customers of Insights are responsible for providing assistance to Insights in such investigations as needed.
  - d) **Additional Restrictions.** Customer may not access the Services for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purpose. Customer may not publicly disseminate performance information or analysis (including, without limitation, benchmarks) unless Insights provides prior written consent. Direct competitors of Insights may only access or use the Services upon the prior written consent of Insights.
- 3) SERVICES**
- a) **General.** Insights shall provide only those Services that are specified or selected in any applicable Order Form entered into by Customer. Unless otherwise specified in an Order Form, modification or customization of the Services for Customer is not contemplated by this Agreement.
  - b) **User Licenses.** Insights will grant Customer access to the Services by providing Customer's User(s) with the requisite log-in credentials and passwords ("User Licenses"). The number of User Licenses purchased by Customer shall be specified in the Order Form. For each such User License, one User shall be granted access to the Services, and User Licenses may not be shared or used by more than one unique User.
  - c) **Subsequent Order Forms.** Customer may add or delete Services by completing a subsequent Order Form. Unless otherwise specified in the subsequent Order Form, the added Services will be coterminous with the preexisting Order Form(s), and the Fees for the added Services will be the then-current, generally applicable license fee. If Services are added in the middle of a billing month, Customer will be charged a pro-rata amount of the applicable Fees according to when the Services were activated in the given billing month.
  - d) **Trial Accounts.**
    - i) **Restrictions on Use.** If Customer is granted a free evaluation or trial account for any period of time ("Evaluation Period"), Customer may access and use the Services during any such Evaluation Period, subject to the terms of this Agreement, and for the limited purpose of evaluating whether Customer wishes to purchase the Services on a non-evaluation basis. Customer may not use the Services during the Evaluation Period for any other purposes,

including but not limited to competitive analysis, benchmarking, commercial, professional, or for-profit purposes. Evaluation Periods are offered only on a per Customer basis, and shall not be offered or available for multiple Users of a single Customer.

- ii) **Duration.** Unless otherwise specified by Insights, Evaluation Periods shall expire fourteen (14) days after the date on which the Evaluation Period is activated and Customer is granted access to the Services.
- iii) **Conversion to Paid Services; Expiration.** If Customer subsequently purchases a non-evaluation license for the Services, the Evaluation Period shall immediately terminate, and Customer will be permitted to access and use the Services as specified in the applicable Order Form. If Customer does not purchase a non-evaluation license, Customer's right to use the Services will automatically expire at the end of the Evaluation Period and the Services associated with the Evaluation Period will be deactivated.
- iv) **No Warranty.** Notwithstanding any other provision of this Agreement, during the Evaluation Period, all Services are provided "AS IS", without warranty of any kind, express or implied.
- v) **Termination.** Insights may terminate any Evaluation Period upon written notice at any time, for any reason and without liability of any kind.

#### 4) CUSTOMER RESPONSIBILITIES

- a) **Customer Warranty.** Customer represents and warrants that (i) it has the full corporate right, power and authority to enter into this Agreement, (ii) the execution of this Agreement and the performance of its obligations and duties hereunder do not and will not violate any agreement to which it is a party or by which it is bound, and (iii) Customer has not falsely identified itself, nor provided any false information to gain access to the Services.
- b) **Compliance with Law.** In connection with the subject matter of this Agreement, Customer agrees to comply with all applicable local, state, federal, and, as applicable to Customer, foreign laws, treaties and regulations, including without limitation, the laws specified in Section 10.
- c) **Passwords; Account Activities.** Upon registration, Customer will create one or more passwords and/or log-in credentials in order to access the Services, and it shall be Customer's responsibility to keep all such passwords and/or log-in credentials protected and confidential. With the exception of unauthorized activities that occur due to Insights' negligence or willful misconduct, Customer is solely responsible and liable for any and all activities, whether authorized by Customer or not, that occur under Customer's User accounts, including activities resulting from any failure by Customer to maintain the confidentiality of such passwords and/or log-in credentials.
- d) **Notification.** Customer shall (i) notify Insights immediately of any unauthorized use of any password, User account or any other known or suspected breach of security, and (ii) use reasonable efforts to immediately stop any unauthorized copying or distribution of Insights Technology that is known or suspected by Customer or Customer's Users.
- e) **Customer Data.** Insights does not own and shall not be responsible for Customer Data. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Customer Data. Insights shall not be responsible or liable for the usage of Customer Data in relating to the delivery of Services under this Agreement, and Insights reserves the right to update or revise its general policies and procedures related to storage of Customer Data under this Agreement.

#### 5) OWNERSHIP

- a) **Insights Property.** Except for the rights expressly granted in this Agreement, Insights (and its suppliers or licensors, where applicable) does not transfer to Customer any Insights Technology, and all right, title and interest, including without limitation, all patents, copyright, trademark, trade secret and other intellectual property rights, in and to Insights Technology (or any underlying technology or content) will remain solely with Insights. Customer acknowledges that it is obtaining only a limited license that grants access to the Services according to the Order Form and that irrespective of any use of the words "purchase", "sale", or like terms hereunder, no ownership rights are being conveyed to Customer under this Agreement or otherwise. The Insights name, logo, EiQ and product names associated with the Services are trademarks of Insights or its affiliates, and no right or license is granted to Customer to use the foregoing.
- b) **Feedback.** In the event Customer elects, in connection with any of the Services, to communicate to Insights suggestions for improvement, ideas, enhancement requests, feedback, recommendations ("Feedback"), Insights shall own all right, title and interest in and to the same, and Insights shall be entitled to use the Feedback without restriction. Customer hereby irrevocably assigns all right, title and interest in and to the Feedback to Insights and agrees to provide Insights such assistance as Insights may require to document, perfect and maintain Insights' rights to the Feedback.
- c) **Customer Property.** Except for the rights expressly granted in this Agreement, Customer does not transfer any right, title and interest in and to Customer Data to Insights, and all of the same shall remain solely with Customer.

- d) **Statistical Information.** Customer hereby acknowledges and agrees that Insights may monitor Customer's use of the Services in order to (i) compile statistical and performance information related to the provision and operation of the Services and (ii) perform data aggregation of Customer Data to form anonymous statistical data sets or analyses ("**Statistical Information**"). Notwithstanding anything else in this Agreement or otherwise, Customer expressly grants Insights the right to use Statistical Information or make Statistical Information publicly available (including for sales and marketing purposes), provided that any such Statistical Information does not incorporate any identifiable Customer Data or otherwise disclose any Confidential Information belonging to Customer. Insights shall retain all right, title and interest, including but not limited to any applicable intellectual property rights, in Statistical Information.

### 6) FEES AND BILLING

- a) **Fees.** In consideration for the provision of Services to Customer, Customer will pay all Fees due as set forth in the applicable Order Form(s). Unless otherwise specified in an Order Form or agreed to by Insights, all Fees will be billed and paid in US dollars (USD). Fees are exclusive of all applicable taxes, which may be billed to the Customer in addition to the Fees. Customer shall be responsible for all taxes, withholdings, duties and levies arising with the Services other than taxes based on Insights' net income. Unless otherwise specified in this Agreement, including any applicable Order Form, all Fees are non-cancellable and all amounts paid are non-refundable. Insights reserves the right to modify the Fees or introduce new charges at any time, upon no less than thirty (30) days prior notice to Customer as required by Section 12(b) below. For the avoidance of doubt, all pricing terms are considered Confidential Information and shall be subject to the terms of Section 7.
- b) **Billing.** Unless otherwise specified in an Order Form, Insights will invoice Customer for the applicable Fees per month, in advance of the provision of the Services, and payment of such Fees will be due immediately upon invoice. Late payments hereunder shall be subject to a penalty of 1.5% per month (or the maximum rate permitted by law, whichever is lower) on all delinquent amounts. If Insights must initiate a collections process to recover Fees due and payable hereunder, Customer shall be responsible for all costs associated with such collection efforts.
- c) **Billing Information.** Customer must provide Insights with all required billing information as a condition to signing up for the Services. This information shall include: (i) a valid credit card or approved purchase order information, (ii) Customer's registered name, (iii) Customer's billing address, and (iv) Customer's authorized billing contact, including the name, telephone number and email address of such contact. Customer is responsible for keeping all billing information and other account information up-to-date. If the billing information is false or fraudulent, Insights reserves the right to terminate access to the Services in accordance with Section 11 of this Agreement.

### 7) CONFIDENTIAL INFORMATION

- a) **Treatment of Confidential Information.** Each party acknowledges that it will have access to certain information of the other party concerning the other party's business, business plans, customers, strategies, trade secrets, technology and any Intellectual Property related thereto, finances, assets, products and contracts, including the terms and conditions of this Agreement, and that all such information shall be deemed confidential, provided that it is identified as confidential at the time of disclosure or should be reasonably known by the receiving party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure ("**Confidential Information**"). For the avoidance of doubt, any Insights Technology, Documentation or technical information provided by Insights, and performance information relating to the Services shall be deemed Confidential Information of Insights without any marking or further designation. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary to carry out the purposes of this Agreement), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information.
- b) **Exceptions.** The receiving party's nondisclosure obligation shall not apply to information which the receiving party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the receiving party; (c) is rightfully obtained by the receiving party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the receiving party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the disclosing party).
- c) **Remedies.** The receiving party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the receiving party the disclosing party shall be entitled to appropriate equitable relief in addition to whatever other

remedies it might have at law.

### 8) WARRANTY; LIMITATION OF LIABILITY

- a) **Warranty.** Insights warrants that the Services will conform in all material respects with any description in the Order Form, and that the Services will be provided in a professional and workmanlike manner, consistent with applicable industry standards.
- b) **Warranty Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES AND ANY DATA AND INFORMATION THAT ARE ACCESSED OR DELIVERED THROUGH OR DERIVED THEREFROM ARE PROVIDED "AS IS", AND EINSIGHTS SHALL HAVE NO LIABILITY FOR ANY ERRORS OR OMISSIONS THEREIN OR ANY OTHER ASPECTS THEREOF. EINSIGHTS (AND ITS LICENSORS, WHERE APPLICABLE) MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES. NOR DOES EINSIGHTS (AND ITS LICENSORS, WHERE APPLICABLE) REPRESENT OR WARRANT THAT USE OF THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, COMPLETELY SECURE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA.

EINSIGHTS (AND ITS LICENSORS, WHERE APPLICABLE) HEREBY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

- c) **Internet Services Disclaimer.** EINSIGHTS SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. EINSIGHTS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.
- d) **Remedy for Breach of Warranty.** Insights' sole liability and Customer's exclusive remedy for any breach of warranty shall be, in Insights' sole discretion, to use commercially reasonable efforts to provide Customer with an error-correction or work-around that corrects the breach. In the event an error-correction or work-around is not available, the parties may terminate this Agreement and Insights shall refund any sums prepaid for the unused term, if any.
- e) **Limitation of Liability.** In no event will Insights or its officers, directors, employees, agents or suppliers be liable in connection with this Agreement for any incidental, indirect, exemplary, punitive, special or consequential damages, including without limitation loss of use, loss of data or loss of profits, even if Insights has been advised of the possibility of such damages. In no event will the liability of Insights or its officers, directors, employees, agents or suppliers in connection with this Agreement exceed the amounts paid hereunder by Customer to Insights in the twelve (12) months immediately preceding the event giving rise to such liability. The foregoing limitations shall apply to all claims, whether arising from breach of warranty, breach of contract, negligence, strict liability in tort or any other legal theory, and notwithstanding the failure of essential purpose of any limited remedy.

### 9) INDEMNIFICATION

- a) **By Customer.** Customer agrees to indemnify, defend, and hold Insights, its affiliates, and all respective employees, officers, directors and representatives, harmless from and against any all claims, losses, damages, liabilities, judgments, penalties, fines, costs and expenses (including reasonable attorneys' fees) arising out of or in connection with (i) Customer's use of the Insights Technology (A) in a manner not authorized by the Agreement, (B) in violation of the applicable restrictions, or (C) in violation of applicable law; (ii) any claim that Customer Data infringes or misappropriates any third-party rights (including intellectual property rights) or violates a third-party's right of privacy or publicity; and (iii) Customer's or User's, or Customer's or User's employees or personnel's negligence or willful misconduct.
- b) **By Insights.** Insights agrees to indemnify, defend, and hold Customer, its affiliates, and all respective employees, officers, directors and representatives, harmless from and against any all claims, losses, damages, liabilities, judgments, penalties, fines, costs and expenses (including reasonable attorneys' fees) arising out of or in connection with any claim by a third party alleging that Insights Technology, as provided by Insights, infringes any intellectual property right. The foregoing notwithstanding, Insights shall have no liability and no obligation to indemnify Customer if a claim (a) pertains to any part of the Insights Technology that has been altered or modified by Customer without Insights prior written approval or (b) is based on use of the Insights Technology in combination with any item or technology not provided or otherwise authorized by Insights, and there would be no basis for the claim but for the combination.
- c) **Indemnification Procedures.** Each party's indemnification obligations hereunder shall be subject to (i) the

indemnifying party receiving prompt written notice of the existence of any covered claim named in this Section 9, (ii) receiving full cooperation from the indemnified party in the defense and settlement of such claim, and (iii) allowing the indemnifying party to assume sole control, defense, and settlement of such covered claim. The indemnifying party shall not, without the prior written consent of the indemnified party, settle or compromise any covered claim, or consent to the entry of judgment of a covered claim against the indemnified party unless the indemnified party is unconditionally released.

### 10) EXPORT COMPLIANCE; PRIVACY AND DATA PROTECTION

- a) **Export Compliance.** Customer is solely responsible for complying with all applicable export laws and regulations in its use of the Service. No part of the Services may be downloaded or otherwise exported or re-exported (i) into any country for which the United States has a trade embargo, (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals, which is currently maintained at <http://www.treasury.gov/resource-centre/sanctions/SND-List/Pages/default.aspx>, or the U.S. Commerce Department's Denied Persons List, which is currently maintained at <http://www.bis.doc.gov/dpl/thedeniallist.asp>, or (iii) to any known end-user or for an known end-use related to the proliferation of nuclear, chemical or biological weapons or missiles, without first obtaining any export license or other approval that may be required by any American government agency having jurisdiction with respect to the transaction. Any diversion of the Services contrary to U.S. law is expressly prohibited.
- b) **Privacy and Data Protection.** Customer shall be compliant with all privacy and data protection laws applicable to Customer's location and operations. If personally identifiable data ("Personal Data") is transferred, either internationally or domestically, by Customer as a result of Customer's use of the Services under this Agreement, Customer is responsible for ensuring that any such transfers comply with all applicable privacy and data protection laws and regulations.

### 11) TERM AND TERMINATION

- a) **Term.** This Agreement shall commence on the date Customer agrees to these Terms of Service and will expire upon the expiration of all Order Forms hereunder, unless sooner terminated as provided herein. Each Order Form will have the term specified therein, and will automatically renew for like terms unless either party provides notice of termination at least thirty (30) days prior to the then-current term's expiration date, with such notice to be effective at the end of the then-current term. If no term is specified in the Order Form, this Agreement and the applicable Services shall continue on a month-to-month basis.
- b) **Termination of Agreement**
  - i) **Breach.** Unless otherwise stated, either party may terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same. Customer's failure to timely pay all applicable Fees as they become due shall constitute a material breach of this Agreement. If Customer is terminated for nonpayment, all outstanding invoices, as well as the remainder of all Fees for the remaining term of the Agreement will be immediately due and payable upon the termination date as liquidated damages, and not as a penalty ("Liquidated Fees"). Customer agrees that E Insights may charge such Liquidated Fees to Customer's credit card or otherwise bill Customer for such Liquidated Fees.
  - ii) **Nonpayment by Customer.** In addition to its rights under Section 11(b)(i), E Insights may suspend all Services to Customer if Customer is in default of its payment obligations set forth in Section 6. E Insights will provide seventy-two (72) hour notice of its intent to suspend Services under this provision. Customer will be charged for the Services during any period of suspension. E Insights reserves the right to impose a reconnection fee in the event Customer is suspended and thereafter reactivated after curing the delinquency or breach.
  - iii) **Upon Bankruptcy.** Either party may terminate this Agreement if the other party (i) ceases operation without a successor, or (ii) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party which is not dismissed within one hundred and twenty (120) days.
  - iv) **Effect of Termination.** Upon expiration or termination of this Agreement, E Insights will cease providing the Services and Customer's rights and licenses granted under this Agreement shall automatically expire. Customer shall incur no further payment obligations under this Agreement other than any amounts outstanding as of the date of expiration or termination. Customer shall immediately return, if instructed by E Insights, or destroy all E Insights' Confidential Information that is in Customer's possession. Neither party shall have any liability to the other or to any third party for the proper suspension or termination of the Agreement, as determined by the terms contained herein.
  - v) **Customer Data Removal; Data Retention Policies.** It is Customer's obligation to remove all data from E Insights' servers, networks and systems prior to discontinuing the usage of E Insights' Services. Customer also agrees and acknowledges that E Insights shall have no obligation to continue to store Customer Data following termination of any Service or termination of this Agreement in its entirety. E Insights may therefore irretrievably delete Customer Data, including all backups, upon termination or expiration of this Agreement for any reason.



- c) **Survival.** The parties' respective representations, warranties and covenants, together with obligations of payment, indemnification, limitations of liability and any other terms contained herein which by their nature should survive, will survive the expiration, termination or rescission of this Agreement and continue in full force and effect. The parties' respective obligations of confidentiality will survive the expiration, termination or rescission of this Agreement and continue in full force and effect for two (2) years from the date of termination.

### 12) MISCELLANEOUS PROVISIONS

- a) **Modification.** Customer agrees that Insights may update or revise this Agreement, including without limitation, these Terms of Service, at any time by posting a revised version at [www.Einsights.com](http://www.Einsights.com). The revised Agreement shall be effective ninety (90) days after posting. By continuing to use or receive the Services after the effective date of any revisions to this Agreement, Customer agrees to be bound by the updated Agreement. If Customer disagrees with any modification to this Agreement, Customer's sole and exclusive remedy shall be to terminate the receipt of Services in accordance with Section 11 above.
- b) **Notifications.** *To Insights:* Any required notice to Insights may be delivered personally, by nationally recognized overnight courier or mailed by registered or certified mail, return receipt requested, postage prepaid to the following address: Level 19, 1 O'Connell Street, NSW – 2000. Such notice shall be deemed given when received by Insights. *To Customer:* Insights may give notice to Customer by means of (a) a general notice at [www.einsights.com](http://www.einsights.com) or other applicable site or log-in page as directed by Insights, or (b) an electronic mail to the e-mail address on record in Insights' Customer account information upon ensuring that the email does not bounce. Unless specified otherwise in this Agreement, such notice shall be deemed to be given upon the expiration of ninety-six (96) hours after posting or sending.
- c) **Marketing.** Customer agrees that during the term of this Agreement, Insights may publicly refer to Customer, orally and in writing (including but not limited to marketing collaterals and / or online material), as a customer of Insights. Any other reference to Customer by Insights requires the written consent of Customer.
- d) **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed under the laws of Australia, without regard to its choice of law principles and specifically excluding from application to this Agreement the United Nations Convention on the International Sale of Goods. Any dispute concerning this Agreement shall be brought exclusively in the courts located in Australia and the parties hereby irrevocably consent to the personal jurisdiction and venue in such courts.
- e) **Severability.** In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to law, invalid, or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provisions, with all other provisions remaining in full force and effect.
- f) **Relationship of Parties.** Insights and Customer are independent contractors and this Agreement will not establish as relationship of partnership, joint venture, employment, franchise or agency between Insights and Customer.
- g) **Waiver.** Unless otherwise specified in this Agreement, the failure or delay of either Insights or Customer to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to in a writing signed by the waiving party.
- h) **Assignment.** Neither party may assign its rights or delegate its duties under this Agreement, either in whole or in part, without the prior written consent of the other party, except either party may assign this Agreement without consent to an affiliate or a party that acquires substantially all of the assigning party's assets or business or a majority of its stock as part of a corporate merger or acquisition. Any attempted assignment or delegation without such consent will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.
- i) **Force Majeure.** Except for Customer's payment obligations, neither Insights nor Customer will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including, but not limited to, acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (each a "Force Majeure Event"), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.
- j) **Entire Agreement.** This Agreement, together with all applicable Order Forms, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all of the prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.