

## GLOBAL SOFTWARE, LLC D/B/A INSIGHTSOFTWARE

### MEKKO GRAPHICS SOFTWARE

### END USER LICENSE AGREEMENT

This End User License Agreement (the “**Agreement**”) constitutes a binding legal agreement between you (“**Customer**” or “**You**”) and Mekko Graphics whose principal office is at 8529 Six Fork Road, Suite 400, Raleigh NC 27615, United States (“**insightsoftware**”) with regard to your use of the proprietary software associated with this Agreement, and any updates provided by insightsoftware to You (collectively, the “**Software**”), and any standard installation materials, specifications, and online user documents, and other documentation relating to the Software made available by insightsoftware to You (“**Documentation**”), and the provision of other related services by insightsoftware. By selecting “I Agree” when downloading or installing the Software, you are indicating your acceptance of the terms and conditions of this Agreement.

#### **1. Purchase Agreement**

- 1.1 To the extent that you are accessing the Software through a license granted to your organization or employer, this Agreement is subject to the terms and conditions of the Master Services Agreement, order form, or other applicable written agreement between such organization and insightsoftware (the “**Purchase Agreement**”), including without limitation the applicable number of licensed users, software license, and support fees, provided that in the event of any conflict between the terms of this Agreement and the Purchase Agreement, the terms and conditions of this Agreement shall control.

#### **2. Grant of License**

- 2.1 Subject to the terms of this Agreement and payment of the fees set forth in the Purchase Agreement, insightsoftware hereby grants to You, and You accept, a worldwide, non-transferable, nonexclusive, non-sublicensable license to use the object code version of the Software and Documentation only as authorized in this Agreement during the Term. You are not permitted to use the Software in any manner not expressly authorized by this Agreement. This Agreement shall remain in full force and effect for the duration of Your use of the Software.
- 2.2 insightsoftware reserves all rights in the Software, updates and Documentation not specifically granted herein.
- 2.3 The rights and licenses granted to You under this Agreement are personal to You and except to the extent expressly authorized in writing by insightsoftware are not transferable or assignable to another end user (including other end users within your organization) without the prior written consent of insightsoftware.
- 2.4 You may use the Software and Documentation provided to you by or on behalf of insightsoftware for the duration of the Term, solely for your internal business purposes.
- 2.5 Except as stated otherwise herein or as required under applicable law, for the duration of the Term, You may make back-up copies of the Software and Documentation as reasonably required for archival and disaster recovery purposes, provided that You may only possess a single back-up copy of the Software, updates and Documentation at any given time.

#### **3. Term and Termination**

- 3.1 **Term.** The term of this Agreement shall commence on the date you click to accept this Agreement and shall continue for the duration of the applicable term set forth in the Purchase Agreement (the “**Initial Term**”) unless terminated earlier as set forth herein. Insightsoftware licenses Software to You as either a perpetual license or for a fixed term, which is designated in the Purchase Agreement. If no Initial Term is set forth in the applicable Purchase Agreement, the Initial Term shall expire after one (1) year from the date insightsoftware or its distributor delivers the Software to you.

#### **3.2 Automatic Renewal.**

- (a) **TO THE EXTENT YOUR LICENSE TO THE SOFTWARE IS FOR A FIXED TERM (I.E., NOT A PERPETUAL LICENSE) OR TO THE EXTENT YOU SUBSCRIBE TO SUPPORT**

**SERVICES, YOUR SOFTWARE LICENSE OR SUBSCRIPTION TO SUPPORT SERVICES, AS APPLICABLE, WILL AUTOMATICALLY RENEW AT THE END OF THE THEN-CURRENT TERM FOR SUCCESSIVE TERMS EACH FOR THE SAME LENGTH OF TIME AS THE INITIAL TERM (EACH, A “RENEWAL TERM”, AND TOGETHER WITH THE INITIAL TERM, THE “TERM”). FOR EXAMPLE, IF THE INITIAL TERM IS ONE YEAR, EACH RENEWAL TERM WILL BE FOR ONE YEAR).**

- (b) **BY CLICKING “I ACCEPT” BELOW, YOU AUTHORIZE INSIGHTSOFTWARE TO CHARGE YOU AT INTERVALS CONSISTENT WITH YOUR SELECTED SUBSCRIPTION FREQUENCY (E.G., ANNUALLY FOR ONE YEAR SUBSCRIPTIONS) FOR YOUR SUBSCRIPTION, IN ADDITION TO ANY APPLICABLE TAXES AND OTHER CHARGES, UNTIL YOU CANCEL YOUR SUBSCRIPTION OR INSIGHTSOFTWARE SUSPENDS OR STOPS PROVIDING ACCESS TO THE SERVICES OR SOFTWARE.**
- (c) **INSIGHTSOFTWARE WILL INVOICE YOU 30 TO 60 DAYS PRIOR TO THE COMMENCEMENT OF THE NEXT RENEWAL TERM TO REMIND YOU OF THE UPCOMING RENEWAL OF THIS AGREEMENT, AND TO PROVIDE THE THEN-CURRENT PRICE FOR THE UPCOMING RENEWAL TERM. YOU MAY ELECT NOT TO RENEW THIS AGREEMENT OR THE APPLICABLE SUPPORT SERVICES BY CONTACTING INSIGHTSOFTWARE DIRECTLY AT INSIGHTSOFTWARE, ATTN: LEGAL, 8529 SIX FORKS ROAD, SUITE 400, RALEIGH, NC 27615, UNITED STATES AT LEAST THIRTY (30) DAYS PRIOR TO THE COMMENCEMENT OF THE THEN-APPLICABLE RENEWAL TERM.**

**3.3 Termination of Entire Licensing Agreement.** Subject to the limitations set forth in Section 1.1, The entire Agreement may be terminated in the following ways:

- (a) **Termination of Entire Licensing Agreement for Breach. insightsoftware may terminate this Agreement for cause in the event of any material breach by You of this Agreement that remains uncured thirty (30) days after written notice is given of the material breach. Non-payment of fees shall be considered a material breach of this Agreement. If fees remain unpaid for more than thirty (30) days past the due date of any applicable invoice, insightsoftware shall be entitled to suspend all services and terminate this Agreement and all existing licenses.**
- (b) **Termination of Entire Licensing Agreement for Prohibited Activity. This Agreement may be terminated in its entirety by insightsoftware immediately if You engage in any of the prohibited activities listed in Section 6.**
- (c) **Termination of Purchase Agreement. This Agreement shall automatically terminate upon termination or expiration of the applicable Purchase Agreement.**

**3.4 Consequences of Termination.** Upon termination of this Agreement under Section 3.3 for any reason:

- (a) All of Your rights in or related to the Software, updates and Documentation will terminate immediately;
- (b) You will immediately cease all use of the Software, updates and Documentation; (c) You will return or destroy or return to insightsoftware all Software, updates and Documentation in Your possession or control, and upon request certify to insightsoftware in writing that You have fully complied with Your obligations under this Section; and (d) You will pay to insightsoftware within thirty (30) days all amounts owed by You to insightsoftware under this Agreement or the Purchase Agreement, including without limitation, all outstanding license fees. Notwithstanding anything to the contrary contained in this Agreement, Sections 3.4, 4.3, 6, 7, 8, 9.4, 11, 12, 13, 14, 15, 16, and 17 of this Agreement shall survive any expiration or termination.

#### **4. Payment**

4.1 Insightsoftware will invoice Customer for fees due under an applicable Purchase Agreement or as otherwise set forth on an applicable order page for the Software or Support Services. Unless otherwise set forth in the Purchase Agreement, Customer shall pay all invoices in full within thirty (30) days of the due date on the invoice.

- 4.2 Customer shall pay all taxes (except for taxes based on insightsoftware's income) due on all payments received by insightsoftware hereunder.
- 4.3 For any invoice not paid within sixty (60) days, insightsoftware may assess and Customer shall pay a service charge accruing thereafter until the date of payment of the lesser of (a) the rate of one and one-half percent (1.5%) per month or (b) the maximum lawful interest rate applicable.

## 5. Use of the Software

- 5.1 Subject to the terms of this Agreement, Customer may use the Software solely to process information or records of Customer and its Affiliates. For purposes of this Agreement, an "**Affiliate**" means an entity that directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement. For purposes of the foregoing, "**control**" means the ownership of (i) greater than fifty percent (50%) of the voting power to elect directors of the company, or (ii) greater than fifty percent (50%) of the ownership interest in the company.
- 5.2 The Software provided herein shall not include, and Customer shall not access or attempt to access the source code of the Software in any form.
- 5.3 The Software and Documentation shall at all times contain all proprietary and copyright notices originally appearing thereon and Customer shall not take any action which would adversely affect proprietary rights or copyrights therein.
- 5.4 Customer's right to use the Software is limited to the number of individual users specified in the Purchase Agreement associated with this Agreement. Customer shall not share its user ID and password to access the Software, and shall protect the security of its password.
- 5.5 insightsoftware reserves all rights not specifically granted herein.
- 5.6 You shall be solely responsible for providing and maintaining at your own expense the operating environment in which the Software will function and be used and the overall effectiveness and efficiency thereof, including, but not limited to, all equipment, hardware, and other devices and all site preparation, installation, integration, testing, and similar activities required for you to use the Software in accordance with the provisions hereof, and insightsoftware shall assume no such responsibilities. Once you install the Software, except for insightsoftware's warranty obligation set forth in Section 9 or as otherwise expressly set forth in this Agreement, insightsoftware shall have no further liability or responsibility to you with respect to the Software, your use thereof, or any of Your data, records, documents, results, or other information or materials used or generated by or on behalf of you or any other party in connection therewith.

## 6. Prohibited Activities

- 6.1 Except as explicitly permitted in this Agreement or required under applicable law, You may not, directly or indirectly:
- (a) **sell, rent, lease, loan, sublicense, transfer, assign, distribute, disclose or provide access to the Software, updates or Documentation or use the Software, updates, or Documentation on a "service bureau" basis to any party other than Your Affiliate(s);**
  - (b) **modify, adapt, translate or create derivative works based upon the Software, updates or Documentation;**
  - (c) **modify, remove or cover proprietary notices in or on the Software, updates or Documentation;**
  - (d) **de-compile, disassemble, reverse engineer, or otherwise seek to discover the source code of the Software or updates;**
  - (e) **use license keys, certificates or access codes with the Software or updates other than those authorized by insightsoftware for Your use of the Software or updates; or**
  - (f) **distribute or make available license keys, certificates or access codes for the Software**

or updates to a third party;

- (g) **circumvent or attempt to circumvent any anti-copying mechanisms that may or may not be included in the Software. Such mechanisms may include, but are not limited to: technology designed to prevent unauthorized use and copying or to enforce limitations on number of users;**
- (h) **use the Software in a manner not authorized by this Agreement;**
- (i) **use the Software in a manner that violates any applicable law, including in violation of the intellectual property or other rights of any third party, including privacy rights;**
- (j) **authorize or permit unauthorized use of or access to the Software.**

## **7. Title**

- 7.1 All rights, title and interest in and to the Software and Documentation, including all enhancements, updates, modifications and corrections to and derivatives of the Software and Documentation, including any intellectual property rights furnished under this Agreement, shall remain with insightsoftware or its licensors. You agree that any modification or enhancement to the Software or Documentation, or derivative works based upon the Software or Documentation, developed by or on behalf of You with or without advice or support by insightsoftware, by insightsoftware for You, or by or on behalf of any other party shall be the exclusive property of insightsoftware (in the case of the insightsoftware Software or Documentation) or the applicable third party (in the case of Third Party Software). In the event that, by operation of law or otherwise, any right, title, or interest in or to the Software, Documentation, or any such enhancements, modifications, or derivative works of the Software or Documentation vests in You or any employees, officers, directors agents, or other representatives (collectively, “**Representatives**”) of yours, You hereby irrevocably, unconditionally, and without encumbrance of any kind assign to insightsoftware (in the case of insightsoftware Software or Documentation) or the applicable third party (in the case of Third Party Software), and forever waive and agree never to assert, and shall cause all such Representatives to irrevocably, unconditionally, and without encumbrance of any kind assign to insightsoftware (in the case of insightsoftware Software or Documentation) or the applicable third party (in the case of Third Party Software), and forever waive and agree never to assert, all such right, title, and interest. In addition, you shall, and shall cause all such Representatives, to execute all documents, and undertake all other activities, reasonably required by insightsoftware (in the case of insightsoftware Software or Documentation) or the applicable third party (in the case of Third Party Software) in order to vest all such right, title, and interest in insightsoftware (in the case of insightsoftware Software or Documentation) or the applicable third party (in the case of Third Party Software).
- 7.2 No modifications or changes made by Customer to the Software, Documentation or services, however extensive, shall reduce the title and ownership rights of insightsoftware or its licensors, to the Software, Documentation, or Services. Notwithstanding the foregoing, any modifications may void the warranty.
- 7.3 The Software and Documentation may contain information on certain open source and other third-party software that is included with or incorporated into the Software (“**Third-Party Software**”). Certain open source Third-Party Software is licensed directly by You pursuant to the public licenses associated with such software, and is not sublicensed by insightsoftware under the terms of this Agreement. The Documentation also lists prerequisite software (“**External Software**”) and hardware that You must acquire for use with the Software. **insightsoftware is not responsible for the performance of any External Software or hardware.**
- 7.4 When reasonably requested by insightsoftware, You will promptly execute any instruments and take any additional steps that insightsoftware considers necessary or desirable for the purpose of effecting, perfecting, registering, or otherwise confirming the ownership of the items referred to in this Section, or otherwise for the purpose of implementing fully the intention expressed in this Agreement.

## **8. Confidentiality**

- 8.1 “**Confidential Information**” means all information and materials obtained by a party (the “**Recipient**”) from the other party (the “**Disclosing Party**”), whether in tangible form, written or oral, that is identified as confidential or would reasonably be understood to be confidential given the nature of the information and circumstances of disclosure. Confidential Information includes, without limitation, all information relating to

the Disclosing Party's business plans, marketing plans, customers, technology, employee and organizational information, product designs, product plans and financial information. Confidential Information does not include information that (i) is already known to the Recipient prior to its disclosure by the Disclosing Party; (ii) is or becomes generally known through no wrongful act of the Recipient; (iii) is independently developed by the Recipient without use of or reference to the Disclosing Party's Confidential Information; or (iv) is received from a third party without restriction and without a breach of an obligation of confidentiality. Confidential Information of Customer includes the all Customer data. Confidential Information of insightsoftware also includes the Software, Documentation, the Purchase Agreement, pricing thereof, and the results of any tests or analyses run by You on the Software. Either party may disclose Confidential Information on a need to know basis to its Affiliates, contractors and service providers who have executed binding written agreements requiring confidentiality and non-use obligations at least as restrictive as those in this Section 8.1. The Recipient shall not use or disclose any Confidential Information without the Disclosing Party's prior written permission except as necessary for the provision of the services or use of the Software, or as otherwise allowed herein. The Recipient shall protect the confidentiality of the Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of a similar nature, but using not less than a reasonable degree of care. The Recipient may disclose Confidential Information to the extent that it is required to be disclosed pursuant to a statutory or regulatory provision or court order, provided that the Recipient provides prior notice of such disclosure to the Disclosing Party, unless such notice is prohibited by law.

- 8.2 insightsoftware shall have the right to view Customer usage statistics and may compile aggregate statistical analysis data and reports for internal use only. Any reporting that contains aggregated data shall preserve Customer's anonymity and the confidentiality of Customer's usage data.
- 8.3 Each party acknowledges and agrees that violation of this section may cause irreparable harm to the Disclosing Party, and the Recipient agrees that the Disclosing Party may seek injunctive relief if the Recipient breaches or threatens to breach this section, without needing to post any bond, and without limitation of any other rights and remedies available to it.

## **9. Limited Warranty**

- 9.1 Each party warrants and represents that it has all requisite legal authority to enter into this Agreement.
- 9.2 insightsoftware warrants that the Software will substantially conform in all material respects to its Documentation at the time the Software is delivered to You. At no additional cost, and as Customer's sole and exclusive remedy for failure to meet the limited warranty set forth in this Section 9, and as insightsoftware's sole obligation and liability under this Section 9, insightsoftware will use commercially reasonable efforts to correct the specified nonconformity to the applicable Software, or at insightsoftware's sole discretion and option, refund the applicable Software license fee paid by Customer upon return of the applicable Software and Documentation, which will serve to terminate this Agreement. The foregoing warranty obligation applies only if Customer promptly notifies insightsoftware in writing of said nonconformity within thirty (30) days following delivery of the Software, and such notice outlines the specific details of the nonconformity.
- 9.3 The limited warranty set forth in this section shall be void if the failure of the Software to conform is caused by (i) the use of the Software other than the most current version, (ii) use or operation of the Software other than as instructed in the Documentation, including the use or operation of the Software with an application or in an environment other than as set forth in the Documentation, or (iii) modifications to the Software that were not made by insightsoftware or insightsoftware's authorized representatives.
- 9.4 EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON- INFRINGEMENT. INSIGHTSOFTWARE DOES NOT REPRESENT OR WARRANT THAT CUSTOMER'S USE OF THE SOFTWARE WILL BE ERROR FREE. INSIGHTSOFTWARE'S EXPRESS WARRANTIES SHALL NOT BE ENLARGED, DIMINISHED, OR AFFECTED BY AND NO OBLIGATION OR LIABILITY SHALL ARISE OUT OF INSIGHTSOFTWARE'S RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE SOFTWARE.

## **10. Support**

- 10.1 Customer may receive support services to the extent agreed upon in the Purchase Agreement and subject to the payment of the applicable fees (collectively, the "Support Services"). The terms and conditions of Support

Services are detailed here: <https://insightsoftware.com/terms-of-use-privacy-policy/#support> (the “Support Terms”). insightsoftware may provide you with updates or revisions to the Software from time to time, but is not obligated to do so under this Agreement, except to the extent such updates are part of your Support Services subscription as set forth in the Support Terms.

## 11. **Indemnification**

11.1 **Customer’s Indemnification Obligation.** Subject to the terms and conditions set forth in this Section 11.1, Customer shall, at its own expense, defend insightsoftware and its Affiliates, subsidiaries, officers, directors, shareholders, and employees, (“**insightsoftware Indemnitees**”) from and against any and all allegations, threats, claims, suits, and proceedings brought by unaffiliated third parties (collectively “**Claims**”) arising from liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys’ fees) (collectively, “**Losses**”) arising from an allegation that Customer’s unauthorized use of the Software or any Customer data infringes such third party’s copyrights or trademarks, or misappropriates such third party’s trade secrets; and shall indemnify insightsoftware Indemnitees from and against Losses to the extent based upon such a Claim. The foregoing indemnification obligations apply only if each of the following conditions are met: insightsoftware (i) gives Customer prompt written notice of such Claim, (ii) grants Customer sole control of the defense or settlement of such Claim, and (iii) reasonably cooperates with Customer, at Customer’s expense, in its defense or settlement of the Claim.

## 12. **Limitation of Liabilities**

12.1 EXCEPT FOR THE PARTIES’ INDEMNIFICATION OBLIGATIONS AND FOR BREACHES OF CONFIDENTIALITY SET FORTH ABOVE, IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY ARISING UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF LICENSE AND/OR SUPPORT SERVICES FEES PAID BY CUSTOMER TO INSIGHTSOFTWARE FOR THE RELEVANT SOFTWARE WITHIN THE PRECEDING TWELVE (12) MONTHS.

12.2 YOU ARE SOLELY RESPONSIBLE FOR BACKING UP YOUR DATA. IN NO EVENT WILL INSIGHTSOFTWARE BE LIABLE FOR ANY LOSS, CORRUPTION, MODIFICATION, OR DAMAGE TO YOUR DATA.

12.3 EXCEPT FOR BREACHES OF CONFIDENTIALITY SET FORTH ABOVE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR ANY LOST PROFITS OR LOST REVENUE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

## 13. **Assignment**

13.1 Customer’s rights in and to the Software provided under this Agreement may not be assigned, licensed, pledged, or otherwise transferred voluntarily, whether by merger, operation of law or otherwise without insightsoftware’s prior written consent, and any such prohibited assignment shall be null and void. Any assignment or attempted assignment in breach of this Section shall be void.

## 14. **Notices**

14.1 All notices which either party is required or may desire to give the other party hereunder shall be given by certified or registered mail, return receipt requested, or nationally recognized overnight courier service. Such notice shall be deemed given on the date of the receipt (or refusal) of delivery. All notices to Customer shall be sent to the address provided at the time of licensing, unless and until written notice is given of any other address. All notices to insightsoftware shall be sent to insightsoftware, 8529 Six Forks Road, Suite 400, Raleigh NC 27615, United States; Attention: Legal, unless and until written notice is given of any other address.

## 15. **Export Compliance**

15.1 Customer shall not permit any third party to access or use the Software in violation of any law or regulation or export the Software or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party

to access or use the Software in, or export it to, a country subject to a United States embargo.

## **16. Data Protection**

16.1 The following paragraph applies where You are established in the European Economic Area (as defined in GDPR), or where Your use of this Software is otherwise subject to Regulation (EU) 2016/679 (“**GDPR**”): in respect of any personal data processed (including collection and storage) by insightsoftware in connection with the provision of the Software and related services, insightsoftware shall as a processor comply with the provisions of Article 28(3) of the GDPR, which are hereby incorporated by reference into this Agreement. For the purposes of Article 28(2) of the GDPR, insightsoftware shall be generally authorized to appoint sub-processors, provided it complies with the provisions of Article 28(4) of the GDPR. For the purposes of Article 28(3)(h) of the GDPR, You acknowledge that Your right to an audit or inspection shall be fully satisfied by sight of an independent third party audit report supplemented by a right to request further information from insightsoftware which demonstrates its compliance, and that You shall have no right to conduct on-site audits of insightsoftware’s processing facilities. You (as “data exporter”) and insightsoftware (as “data importer”), with effect from the commencement of any relevant transfer, hereby enter into the Standard Contractual Clauses (processors) for the purposes of Article 26(2) of Directive 95/46/EC set out in Decision 2010/87/EC as the same are revised or updated from time to time by the European Commission (“**SCCs**”) in respect of any transfer to insightsoftware (or onward transfer) where such transfer would otherwise be prohibited by the GDPR in the absence of the SCCs. Appendix 1 to the SCCs shall be deemed to be prepopulated with the information about the data processing described in this Agreement. Appendix 2 to the SCCs shall be deemed to be prepopulated with the following: *“Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood for the rights and freedoms of natural persons, insightsoftware shall ensure a level of security appropriate to the risk, including as appropriate the specific controls described in Article 32(1), to (d) inclusive of GDPR and including any other controls mandated by applicable data protection laws.”*

16.2 This Agreement shall be governed by the laws of the State of Delaware without regard to the conflicts of laws principles. Each party hereby consents to the jurisdiction and venue of the state and federal courts located in Wake County, North Carolina, United States, with regard to any suit or claim arising under or by reason of this Agreement. Company will not commence or prosecute any suit or claim to enforce this Agreement, or otherwise arising under or by reason of this Agreement, other than in such courts.

## **17. General**

17.1 Titles and paragraph headings are for convenient reference and are not a part of this Agreement.

17.2 This Agreement, together with the Purchase Agreement and all documents incorporated herein by reference, constitutes the entire agreement between the parties relating to the Software and services, supersedes in full all prior discussions, correspondence and agreements between the parties relating to the Software and services and may be modified or supplemented only by a document agreed to by an authorized representative of each party. The foregoing notwithstanding, the pre-printed terms and conditions of any purchase order or other ordering document issued by Customer in connection with this Agreement shall be deemed to be for Customer’s convenience only and shall in no way modify, add to or delete from the terms and conditions of this Agreement or any Purchase Agreement.

17.3 insightsoftware shall not be liable for delays in any of its performance hereunder due to causes beyond its reasonable control, including but not limited to, acts of God, strikes, acts of war, terrorism, or inability to obtain labor or materials on time.

17.4 No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof and no waiver shall be effective unless made in writing and signed by an authorized representative.

17.5 In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed and the entire Agreement shall not fail on account thereof and the balance of the Agreement shall continue in full force and effect.

17.6 The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other’s behalf.

17.7 In the event that any action or proceeding is brought in connection with this Agreement, the prevailing party

therein shall be entitled to recover its cost and reasonable attorney's fees.

- 17.8 If the Purchase Agreement is entered into by an Affiliate of insightsoftware rather than insightsoftware, then this Agreement shall be between such insightsoftware Affiliate and You, rather than insightsoftware and You. In such case, You agree that any claim that You may have under this Agreement will be only against the insightsoftware Affiliate that entered into the Purchase Agreement with You, that insightsoftware and such Affiliate shall not have joint and several liability, and You will make no claim under this Agreement against insightsoftware or any other insightsoftware Affiliate.
- 17.9 If the Software or Services are being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then, as a commercial item, the Government's rights in the Software, Services, Content 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.
- 17.10 The original of this Agreement is in English; any translations are provided for reference purposes only. The English version of this Agreement shall govern the transaction. You waive any right You may have under the law of your country to have this Agreement written or construed in the language of any other country.