

**Subscription Agreement Terms for InEightNOW**

A Subscription Agreement is required for use of the InEightNOW solutions. Select the Terms below that apply to you in order to review.

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## Subscription Agreement Terms for United States and Canada (v.01May2025)

THIS **SUBSCRIPTION AGREEMENT ("AGREEMENT")**, IS BY AND BETWEEN INEIGHT, INC. ("INEIGHT") AND THE CUSTOMER (IDENTIFIED AS "COMPANY NAME" ON THE ORDER FORM). THIS AGREEMENT CONSISTS OF THE FOLLOWING TERMS AND CONDITIONS AND ANY OTHER ATTACHMENTS INCORPORATED HEREIN, AND ANY AND ALL ORDER FORMS EXECUTED BY THE PARTIES PURSUANT TO THIS AGREEMENT. THE PARTIES AGREE AS FOLLOWS:

### 1. INEIGHT PRODUCTS

**1.1 Order Forms.** The subscription of the InEight Products (defined below) to be provided to Customer in consideration of fees paid by Customer, as agreed upon by InEight and Customer, are as set forth in the order form completed through the InEight.com Website order form (the "Order Form"). All subscriptions for InEight Products under such Order Form are part of and subject to the terms of this Agreement.

**1.2 InEight Products.** Subject to the terms and conditions of this Agreement, including without limitation Customer's non-refundable payment of all of the fees due thereunder, InEight will provide Customer with right to use the InEight SaaS (software as a service) products specified and agreed to by the parties in the Order Form (the "InEight Products") for the period selected by Customer. Customer may only use the InEight Products purchased under the Order Form for the number of projects specified on the Order Form.

**1.3 Users.** Customer's subscription of InEight Products under this Agreement is for an unlimited number of users, which users must be employees of the Customer and Customer designates as a user permitted access to the InEight Products subscribed under this Agreement (the "Users"). A User's login to use of InEight Products is specific to that User, and as such a User may not share his/her login credentials with others. Customer shall immediately notify InEight in the event that Customer becomes aware of any violation of these terms concerning the use of the InEight Products by its Users and is responsible for any and all violations of these terms by the Users.

**1.4 Third Party Software.** InEight may make available to Customer a third-party software applications ("Third Party Software") as part of or for use in connection with the InEight Products. InEight has no responsibility for Third Party Software, except to the extent InEight provides the Third-Party Software as a function of the InEight Products and then only to the extent to ensure it operates in accordance with the Service Levels and Support Addendum in section 1.6. Customer shall be responsible for and obtain all rights necessary for the operation of the InEight Products and third-party software provided by Customer or in connection with any of Customer's other programs or materials. Customer acknowledges and agrees that InEight is not responsible for the software, hardware, products and services of third parties not provided by InEight.

**1.5** Customer acknowledges, understands and agrees that (a) there is inherent risk of compromising information when sharing or transferring electronic documents, and Customer accepts those risks and the fact that the InEight Products do not eliminate the risk of compromising information; (b) Customer shall be solely responsible for ensuring that its

disclosure of information, including but not limited to third party information, complies with all applicable local, state, provincial and federal laws, rules, regulations and requirements relating to privacy; and (c) improper use of (or unauthorized modifications to) the InEight Products, including use beyond the scope of the use granted herein, may increase the risk of the inadvertent disclosure of compromising information.

**1.6 Service Levels and Support.** The service levels and support for InEight Products are set forth on InEight's website (ineight.com) at <https://ineight.com/ineight-introductory-service-and-support-terms-25-november-2024/> ("Service Levels and Support Addendum") and incorporated herein by this reference.

### 2. FEES AND PAYMENT

**2.1 Fees.** Customer must pay InEight for use of the InEight Products at the time of the subscription purchase under the relevant Order Form in order to receive login access to the InEight Products set forth in the Order Form. All fees are due and payable in US Dollars unless otherwise stated on the Order Form and include any applicable tax. All fees are non-refundable.

**2.2 Taxes.** Except as otherwise provided in the Order Form, all charges for InEight Products exclude any value added (VAT), goods and services (GST), state and local sales or use taxes (SUT), provincial sales taxes (PST) or other taxes, fees, duties, charges or surcharges, imposed on, incident to, or based upon the provision or subscription of the InEight Products to Customer (collectively "Applicable Taxes"). If InEight is authorized by any governmental authority to collect Applicable Taxes, InEight shall issue billings to Customer separately itemizing the charge for Applicable Taxes and Customer shall pay InEight the Applicable Taxes in addition to all other charges for InEight Products. Taxes based on InEight's net income and capital, and all other taxes directly imposed by any governmental authority remain the sole obligation of InEight and shall not be eligible for reimbursement from Customer.

### 3. PROPRIETARY RIGHTS

**3.1 Ownership.** InEight and its licensors retain ownership of, and all right, title, and interest in and to, the InEight Products, including any modifications, improvements, upgrades, derivative works thereof, and all intellectual property rights therein and thereto. Customer will not remove or destroy and will take commercially reasonable steps to prevent the removal or destruction of, any InEight or third party copyright, trade secret or other proprietary rights notice from the InEight Products. Except for the express rights granted in this Agreement, InEight does not grant any other rights or interests of any kind, whether express or implied, to any InEight Products, services, or technology, and accordingly, any and all other rights and interests in and to InEight Products not specifically granted



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to Customer in this Agreement are expressly reserved by InEight and its licensors and suppliers.

**3.2 Customer Data.** Any and all data that is uploaded by Customer to the InEight Products is considered Customer's sole property ("Customer Data"). InEight is permitted to use Customer Data for the following purposes: (a) to support Customer's and its User's use of the InEight Products including without limitation monitor and address service or technical problems associated with the InEight Products; and (b) to improve the InEight Products (except that Customer personal data shall not be used for this purpose). Customer has access to Customer Data in the InEight Products, for Customer to obtain a copy of its data as needed. Accordingly, if Customer requests that InEight assist in obtaining Customer Data from the InEight Products, such assistance is subject to the parties reaching agreement on the format of the data to be obtained and the fees to be paid to InEight for such assistance. InEight is not responsible for any claim, loss, cost, expense or other issues resulting from any data provided by Customer that is incomplete, inaccurate, or defective in any way. Customer is responsible for determining what data it uploads to, or otherwise provides in use of, the In Eight Products, and acknowledges that the right to use, and accuracy and quality of, all data provided to InEight by Customer or its Users is entirely Customer's responsibility.

**3.3 Restrictions.** Customer shall not, and shall prevent Users from using the InEight Products to: (i) resell, rent, lend, lease, distribute, or timeshare the InEight Products (including on a "service bureau" basis or other on-line service, bulletin board, Web or Internet access), or otherwise provide third parties that are not Users with access to or grant third parties rights to the InEight Products; (ii) circumvent or otherwise interfere with any authentication or security measures of the InEight Products or access the InEight Products other than through approved means; (iii) interfere with or disrupt the integrity or availability of the InEight Products; (iv) send SPAM or any other form of duplicative and unsolicited messages through the InEight Products; (v) alter, merge, modify, adapt, translate or create derivative works based on InEight Products; or design or create a program, environment or application substantially similar in function to the InEight Products; (vi) violate InEight Documentation; (vii) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (viii) deceive or defraud third parties; (ix) defame, abuse, harass, or otherwise violate the legal rights (such as rights of privacy) of others, or publish, post, upload, distribute or disseminate any inappropriate, defamatory, infringing, obscene, indecent or unlawful material or information, or (x) violate any rights of third parties. Customer shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the InEight Products. Customer shall not remove or obscure, destroy and will take commercially reasonable steps to prevent the removal, obfuscation or destruction of, any InEight's or any third party's copyright, trademark, trade secret or other proprietary rights notices or legends from the InEight Products. Customer shall not use the InEight Products for any

government secure projects or for management of personal data.

## **4. CONFIDENTIAL INFORMATION**

**4.1 Confidential Information Definition.** For purposes of this Agreement, "Confidential Information" shall mean any business information disclosed by one Party ("Disclosing Party") to the other Party ("Recipient") pursuant to this Agreement. Customer Data shall be considered Confidential Information, subject to the restrictions in Section 3.2 and the exceptions in Section 4.3. The InEight Products and this Agreement shall be considered Confidential Information of InEight.

**4.2 Confidential Information Restrictions.** All Confidential Information: (a) shall only be used by the Recipient in furtherance of this Agreement or in furtherance of the exercise of its rights or obligations under this Agreement; (b) shall not be copied or distributed, disclosed, or disseminated in any way or form by the Recipient to anyone except its own employees (and with respect to InEight its contractors and with respect to Customer its Users as applicable), who have a reasonable need to know said Confidential Information, and where such employees shall be made aware that the information is confidential and shall be under a written contractual restriction on nondisclosure and proper treatment of Confidential Information that is no less restrictive than the terms of this Section 4 of this Agreement; the Recipient shall be responsible for any failure of any third party to which it discloses the Disclosing Party's Confidential Information; and (c) shall be treated by the Recipient with the same degree of care to avoid disclosure to any third party as is used with respect to the Recipient's own information of like importance which is to be kept secret, but with no less than reasonable care.

**4.3 Confidentiality Exceptions.** The restrictive obligations as set forth in Section 4.1 shall not apply to any information which (a) is generally publicly available or in the public domain at the time it is disclosed; (b) is or hereafter becomes public knowledge through no fault of the Recipient; (c) is known by the Recipient on the date of disclosure and is not subject to any restriction on disclosure or use; (d) is disclosed to the Recipient by a third party who is not subject to any restriction on disclosure or use; (e) the Recipient can demonstrate was developed by it independently without benefit of, or based on, the disclosures made hereunder.

**4.4 Additional Provisions.** If disclosure of the Disclosing Party's Confidential Information is required by law, Recipient may disclose the Disclosing Party's Confidential Information, provided, however, that the Recipient will use all reasonable efforts to notify the Disclosing Party of the obligation to make such disclosure in advance of the disclosure so that the Disclosing Party will have a reasonable opportunity to object to such disclosure and will disclose only that Confidential Information which Recipient's legal counsel deems reasonably necessary to disclose. No license or other right is granted to the Recipient by the disclosure of any information hereunder, nor is



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any warranty made by the Disclosing Party with respect to its Confidential Information.

**4.5 Return of Confidential Information.** Confidential Information shall remain the property of the Disclosing Party (along with all copies thereof) even after the expiration or termination of this Agreement. Any Confidential Information of a Disclosing Party which is furnished to a Recipient, and all copies thereof, at the earlier of Disclosing Party's request for return of the materials, or the termination of this Agreement, at the Disclosing Party's option, will be destroyed by Recipient (with Recipient providing written certification of such destruction upon request of Disclosing Party), with the exception of Customer Data. All Customer Data is automatically deleted upon Agreement termination.

**4.6 Feedback.** From time to time, Customer may provide InEight with suggestions, comments, feedback, ideas or know-how regarding InEight products and services ("Feedback"). Feedback also includes anonymized usage information derived from or submitted by the InEight Products (excluding Personal Data). InEight may in connection with any of its products or services (including any improvements) freely use such Feedback in any manner without obligation, royalty or restriction.

**4.7 Remedies.** Recipient will be fully responsible to the Disclosing Party for any damages or harm caused to the Disclosing Party by a breach of this Section 4 of this Agreement by Recipient or any of its officers, directors, agents, employees, consultants or Affiliates. Recipient acknowledges and agrees that a breach of any of its promises or agreements contained herein will result in irreparable injury to the Disclosing Party for which there will be no adequate remedy at law, and the Disclosing Party shall be entitled to apply for equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach of Section 4 by Recipient and the Disclosing Party shall not be required to, and Recipient hereby waives any requirement for Disclosing Party to, post a bond in connection with such pursuit of equitable relief. Such remedies, however, shall not be deemed to be the exclusive remedies for any breach of the Agreement but shall be in addition to all other remedies available at law or in equity.

## **5. WARRANTY DISCLAIMER; LIMITATIONS OF LIABILITY.**

**5.1 DISCLAIMER.** THE INEIGHT PRODUCTS, DOCUMENTATION, SERVICE LEVEL, SUPPORT AND MAINTENANCE SERVICES, AND ANY OTHER MATERIALS, TECHNOLOGY, DATA AND/OR SERVICES PROVIDED BY INEIGHT OR ANY OF ITS LICENSORS OR SUPPLIERS, ARE PROVIDED "AS IS" AND "AS AVAILABLE." INEIGHT AND ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY IS MADE BY INEIGHT OR ANY OF ITS LICENSORS OR SUPPLIERS ON

THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. INEIGHT, ITS LICENSORS AND SUPPLIERS DO NOT WARRANT THAT THE INEIGHT PRODUCTS, DOCUMENTATION, SERVICE LEVEL, SUPPORT AND MAINTENANCE SERVICES, OR ANY OTHER MATERIALS, TECHNOLOGY, DATA AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED, ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED, OR THAT SUCH IS SECURE, FREE FROM BUGS, VIRUSES, OR OTHER PROGRAM LIMITATIONS.

**5.2 Limitations of Liability.** EXCEPT FOR MISAPPROPRIATION OR VIOLATION OF INEIGHT'S OR ANY OF ITS LICENSORS OR SUPPLIERS' INTELLECTUAL PROPERTY RIGHTS BY CUSTOMER, (A) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR COST OF SUBSTITUTE GOODS AND SERVICES, LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF OR RECREATION OF INFORMATION, REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING, AND (B) IN NO EVENT SHALL THE TOTAL COLLECTIVE LIABILITY OF A PARTY TO THE OTHER PARTY FOR ALL CLAIMS UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE FEES PAID OR OWED BY CUSTOMER UNDER THIS AGREEMENT in the twelve (12) month period immediately preceding the event giving rise to the liability.

**5.3 Allocation of Risk.** The warranty disclaimer and limitations of liability set forth in this Agreement shall apply irrespective of any failure of essential purpose of any limited remedy. Customer and InEight each acknowledge and agree that the limitation of liability provisions of this section reflect an informed, voluntary allocation between them of the risk associated with Customer's use of the InEight Products and, but for this provision, InEight would not have made the InEight Products available to Customer at the prices contemplated under this Agreement.

## **6. TERM**

**6.1 Term.** This Agreement shall commence on the Effective Date and remain in effect until terminated pursuant to this Section 6 or upon expiration of the term selected by Customer, whichever occurs first.

**6.2 Termination.** In the event that either Party is in material breach of these terms (or this Agreement), and the breaching Party does not cure such breach within thirty (30) days following notice of such breach, then the non-breaching Party may immediately terminate this Agreement in its entirety, by sending written notice to the breaching Party. To the extent permitted by applicable law, either Party shall have the right to immediately terminate this Agreement upon written notice in the event the other Party (i) fails to comply with its confidentiality obligations under this Agreement; or (ii) becomes the subject of



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petition in bankruptcy or other proceeding relating to insolvency, receivership, liquidation, or otherwise dissolves, terminates or suspends its business. Termination by either Party for breach shall be in addition to any other remedies the non-breaching Party may have for such breach.

**6.3 Effect of Termination.** Upon expiration or termination of this Agreement, Customer (including any Users) must immediately stop using the InEight Products and destroy all documentation. Expiration or termination of this Agreement shall not relieve either Party from any obligations accruing prior to such expiration or termination, nor limit any Party's right to pursue any and all other remedies available to it at law or in equity, including injunctive relief. Customer has access to Customer Data to obtain a copy as needed prior to termination. All Customer Data will be deleted upon termination or expiration.

Upon termination of this Agreement, Sections 2 (with respect of fees owed), 3, 4, 5, 6 and 7 shall survive and remain in effect.

## 7. SECURITY

**7.1 Account Protection.** Customer shall protect the confidentiality of all User information, including user names and passwords. In the event that Customer becomes aware that the security of User login information has been breached or compromised in any way, Customer shall immediately deactivate such Users or change the Account's login information and notify InEight. Customer will comply with such other terms as set forth in Section 7.2 below.

### 7.2 Security and Data Protection.

**7.2.1 General.** InEight has implemented and will maintain and follow reasonable technical and organizational measures (including security compliance testing) intended to protect Customer Data against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction. InEight may use a third-party hosting service and other contractors to provide services on its behalf. Such contractors will be permitted to obtain Customer Data only to deliver the services that InEight has retained them to provide. Customer consents to transfer of Customer Data to such contractors as described herein. InEight cannot guarantee absolute security, or that a security incident will not occur, and does not warrant or guarantee that its systems, products, or services are immune from the malicious or illegal conduct of any third-party.

**7.2.2 Security Incident Notification.** If InEight becomes aware of any unlawful access to any Customer Data which results in loss, disclosure or alteration of Customer Data (a "Security Incident"), InEight will promptly (1) notify Customer of the Security Incident; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident. Notices of Security Incidents will be delivered by InEight via email. InEight's obligation to report or respond to a Security Incident under these terms is not an acknowledgement by InEight of any fault or liability with respect to the Security Incident. Customer will notify InEight promptly of any possible

misuse of its accounts or login credentials or any security incident related to the InEight Products of which Customer becomes aware.

**7.3 Data Processing.** Customer Data may be transferred to and stored and processed in the United States, Canada or Australia, and in other jurisdictions in which InEight or any of its contractors, or its or their affiliates or subcontractors, maintain facilities. Customer appoints InEight to perform any such transfer of Customer Data to any such country and store and process Customer Data in order to provide the InEight Products.

**7.4 Customer Actions.** Customer is responsible for security incidents or loss resulting from its (a) failure to perform reasonably requested or recommended upgrades to equipment or software; (b) failure to take reasonable security precautions; and (c) any modifications to the InEight Products performed by anyone other than InEight. Further, Customer is responsible for managing and controlling its users of the InEight Products, and the process they use to do so. InEight is not responsible for (a) any damage or liability arising out of or otherwise caused by Customer's failure to take reasonable security precautions; (b) any damage or liability caused by any person who Customer has given access to InEight Products; or (c) any person who gains access to Customer's Confidential Information as a result of Customer's failure to take reasonable security precautions.

**7.5 Data Protection.** To the extent any applicable data protection laws deem InEight a data processor for the purposes of Personal Data: (a) each party shall take appropriate technical and organizational measures against unauthorized or unlawful disclosure or processing of the Personal Data or its accidental loss, destruction or damage; (b) Customer shall ensure that it is entitled to transfer the relevant Personal Data to InEight so that it may lawfully process the Personal Data in accordance with this Agreement on Customer's behalf; and (c) InEight shall process the Personal Data only in accordance with the terms of this Agreement, including the Data Processing Addendum found at: <https://ineight.com/data-processing-addendum-introductory-25-november-2024/>, and any reasonable and lawful instructions given by Customer from time to time, and any reasonable and lawful instructions given by Customer from time to time.

## 8. DISASTER RECOVERY PROCEDURES

**8.1** InEight will maintain a disaster recovery ("DR") procedure designed to recover the InEight Service following a disaster. Such DR program will include the following elements:

- (i) routine procedures to regularly and programmatically create retention copies of Customer Data for the purpose of recovering lost or corrupted data;
- (ii) inventories, updated at least annually, that list all critical InEight systems;
- (iii) annual review and update of the DR procedures; and
- (iv) annual testing to validate the DR procedures and recoverability of the InEight Service.



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### 9. GENERAL

9.1 Audit. During the term of this Agreement, InEight (and its licensors, as applicable) shall have the right to audit Customer's use as reasonably necessary to confirm Customer's compliance with the terms and conditions of this Agreement.

9.2 Publicity. InEight may identify Customer on its customer lists and list Customer as a customer in its marketing materials, and reproduce Customer's company name, logo, trademark, trade name, service mark, or other commercial designations.

9.3 Assignment. Customer may not assign this Agreement without InEight's prior written consent. A merger, sale of all or substantially all of Customer's assets to which this Agreement relates and a direct or indirect change of control of Customer shall constitute an assignment requiring consent. InEight may freely assign this Agreement. Any assignments in violation of the foregoing shall be null and void. Subject to the foregoing, the entire Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the respective representatives, and permitted successors and assigns of the Parties.

9.4 Export. InEight Products may be subject to the international trade and export control laws and regulations of the United States and other jurisdictions, including without limitation the U.S. Export Administration Regulations, and International Traffic in Arms Regulations. Each Party shall comply with all applicable trade and export control laws and regulations applicable to its use, transfer or export of the InEight Products. Customer certifies that it is not restricted from making or receiving U.S. exports, and confirms that neither it nor any of its subsidiaries, affiliates, or any other entities owned or controlled by Customer have been designated as being subject to U.S. sanctions and export control restrictions including, but not limited to, being identified on the U.S. list of Specially Designated Nationals ("SDN") or the Entity List (collectively "Designated Persons") [as set forth in <https://www.export.gov/article?id=Consolidated-Screening-List>, or such other US government lists], and will not permit Users to access or use the InEight Products in a U.S. embargoed country, or in violation of any applicable trade and export laws or regulations. Customer shall not engage in any activity that would cause InEight to be exposed to risk of sanctions, prohibitions, or designation pursuant to U.S. or other applicable economic sanctions regulations. Neither Customer nor any of its subsidiaries, affiliates, or any other entities owned or controlled by Customer are owned or controlled by a government of, or entity located in, a country or region subject to comprehensive economic sanctions programs including, but not limited to, Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine. In the event the Customer is in violation of this clause, InEight shall have the right to terminate this Agreement, and will assist Customer in the transfer of Customer Data from InEight Products through mutually agreeable process to the extent permitted by applicable law.

9.5 Governing Law/Jurisdiction/. This Agreement and any dispute, claim or controversy arising therefrom shall be governed by the laws of Delaware in the Federal Courts of Delaware, located in Wilmington, Delaware, in each case without reference to "conflict of laws" principles.

The application of the United Nations Convention of Contracts for the International Sale of Goods to this Agreement is expressly excluded. The Parties consent to jurisdiction of the court listed above, as applicable, and such venue shall not be challenged by the non-filing Party as improper or inappropriate due to, among other things, inconvenience under the doctrine of forum non-conveniens or other similar doctrines.

9.6 Entire Agreement; No Waiver; Order of Precedence. This Agreement constitutes the complete agreement and understanding of the Parties with respect to the subject matter hereof. Any other agreements or environments that may be in place with Customer are independent of this Agreement and any environments provided under this Agreement. No term or provision of this Agreement may be altered, amended or waived except by a writing signed by both Parties. The terms of any purchase order issued by Customer and accepted by InEight are null and void. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right. Any Section headings are for reference only and shall not be used to interpret the meaning of any terms and conditions. In the event that there is a conflict between any Order Forms and these Terms and Conditions (including the Data Processing Addendum), these Terms and Conditions shall govern.

9.7 No Third Party Beneficiaries. No term or provision of this Agreement is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a party to this Agreement, and no such other person, firm, corporation or entity shall have any right or cause of action hereunder.

9.8 Severability. In case one or more provisions of this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, such provisions shall be severed and the Parties specifically intend that the remaining provisions shall continue as valid, legal and enforceable, and these provisions shall be interpreted in such a way as to give them maximum enforceability and validity under the applicable law while retaining the original intent of the Parties with respect to such provisions.

9.9 Relationship. The Parties acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement. Neither Party has the right or authority to assume or create any obligation or responsibility on behalf of the other Party.

9.10 Notices. All notices, demands, consents, approvals and other communications which may be required to



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be served or given under this Agreement shall be sufficient if given via email or in writing and sent by overnight courier to the addresses of the Parties specified in the Notification section listed in the Order Form. Notices shall be deemed given when received via email or overnight courier.

9.11 Force Majeure. Neither Party will incur any liability to the other Party on account of any loss or damage resulting from its delay or failure to perform any obligation hereunder (other than payment of money) if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without the negligence of such Party. Such events, occurrences or causes include, without limitation, acts of God, strikes, pandemics, epidemics, lockouts, riots, acts of war, earthquakes, fire and explosions. The Party claiming Force Majeure Event shall use reasonable efforts to mitigate the effects of such Event.

9.12 Electronic Signatures. This Agreement and any related documents may be signed electronically, in

counterparts, and that the electronic signatures appearing on this Agreement or any related documents shall have the same legal effect for all purposes, including validity, enforceability and admissibility, as a handwritten signature.

Remedies. Unless otherwise expressly stated, any remedies specified herein are in addition to and not in lieu of any remedies available at law or in equity.

9.13 English Language. The language of this Agreement and all documentation related thereto (including without limitation invoices, Documentation, support services correspondence and documentation) shall be the English language and the parties hereby agree that the English language version of this Agreement and related documentation shall control for all purposes and shall be valid and enforceable notwithstanding any translation into a language other than English. Further, all communications and proceedings relating to this Agreement shall be conducted in English.



## Subscription Agreement Terms for Australia (v.01May2025)

THIS **SUBSCRIPTION AGREEMENT** (“**AGREEMENT**”), IS BY AND BETWEEN INEIGHT, INC. (“INEIGHT”) AND THE CUSTOMER (IDENTIFIED AS “COMPANY NAME” ON THE ORDER FORM). THIS “AGREEMENT” CONSISTS OF THE FOLLOWING TERMS AND CONDITIONS AND ANY ADDENDUMS, OR OTHER ATTACHMENTS INCORPORATED HEREIN, AND ANY AND ALL ORDER FORMS EXECUTED BY THE PARTIES INCORPORATING THESE TERMS. BY EXECUTING AN ORDER FORM YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS AND ALL ADDENDUMS, AND OTHER ATTACHMENTS REFERENCED HEREIN ALONG WITH THE ORDER FORM, WHICH CONSTITUTES THE AGREEMENT GOVERNING YOUR USE OF INEIGHT PRODUCTS.

### 1. DEFINED TERMS

Unless the context requires otherwise, the following words bear the meaning set out below.

1.1 **Access** means access to the InEight SaaS Service via a user name and password over the internet

1.2 **Affiliate** means any entity that is under the effective control of the entity that ultimately has effective control of the first-mentioned entity.

1.3 **Authorised User** means an individual who is:

(a) one of Customer's or its Affiliates' employees, contractors, suppliers or other person to whom Customer has given Access to, or is licensed to use, the InEight Product; and

(b) Accessing and/or using the InEight Product for Customer's or its Affiliates' internal business purposes only.

1.4 **Business Day** means any weekday that is not a public holiday in Victoria, Australia.

1.5 **Case** means Customer's notification of an Error or request for assistance by Customer's designated technical liaison to InEight's help desk in relation to an InEight Product, as provided in InEight Service Level and Support Addendum (as defined below).

1.6 **Data Centre** means the building(s) in which the Hosted Environment is located, as may be changed from time to time by InEight in its discretion.

1.7 **Disclosing Party** means the Party that makes a disclosure of Confidential Information.

1.8 **Documentation** means all online help files or written instruction manuals regarding the InEight Products provided by InEight to Customer from time to time at <https://learn.ineight.com/>.

1.9 **Effective Date** means the date of purchase as set forth in the Order Form (defined below)

1.10 **Fees** means the amount payable by Customer, exclusive of Taxes, as stated on the website.

1.11 **GST** means the Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

1.12 **Hosted Environment** means the server and/or processing capacity, operating system software and

Network from which the InEight SaaS Service operates.

1.13 **InEight Products** means the InEight Software, Maintenance Services and InEight SaaS Service.

1.14 **InEight SaaS Service** means: (a) the InEight Software that is operating from the Hosted Environment and is Accessed and used via the internet; and (b) the related Maintenance Services, during the InEight SaaS Service Period in accordance with the Agreement. The term InEight SaaS Service excludes any internet or other network that connects a user to the InEight Software on the Hosted Environment.

1.15 **InEight SaaS Service Period** means the period during which Customer has the right to Access the InEight SaaS Service that is stated on the Order Form. The initial InEight SaaS Service Period commences on the Effective Date.

1.16 **InEight Software** means the object code version of InEight's software program, and any Documentation, as updated by InEight in its discretion from time to time, and any Update and New Release that may be made available by InEight, in its discretion, to supported customers of InEight Software, from time to time.

1.17 **Intellectual Property Rights** means copyright (including Moral Rights), trade marks, design rights, service marks, patent, semiconductor or circuit layout rights, trade secrets, know-how, database rights or other rights in the nature of intellectual property rights (whether registered or unregistered), including the rights to keep confidential information confidential, or any right to registration of such rights, existing anywhere in the world, or protected by statute from time to time.

1.18 **Moral Rights** means the rights of an individual that are defined as moral rights in the Copyright Act 1968 (Cth).

1.19 **New Release** means a version of the InEight Software that has been produced primarily to extend, alter or improve the InEight Software by providing additional functionality or performance enhancements (whether or not defects are also corrected). InEight shall determine in its discretion whether any software is a New Release or a different product.

1.20 **Personal Information** means any information or data defined as Personal Information under the



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Privacy Act.

1.21 **Privacy Act** means the Privacy Act 1988 (Cth).

1.22 **Order Form** means the order or purchase form completed and agreed to by Customer through the InEight.com Website.

1.23 **Recipient** means the Party that receives a disclosure of Confidential Information.

1.24 **Representatives** means the employees, agents and contractors of a Party, or those of any Affiliate, and the professional representatives of a Party providing advice in relation to this Agreement or any Agreement, including the lawyers, bankers, auditors, accountants and insurers of a Party.

1.25 **Tax** includes any GST, sales taxes, duties, withholding taxes, levies, tariffs, imposts or other charges levied by any federal, state or local government which arise out of or in connection with this Agreement and/or any Agreement, and any interest, penalties or liabilities incurred on such amounts, but excludes taxes based on the net income of InEight.

1.26 **Update** means any bug fixes, patches, and/or minor releases for the InEight Software that have been produced primarily to overcome defects in the InEight Software without significantly altering the functionality of the InEight Software.

1.27 "including", "includes" are not words of limitation.

1.28 Any clause headings are for reference only and must not be used to interpret the meaning of any terms and conditions.

1.29 Unless set out otherwise, all amounts set out in this Agreement (including as set out on the Order Form) are stated in Australian Dollars.

## 2. INEIGHT PRODUCTS

### Order Forms

2.1 The subscription of the InEight Products (defined below) to be provided to Customer in consideration of fees paid by Customer, as agreed upon by InEight and Customer, are as set forth in the order or purchase form completed through the InEight.com Website (the "**Order Form**"). All subscriptions for InEight Products under such Order Form are part of and subject to the terms of this Agreement.

2.2 Subject to the terms and conditions of this Agreement, including without limitation Customer's non-refundable payment of all of the fees due thereunder, InEight will provide Customer with right to use the InEight SaaS (software as a service) products specified and agreed to by the parties in the Order Form (the "**InEight Products**") for the period selected by Customer. Customer may only use the

InEight Products purchased under the Order Form for the number of projects specified on the Order Form.

2.3 InEight Products includes all Documentation and all Updates and New Releases to them that may be provided in connection with the InEight Products to Customer.

### Users

2.4 Customer's subscription of InEight Products under this Agreement is for an unlimited number of users, which users must be employees of the Customer and Customer designates as a user permitted access to the InEight Products subscribed under this Agreement (the "Users"). A User's login to use of InEight Products is specific to that User, and as such a User may not share his/her login credentials with others. Customer shall immediately notify InEight in the event that Customer becomes aware of any violation of these terms concerning the use of the InEight Products by its Users, and is responsible for any and all violations of these terms by the Users.

2.5 Customer must only permit the InEight Products to be used by Authorised Users who are using the InEight Products for Customer's or its Affiliates' internal business purposes only.

### Third Party Software

2.6 InEight may make available to Customer a third party software applications ("Third Party Software") as part of or for use in connection with the InEight Products. InEight has no responsibility for Third Party Software, except to the extent InEight provides the Third Party Software as a function of the InEight Products and then only to the extent to ensure it operates in accordance with the Service Levels and Support Addendum in section 2.8.

### Account Protection

2.7 Customer must protect the confidentiality of all Authorised User information, including user names and passwords. In the event that Customer becomes aware that the security of any Authorised User login information has been breached or compromised in any way, Customer must immediately de-activate such Authorised Users or change the Account's login information and notify InEight in writing.

### Service Levels and Maintenance Services

2.8 The service levels and support for InEight Products are set forth on InEight's website (ineight.com) at <https://ineight.com/ineight-introductory-service-and-support-terms-25-november-2024/> ("Service Levels and Support Addendum") and incorporated herein by this reference.

## 3. FEES AND PAYMENT

### Fees

3.1 Customer must pay InEight for use of the InEight Products at the time of the subscription purchase under the relevant Order Form in order to receive login access to the InEight Products set forth in the Order Form. All fees are due and payable in Australian Dollars unless otherwise stated



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on the Order Form and include any applicable tax (including GST).

### **Taxes**

3.2 Except as otherwise provided in the Order Form, all charges for InEight Products exclude any value added (VAT), goods and services (GST), state and local sales or use taxes (SUT), provincial sales taxes (PST) or other taxes, fees, duties, charges or surcharges, imposed on, incident to, or based upon the provision or subscription of the InEight Products to Customer (collectively "Applicable Taxes"). If InEight is authorized by any governmental authority to collect Applicable Taxes, InEight shall issue billings to Customer separately itemizing the charge for Applicable Taxes and Customer shall pay InEight the Applicable Taxes in addition to all other charges for InEight Products. Taxes based on InEight's net income and capital, and all other taxes directly imposed by any governmental authority remain the sole obligation of InEight and shall not be eligible for reimbursement from Customer.

## **4. PROPRIETARY RIGHTS**

### **IP Ownership**

4.1 InEight and its licensors retain ownership of, and all right, title, and interest in and to, the InEight Products, including any modifications, improvements, upgrades, derivative works thereof, and all Intellectual Property rights therein and thereto. Customer will not remove or destroy and will take commercially reasonable steps to prevent the removal or destruction of, any InEight or third party copyright, trade secret or other proprietary rights notice from the InEight Products. Except for the express rights granted in this Agreement, InEight does not grant any other rights or interests of any kind, whether express or implied, to any InEight Products, services, or technology, and accordingly, any and all other rights and interests in and to InEight Products not specifically granted to Customer in this Agreement are expressly reserved by InEight and its licensors and suppliers.

### **Customer Data**

4.2 Any and all data that is uploaded by Customer to the InEight Products is considered Customer's sole property ("Customer Data"). InEight is permitted to use Customer Data for the following purposes: (a) to support Customer's and its User's use of the InEight Products including without limitation monitor and address service or technical problems associated with the InEight Products; and (b) to improve the InEight Products (except that Customer personal data shall not be used for this purpose). Customer has access to Customer Data in the InEight Products, for Customer to obtain a copy of its data as needed. Accordingly, if Customer requests that InEight assist in obtaining Customer Data from the InEight Products, such assistance is subject to the parties reaching agreement on the format of the data to be obtained and the fees to be paid to InEight for such assistance. InEight is not responsible for any claim, loss, cost, expense or other issues resulting from any data provided by Customer that is incomplete, inaccurate, or defective in any way. Customer is responsible

for determining what data it uploads to, or otherwise provides in use of, the In Eight Products, and acknowledges that the right to use, and accuracy and quality of, all data provided to InEight by Customer or its Users is entirely Customer's responsibility.

### **Restrictions**

4.3 Customer shall not, and shall prevent Users from using the InEight Products to: (i) resell, rent, lend, lease, distribute, or timeshare the InEight Products (including on a "service bureau" basis or other on-line service, bulletin board, Web or Internet access), or otherwise provide third parties that are not Users with access to or grant third parties rights to the InEight Products; (ii) circumvent or otherwise interfere with any authentication or security measures of the InEight Products or access the InEight Products other than through approved means; (iii) interfere with or disrupt the integrity or availability of the InEight Products; (iv) send SPAM or any other form of duplicative and unsolicited messages through the InEight Products; (v) alter, merge, modify, adapt, translate or create derivative works based on InEight Products; or design or create a program, environment or application substantially similar in function to the InEight Products; (vi) violate InEight Documentation; (vii) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (viii) deceive or defraud third parties; (ix) defame, abuse, harass, or otherwise violate the legal rights (such as rights of privacy) of others, or publish, post, upload, distribute or disseminate any inappropriate, defamatory, infringing, obscene, indecent or unlawful material or information, or (x) violate any rights of third parties. Customer shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the InEight Products. Customer shall not remove or obscure, destroy and will take commercially reasonable steps to prevent the removal, obfuscation or destruction of, any InEight's or any third party's copyright, trademark, trade secret or other proprietary rights notices or legends from the InEight Products. CUSTOMER SHALL NOT USE THE INEIGHT PRODUCTS FOR ANY GOVERNMENT SECURE PROJECTS OR FOR MANAGEMENT OF PERSONAL DATA.

## **5. CONFIDENTIAL INFORMATION**

### **Confidentiality Restrictions**

5.1 For purposes of this Agreement, "Confidential Information" shall mean any business information disclosed by one Party ("Disclosing Party") to the other Party ("Recipient") pursuant to this Agreement. Customer Data shall be considered Confidential Information, subject to the restrictions in the exceptions in Section 4.3. The InEight Products and this Agreement shall be considered Confidential Information of InEight.

5.2 All Confidential Information: (a) shall only be used by the Recipient in furtherance of this Agreement or in furtherance of the exercise of its rights or obligations under this Agreement; (b) shall not be copied or distributed, disclosed, or



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disseminated in any way or form by the Recipient to anyone except its own employees (and with respect to InEight its contractors and with respect to Customer its Users as applicable), who have a reasonable need to know said Confidential Information, and where such employees shall be made aware that the information is confidential and shall be under a written contractual restriction on nondisclosure and proper treatment of Confidential Information that is no less restrictive than the terms of this Section 4 of this Agreement; the Recipient shall be responsible for any failure of any third party to which it discloses the Disclosing Party's Confidential Information; and (c) shall be treated by the Recipient with the same degree of care to avoid disclosure to any third party as is used with respect to the Recipient's own information of like importance which is to be kept secret, but with no less than reasonable care.

### Confidentiality Exceptions

5.3 The restrictive obligations as set forth in Section 4.2 shall not apply to any information which (a) is generally publicly available or in the public domain at the time it is disclosed; (b) is or hereafter becomes public knowledge through no fault of the Recipient; (c) is known by the Recipient on the date of disclosure and is not subject to any restriction on disclosure or use; (d) is disclosed to the Recipient by a third party who is not subject to any restriction on disclosure or use; (e) the Recipient can demonstrate was developed by it independently without benefit of, or based on, the disclosures made hereunder.

### Additional Provisions

5.4 If disclosure of the Disclosing Party's Confidential Information is required by law, Recipient may disclose the Disclosing Party's Confidential Information, provided, however, that the Recipient will use all reasonable efforts to notify the Disclosing Party of the obligation to make such disclosure in advance of the disclosure so that the Disclosing Party will have a reasonable opportunity to object to such disclosure and will disclose only that Confidential Information which Recipient's legal counsel deems reasonably necessary to disclose. No license or other right is granted to the Recipient by the disclosure of any information hereunder, nor is any warranty made by the Disclosing Party with respect to its Confidential Information.

### Return of Confidential Information

5.5 Confidential Information shall remain the property of the Disclosing Party (along with all copies thereof) even after the expiration or termination of this Agreement. Any Confidential Information of a Disclosing Party which is furnished to a Recipient, and all copies thereof, at the earlier of Disclosing Party's request for return of the materials, or the termination of this Agreement, at the Disclosing Party's option, will be destroyed by Recipient (with Recipient providing written certification of such destruction upon request of Disclosing Party).

### Customer's Acknowledgements and Obligations

5.6 Customer acknowledges and agrees that:

(a) there is inherent risk of compromising information when sharing or transferring electronic documents and Customer accepts those risks and the fact that the InEight Products do not eliminate the risk of compromising information; and

(b) improper use of (or unauthorised modifications to) the InEight Products, including use beyond the scope of the licence or use rights granted under the Agreement, may increase the risk of the inadvertent disclosure of compromising information.

5.7 Customer shall be responsible for and obtain all rights necessary for the operation of the InEight Products and third-party software provided by Customer or in connection with any of Customer's other programs or materials. Customer acknowledges and agrees that InEight is not responsible for the software, hardware, products and services of third parties not provided by InEight.

### Feedback

5.8 From time to time, Customer may provide InEight with suggestions, comments, feedback, ideas or know-how regarding InEight products and services ("Feedback"). Feedback also includes anonymized usage information derived from or submitted by the InEight Products (excluding Personal Data). InEight may in connection with any of its products or services (including any improvements) freely use such Feedback in any manner without obligation, royalty or restriction.

### Remedies

5.9 Recipient will be fully responsible to the Disclosing Party for any damages or harm caused to the Disclosing Party by a breach of this Section 5 of this Agreement by Recipient or any of its officers, directors, agents, employees, consultants or Affiliates. Recipient acknowledges and agrees that a breach of any of its promises or agreements contained herein will result in irreparable injury to the Disclosing Party for which there will be no adequate remedy at law, and the Disclosing Party shall be entitled to apply for equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach of Section 5 by Recipient and the Disclosing Party shall not be required to, and Recipient hereby waives any requirement for Disclosing Party to, post a bond in connection with such pursuit of equitable relief. Such remedies, however, shall not be deemed to be the exclusive remedies for any breach of the Agreement but shall be in addition to all other remedies available at law or in equity.

## 6. PRIVACY

### Comply with Privacy Act

6.1 Each Party must, when it collects, receives, uses, discloses, processes, transfers or otherwise handles Personal Information in the course of performing its obligations or exercising its rights under this Agreement comply with the Privacy Act as though it were bound by the Privacy Act and any subordinate legislative instruments or regulations.

### Restricted Use



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6.2 Each Party must: (a) collect, use, process and disclose the Personal Information only as authorised or for the purposes of: (i) the exercise of its rights and obligations under this Agreement; (ii) the administrative tasks associated with the performance of this Agreement, including invoicing, payment, contract management, risk management, insurance, renewals, delivery, maintenance and support; (iii) where InEight is the recipient of the Personal Information, marketing and promoting InEight's other goods and services to Customer; (b) not disclose the Personal Information except: (i) to it, its Affiliates and their respective officers, directors, agents, employees or contractors to the minimum extent necessary for the purposes of performing its obligations under this Agreement; (ii) subject to clause 6.5(b), as required by law; or (iii) with the prior written consent of the other Party; and (c) ensure that any person to whom Personal Information is disclosed under sub-paragraph (b), uses, discloses, transfers, retains and otherwise manages such Personal Information consistently with that Party's obligations under this Agreement.

### Overseas Transfer- Personal Information

6.3 Neither Party may transfer or disclose any Personal Information to any person located outside of Australia, or any other country in which the Personal Information was first collected (the "Relevant Countries"), or allow or permit any person located outside the Relevant Countries to access or receive any Personal Information, without the prior written consent of the other Party. Notwithstanding the preceding sentence, Customer consents to InEight, its Affiliates and their respective officers, directors, agents, employees or contractors transferring and processing Personal Information, in order to provide billing and customer support services, in the following countries or territories: (a) any State or Territory in Australia; (b) the United States of America; (c) any country in which InEight or its Affiliates or their respective contractors has an office or a Data Centre.

### Return of Personal Information

6.4 Except as otherwise required by law or as otherwise agreed between the Parties, each Party must return to the other Party all materials in the first Party's possession, custody or control containing Personal Information handled in connection with this Agreement in the following circumstances: (a) when the Personal Information is no longer required by the other Party for the purposes of this Agreement; (b) if required by law.

### Notification of Data Breaches

6.5 Where there is a eligible data breach (as defined in the Privacy Act) involving the Personal Information that has been provided by the other Party, then the Party that

has suffered the eligible data breach must: (a) immediately, and in any event within twenty four (24) hours of the discovery of the eligible data breach, notify the other Party of the eligible data breach, provide to the other Party all information that is required to be provided to the Office of the Australian Information Commission and/or the affected individual, as required under the Privacy Act; (b) co-operate with the other Party in any investigation or audit (including by providing access to the breaching Party's premises, personnel, processes and systems) in respect of the eligible data breach; (c) not disclose to any third party (including the Information Commissioner as defined in the *Australian Information Commissioner Act 2010* (Cth)) the existence or circumstances surrounding any eligible data breach, without the non-breaching Party's prior written approval, unless the non-breaching Party does not make any notification that it is lawfully required to do and the breaching Party is required by the Privacy Act to make the notification.

### GDPR

6.6 If any personal data that is subject to the European privacy law known as the General Data Protection Regulation (EU) 2016/679 is transferred or disclosed by one Party to the other Party under this Agreement, then Customer will advise InEight and the parties will enter in a mutually agreeable Data Processing Agreement.

### Customer Obligations for Compliance with Laws and responding to Notices

6.7 Customer acknowledges and agrees that all Personal Information that is entered into, or processed by, the InEight SaaS Service is under Customer's control, and that in respect of that information Customer is solely responsible for: (a) complying with any obligations Customer may have under any laws relating to record keeping, archiving, freedom of information, consent or disclosure of information that apply to Customer; (b) responding to any request or notice from any Authorised User or third party. If Customer requests InEight to assist it in meeting any such obligation, request or notice then Customer must pay InEight for such assistance at InEight's then current time and materials rates and expenses.

### Customer Warranty for Personal Information

6.8 Customer warrants that Customer has either: (a) obtained the express informed consent from each individual about whom InEight will obtain Personal Information from Customer as a result of this Agreement and any Agreement; or (b) otherwise has lawful authority, for InEight, its Affiliates and their respective officers, directors, agents, employees or contractors and their permitted successors, assignees and sub-licencees, to use, process and transfer that individual's Personal Information in any manner that may be reasonably contemplated by this Agreement and any Agreement and/or is stated in InEight's privacy policy (as



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available on InEight's website).

### 7. WARRANTY DISCLAIMER; LIMITATIONS OF LIABILITY.

#### Disclaimer

7.1 THE INEIGHT PRODUCTS, DOCUMENTATION, SERVICE LEVEL, SUPPORT AND MAINTENANCE SERVICES, AND ANY OTHER MATERIALS, TECHNOLOGY, DATA AND/OR SERVICES PROVIDED BY INEIGHT OR ANY OF ITS LICENSORS OR SUPPLIERS, ARE PROVIDED "AS IS" AND "AS AVAILABLE." INEIGHT AND ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY IS MADE BY INEIGHT OR ANY OF ITS LICENSORS OR SUPPLIERS ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. INEIGHT, ITS LICENSORS AND SUPPLIERS DO NOT WARRANT THAT THE INEIGHT PRODUCTS, DOCUMENTATION, SERVICE LEVEL, SUPPORT AND MAINTENANCE SERVICES, OR ANY OTHER MATERIALS, TECHNOLOGY, DATA AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED, ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED, OR THAT SUCH IS SECURE, FREE FROM BUGS, VIRUSES, OR OTHER PROGRAM LIMITATIONS.

#### Limitation of Liability

7.2 To the extent permitted by law, and subject to clause 6.12 and section 10, excluding misappropriation of InEight's or its licensors Intellectual Property Rights, neither Party's liability to the other Party, in respect of any claim for any loss, damage, expense or costs whether it be in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise, arising out of or in connection with this Agreement, shall not exclude in the aggregate an amount equal to the Fees paid or payable to InEight under the Agreement under which the claim arose in the twelve (12) months prior to the date the claim first arose.

#### Excluded Losses

7.3 Excluding claims for misappropriation of InEight's or its licensors Intellectual Property Rights, neither Party is liable to the other Party for any loss, damage, expense or cost which:  
(a) is lost profits, lost revenue, failure to realise expected savings, lost or damaged data, business interruption or loss of goodwill; or  
(b) is indirect, consequential, special, punitive or exemplary,  
even if Party has been advised of, knows of, or should have known of the possibility of such loss, damage, expense or cost.

#### Allocation of Risk

7.4 The warranty disclaimer and limitations of liability set forth in this Agreement shall apply irrespective of any failure of essential purpose of any limited remedy. Customer and InEight each acknowledge and agree that the limitation of liability provisions of this section reflect an informed, voluntary allocation between them of the risk associated with Customer's use of the InEight Products and, but for this provision, InEight would not have made the InEight Products available to Customer at the prices contemplated under this Agreement.

### 8. SECURITY

#### Account Protection

8.1 Customer shall protect the confidentiality of all User information, including user names and passwords. In the event that Customer becomes aware that the security of User login information has been breached or compromised in any way, Customer shall immediately de-activate such Users or change the Account's login information and notify InEight. Customer will comply with such other terms as set forth in Section 8.2 below.

#### Security and Data Protection

8.2 InEight has implemented and will maintain and follow reasonable technical and organizational measures (including security compliance testing) intended to protect Customer Data against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction. InEight may use a third-party hosting service and other contractors to provide services on its behalf. Such contractors will be permitted to obtain Customer Data only to deliver the services that InEight has retained them to provide. Customer consents to transfer of Customer Data to such contractors as described herein. InEight cannot guarantee absolute security, or that a security incident will not occur, and does not warrant or guarantee that its systems, products, or services are immune from the malicious or illegal conduct of any third-party.

#### Security Incident Notification

8.3 If InEight becomes aware of any unlawful access to any Customer Data which results in loss, disclosure or alteration of Customer Data (a "Security Incident"), InEight will promptly (1) notify Customer of the Security Incident; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident. Notices of Security Incidents will be delivered by InEight via email. InEight's obligation to report or respond to a Security Incident under these terms is not an acknowledgement by InEight of any fault or liability with respect to the Security Incident. Customer will notify InEight promptly of any possible misuse of its accounts or login credentials or any security incident related to the InEight Products of which Customer becomes aware.

#### Data Processing

8.4 Customer Data may be transferred to and stored and processed in the United States, Canada or Australia, and in other jurisdictions in which InEight or any of its



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contractors, or its or their affiliates or subcontractors, maintain facilities. Customer appoints InEight to perform any such transfer of Customer Data to any such country and store and process Customer Data in order to provide the InEight Products.

### Customer Actions

8.5 Customer is responsible for security incidents or loss resulting from its (a) failure to perform reasonably requested or recommended upgrades to equipment or software; (b) failure to take reasonable security precautions; and (c) any modifications to the InEight Products performed by anyone other than InEight. Further, Customer is responsible for managing and controlling its users of the InEight Products, and the process they use to do so. InEight is not responsible for (a) any damage or liability arising out of or otherwise caused by Customer's failure to take reasonable security precautions; (b) any damage or liability caused by any person who Customer has given access to InEight Products; or (c) any person who gains access to Customer's Confidential Information as a result of Customer's failure to take reasonable security precautions.

### Data Protection

8.6 To the extent any applicable data protection laws deem InEight a data processor for the purposes of Personal Data: (a) each party shall take appropriate technical and organizational measures against unauthorized or unlawful disclosure or processing of the Personal Data or its accidental loss, destruction or damage; (b) Customer shall ensure that it is entitled to transfer the relevant Personal Data to InEight so that it may lawfully process the Personal Data in accordance with this Agreement on Customer's behalf; and (c) InEight shall process the Personal Data only in accordance with the terms of this Agreement, including the Privacy Act under section 6, and any reasonable and lawful instructions given by Customer from time to time.

### Disaster Recovery Procedures

8.7 InEight will maintain a disaster recovery ("DR") procedure designed to recover the InEight Service following a disaster. Such DR program will include the following elements:

- (i) routine procedures to regularly and programmatically create retention copies of Customer Data for the purpose of recovering lost or corrupted data;
- (ii) inventories, updated at least annually, that list all critical InEight systems;
- (iii) annual review and update of the DR procedures; and
- (iv) annual testing to validate the DR procedures and recoverability of the InEight Service.

## 9. TERM AND TERMINATION

### Term

9.1 This Agreement shall commence on the Effective Date and remain in effect until terminated pursuant to this Section 6 or upon expiration of the term selected by Customer, whichever occurs first. Products Agreement commences and ends in accordance with clause 2.

### Termination of Agreement

9.2 In the event that either Party is in material breach of these terms (or this Agreement), and the breaching Party does not cure such breach within thirty (30) days following notice of such breach, then the non-breaching Party may immediately terminate this Agreement in its entirety, by sending written notice to the breaching Party. To the extent permitted by applicable law, either Party shall have the right to immediately terminate this Agreement upon written notice in the event the other Party (i) fails to comply with its confidentiality obligations under this Agreement; or (ii) becomes the subject of petition in bankruptcy or other proceeding relating to insolvency, receivership, liquidation, or otherwise dissolves, terminates or suspends its business. Termination by either Party for breach shall be in addition to any other remedies the non-breaching Party may have for such breach.

### Effect of Termination of an Agreement

9.3 Upon expiration or termination of this Agreement, Customer (including any Users) must immediately stop using the InEight Products and destroy all documentation. Expiration or termination of this Agreement shall not relieve either Party from any obligations accruing prior to such expiration or termination, nor limit any Party's right to pursue any and all other remedies available to it at law or in equity, including injunctive relief. Customer has access to Customer Data to obtain a copy as needed prior to termination. All Customer Data will be deleted upon termination or expiration.

Upon termination of this Agreement, Sections 3 (with respect of fees owed), 4,5,6,7,9 and 10 shall survive and remain in effect.

## 10. GENERAL Audit

10.1 During the term of this Agreement, InEight (and its licensors, as applicable) shall have the right to audit Customer's use as reasonably necessary to confirm Customer's compliance with the terms and conditions of this Agreement.

### Publicity

10.2 InEight may identify Customer on its customer lists and list Customer as a customer in its marketing materials, and reproduce Customer's company name, logo, trade mark, trade name, service mark, or other commercial designations.

### Assignment

10.3 Customer may not assign this Agreement, without InEight's prior written consent. A merger, sale of all or substantially all of Customer's assets to which this Agreement relates and a direct or indirect change of control of Customer is deemed to be an assignment requiring consent. InEight may freely assign this Agreement. Any assignments in breach of this clause is null and void. This Agreement is binding upon and shall inure to the benefit of, and be enforceable by, the respective permitted successors and assigns of the Parties.



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### Export

10.4 InEight Products may be subject to the international trade and export control laws and regulations of the United States and other jurisdictions, including without limitation the U.S. Export Administration Regulations, and International Traffic in Arms Regulations. Each Party shall comply with all applicable trade and export control laws and regulations applicable to its use, transfer or export of the InEight Products. Customer certifies that it is not restricted from making or receiving U.S. exports, and confirms that neither it nor any of its subsidiaries, affiliates, or any other entities owned or controlled by Customer have been designated as being subject to U.S. sanctions and export control restrictions including, but not limited to, being identified on the U.S. list of Specially Designated Nationals ("SDN") or the Entity List (collectively "Designated Persons") [as set forth in <https://www.export.gov/article?id=Consolidated-Screening-List>, or such other US government lists], and will not permit Users to access or use the InEight Products in a U.S. embargoed country, or in violation of any applicable trade and export laws or regulations. Customer shall not engage in any activity that would cause InEight to be exposed to risk of sanctions, prohibitions, or designation pursuant to U.S. or other applicable economic sanctions regulations. Neither Customer nor any of its subsidiaries, affiliates, or any other entities owned or controlled by Customer are owned or controlled by a government of, or entity located in, a country or region subject to comprehensive economic sanctions programs including, but not limited to, Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine. In the event the Customer is in violation of this clause, InEight shall have the right to terminate this Agreement, and will assist Customer in the transfer of Customer Data from InEight Products through mutually agreeable process to the extent permitted by applicable law.

### Entire Agreement

10.5 To the extent permitted by law:

(a) InEight excludes any warranty or guarantee not expressly set out in this Agreement, whether express, implied or statutory, including any guarantees or warranties of acceptability and fitness for a particular purpose and any term that may be implied by custom, course of dealings or otherwise;

(b) this Agreement constitutes the entire agreement between the Parties regarding its subject matter and supersedes all prior or contemporaneous agreements, arrangements, understandings and communications, whether written or oral.

### Variation and Waiver

10.6 Any other agreements or environments that may be in place with Customer are independent of this Agreement and any environments provided under this Agreement. No term or provision of this Agreement may be altered, amended or waived except by a writing signed by both Parties. The terms of any purchase order issued by Customer and accepted by InEight are null and void. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right. Any Section headings are for reference only and shall not be used to

interpret the meaning of any terms and conditions. In the event that there is a conflict between any Order Forms and these Terms and Conditions, these Terms and Conditions shall govern.

### No Third Party Beneficiaries

10.7 No term or provision of this Agreement is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a party to this Agreement, and no such other person, firm, corporation or entity shall have any right or cause of action hereunder.

### Severability

10.8 In case one or more provisions of this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, such provisions shall be severed and the Parties specifically intend that the remaining provisions shall continue as valid, legal and enforceable, and these provisions shall be interpreted in such a way as to give them maximum enforceability and validity under the applicable law while retaining the original intent of the Parties with respect to such provisions.

### Relationship

10.9 The Parties acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement. Neither Party has the right or authority to assume or create any obligation or responsibility on behalf of the other Party.

### Notices

10.10 All notices, demands, consents, approvals and other communications which may be required to be served or given under this Agreement shall be sufficient if given via email or in writing and sent by overnight courier to the addresses of the Parties specified in the Notification section listed in the Order Form. Notices shall be deemed given when received via email or overnight courier.

### Force Majeure

10.11 Neither Party will incur any liability to the other Party on account of any loss or damage resulting from its delay or failure to perform any obligation hereunder (other than payment of money) if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without the negligence of such Party. Such events, occurrences or causes include, without limitation, acts of God, strikes, pandemics, epidemics, lockouts, riots, acts of war, earthquakes, fire and explosions. The Party claiming Force Majeure Event shall use reasonable efforts to mitigate the effects of such Event.

### Counterparts/Electronic Signatures

10.12 The Order Form and any related documents (the Agreement) may be signed electronically, in counterparts, and/or Customer's acknowledgment of a purchase of the



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InEight Product on the relevant Order Form shall have the same legal effect for all purposes, including validity, enforceability and admissibility, as a handwritten signature.

### Remedies

10.13 Unless otherwise expressly stated, any remedies specified herein are in addition to and not in lieu of any remedies available at law or in equity.

### Governing Law; Jurisdiction

10.14 The application of the United Nations Convention of Contracts for the International Sale of Goods to this Agreement is expressly excluded. The Parties consent to jurisdiction of the court listed above, as applicable, and such venue shall not be challenged by the non-filing Party as improper or inappropriate due to, among other things, inconvenience under the doctrine of forum non-conveniens or other similar doctrines.

### Modern Slavery

10.15 Each party must ensure that it complies with all applicable anti-slavery and human trafficking laws. Each Party will have and maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with any such laws and enforce them where appropriate. As of the Effective Date, each party represents to the other that it has not been convicted of any offence involving slavery or human trafficking, and to the best of its knowledge, has not been, or is, the subject of any formal complaint, investigation, inquiry or enforcement proceedings ("Action") by any person or regulatory body in connection with slavery or human trafficking.

## 11. AUSTRALIAN CONSUMER LAW

11.1 If the price (as defined by the Australian Consumer Law) of any of the InEight InEight SaaS Service on the Order Form is less than or equal to \$40,000 then Customer is entitled to the statutory guarantees under the Australian Consumer Law, and the clauses under this Section 11 apply to this Agreement in respect of that InEight SaaS Service. The clauses in this Section 11 do not apply in any other circumstances.

11.2 **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

11.3 Where Customer is entitled to a statutory guarantee under sections 54 to 59 and/or 60 to 62 of the Australian Consumer Law and InEight fails to comply with any of those statutory guarantees, the provisions of clauses 8.1 and 8.2 of this Agreement do not apply to that liability.

11.4 Where Customer is entitled to a statutory guarantee under sections 54 to 59 of the Australian Consumer Law then to the extent that InEight fails to comply with such guarantee, InEight's liability for a failure to comply with such statutory guarantee is limited to one or more of the following, at InEight's option:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- (d) the payment of the cost of having the goods repaired,

unless it is not fair or reasonable for InEight to rely on this term of the agreement.

11.5 Where Customer is entitled to a statutory guarantee under sections 60 to 62 of the Australian Consumer Law then to the extent that InEight fails to comply with such statutory guarantee, InEight's liability for a failure to comply with such statutory guarantee is limited to one of the following, at InEight's option:

- (a) supplying the services again; or
- (b) payment of the cost of having the services supplied again,

unless it is not fair or reasonable for InEight to rely on this term of the agreement.

11.6 The provisions of clauses XXXXX are subject to the provisions of the Australian Consumer Law.

11.7 Customer may also terminate this Agreement in accordance with any right it may have under the Australian Consumer Law.

11.8 Any notice that is issued under the Australian Consumer Law may be issued in accordance with the Australian Consumer Law.

### Warranty Against Errors Notice

11.9 "Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

*You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service."*

11.10 The benefits that InEight provides to consumers under the Warranty Against Errors (as defined by Regulation 90, issued under the Australian Consumer Law) in the agreement are in addition to any other rights or remedies the consumer may have in respect of these goods or services under



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the Australian Consumer Law.

11.11 These Warranty Against Errors services are provided by InEight Pty Ltd ABN: 81 009 583 671 of Tenancy 6A, Level 6, 700 Swanston Street, Carlton, Vic, 3053, Tel: +61 3 9291 0800; Email: support@ineight.com.

11.12 If you believe there is a defect in any good or service provided by us, then you should follow the relevant procedure for the type of good or service that we supplied to you. You must also provide us with any help that we may reasonably request to help us remedy and defect or provide any replacement, at no cost to us.

### **Making a Claim**

11.13 You must give us written notice to the address above (including by email), within the period of the Service setting out details of the issue, including wherever possible, a screen shot of the issue or any error message.

11.14 Once you have done these things:

- (a) you must, at your cost, provide us with remote access to the relevant technology in order for use to diagnose and remedy the defect; and
- (b) we will use reasonable efforts to re-perform the service or remedy the defect in a timely manner.

11.15 If we cannot re-perform the service or remedy the defect in a timely manner we will provide you with a refund of the Fees paid for the defective service for the month in which the defect occurred, or if the defect is a major defect, we may also terminate the defective service and provide you with an

additional refund of any Fees that you may have paid in advance for the period of the service that is no longer going to be provided.

### **Exclusions**

11.16 Our warranty against defects does not cover any defects that are caused by any of the following:

- (a) misuse, incorrect use of or damage to the InEight SaaS Service from whatever cause (other than any act or omission by us), including failure or fluctuation of electrical power;
- (b) failure to maintain the necessary environmental conditions for use of the InEight SaaS Service;
- (c) any breach of your obligations under the Agreement;
- (d) having the InEight SaaS Service maintained by a third party;
- (e) any error arising from any Customer Data; or
- (f) user error.

### **Your costs**

11.17 You are responsible for any expenses you incur in using any of our warranty against defects service, except where it is stated that we are paying the relevant costs. If you submit a claim for these expenses to us, and we have failed to meet any statutory guarantees under the Australian Consumer Law and as a result you are entitled to reimbursement of these costs, we will reimburse you for those costs.