

Terms of Use

BY SIGNING UP OR OTHERWISE USING THE SERVICES PROVIDED BY ENSIGHT, INC., YOU ARE AGREEING TO THIS AGREEMENT, AND YOU AGREE TO THIS AGREEMENT GOVERNING YOUR USE OF THE WEB-BASED SERVICE ACCESSED THROUGH THE WEBSITE WWW.ENSIGHTCLOUD.COM, PROVIDED BY ENSIGHT, INC (“COMPANY”). IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY.

Company will provide you with use of the Service that is expressly set forth in a Quote, your registration for, or use of, the Service shall confirm your agreement to abide by this Agreement and the Quote for the Service between you and Company (“Quote”), including any policies expressly referenced herein, including but not limited to Company’s privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

1. License Grant & Restrictions

Company hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service, solely for your business purposes, subject to this Agreement including, without limitation, the number of Users authorized in the Quote. All rights not expressly granted to you are reserved by Company and its licensors.

You may not access the Service if you are a direct competitor of Company, except with Company’s prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes. You shall not, and shall not allow any third party to (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; PROVIDED, HOWEVER, YOU MAY ASSIGN THE RIGHT TO USE THE SERVICE TO YOUR USERS (AS HEREAFTER DEFINED); (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet “links” to the Service or “frame” or “mirror” any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or otherwise conflict with third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

2. Your Responsibilities

You are responsible for all activities of Users whether or not such Users are allotted to you in the Quote. You and such Users shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your and their use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify Company immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Company immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another company User or provide false identity information to gain access to or use the Service.

3. Account Information and Data

Company does not own (but shall have the right to use consistent with this Agreement) any data, information or material that you submit in the course of using the Service which is stored on servers owned or licensed by

Company (“Customer Data”). You, not Company, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Company shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. Except as noted below, Company reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment.

Notwithstanding the foregoing, Company and its vendors and contractors may use Customer Data to operate and administer the Service. In addition, Company may (a) collect and use Customer Data to develop improve, support, and operate its products and services as well as create new products and services; (b) share Customer Data with those third parties that are set up to do business or are otherwise licensed and appointed by you for life insurance and/or annuities; and (c) aggregate Customer Data with other customers’ similar information for benchmarking and other data analysis purposes; provided that in each instance, Company performs the Service in accordance with all applicable laws.

4. Privacy & Security; Disclosure

Company has complied with all applicable laws and its internal privacy policies relating to (i) the privacy of users of Internet websites owned, maintained or operated by Company (“Company Sites”) and the Services and (ii) Company PII (if any). The transactions contemplated by this Agreement and the Quote, including the disclosure and/or transfer to you (by operation of law or otherwise) of Company PII, complies with all applicable laws relating to privacy and with Company’s privacy policies. Company’s privacy and security policies may be viewed at <https://ensightcloud.com/>. Company has at all times taken all steps reasonably necessary (including, without limitation, implementing and monitoring compliance with adequate measures with respect to technical and physical security) designed to ensure that Company PII is protected against loss and against unauthorized access, use, modification, disclosure or other misuse, and there has been no unauthorized access to or other misuse of Company PII. Company reserves the right to modify its privacy and security policies in its reasonable discretion from time to time.

5. Intellectual Property Ownership

Company alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Company Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement does not constitute a sale and does not convey to you any rights of ownership in or related to the Service, the Company Technology or the Intellectual Property Rights owned by Company. The Company name, the Company logo, and the product names associated with the Service are trademarks of Company or third parties, and no right or license is granted to you to use them.

6. Third Party Interactions

During use of the Service, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third-party. Company and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. Company does not endorse any external sites on the Internet that are linked through the Service. Company provides these links to you only as a matter of convenience, and in no event shall Company or its licensors be responsible for any content, products, or other materials on or available from such sites. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

7. Charges and Payment of Fees

You shall pay all fees or charges to your account in accordance the terms of this Agreement. Payments must be made annually unless otherwise mutually agreed upon by the parties. All payment obligations are non-cancelable and all amounts paid are nonrefundable. You are responsible for paying for all User licenses ordered, whether or not such User licenses are actively used. Company reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. All pricing

terms are confidential, and you agree not to disclose them to any third party. In the event Company offers a version of the Service that does not require a monthly fee all other terms herein shall apply.

8. Billing and Renewal

Company charges and collects fees for use of the Service. Company will automatically invoice unless prior written approval has been obtained from Company's credit department for postpaid invoicing. Fees for other services will be charged on an as-quoted basis. Company's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Company's income. You agree to provide Company with complete and accurate billing and contact information. This information may include your legal company name, street address, e-mail address, as well as the name and telephone number of an authorized billing contact. You agree to update this information within 30 days of any change to it. If the contact information you have provided is incorrect, false or fraudulent, Company reserves the right to terminate your access to the Service in addition to any other legal remedies. If you believe your bill is incorrect, you must contact Company in writing or by email within 30 days of the payment date containing the amount in question to be eligible to receive an adjustment or credit.

9. Non-Payment and Suspension

Company reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent. Company reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. Company is entitled to all costs incurred in collecting any unpaid balance and related interest, including, without limitation, collection agency and/or reasonable attorneys' fees. You agree and acknowledge that Company has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted as provided in Section 3.

10. Initial Term; Termination

This Agreement commences on the Effective Date for the Initial Term referenced in the Quote. After the Initial Term your subscription for the Services will continue for similar renewal terms with recurring billing, commencing on the first day of the next month after expiration of the Initial Term. If the Quote does not state otherwise, invoices will be billed a month in advance. Either party may terminate your right to use the Service at any time by notifying the other party in writing or by email, unless stated otherwise in the Quote. In the event your right to use the Service is terminated, you agree and acknowledge that Company has no obligation to retain the Customer Data and may delete such Customer Data as provided in Section 3. Upon account closure, requests for refund of "prepayments" (net of discounts) are subject to a 50% cancellation fee on unused balances. Company does not offer a User "hold" policy e.g. postponement of the Service for a User during down times and thus the Service runs continually until terminated. Although Users may be reassigned as provided in Section 1, Company may not transfer or assign rights to use the Service except as specifically provided in this Agreement.

11. Termination for Breach

Any breach of this Agreement (including but not limited to breach of your payment obligations or unauthorized use of the Company Technology or Service) will be deemed a material breach of this Agreement. Company, in its sole discretion, may terminate your use of the Service if your breach or failure to comply with this Agreement is not cured within 30 days of email notice from Company. In addition, Company may terminate a free account at any time in its sole discretion. You agree and acknowledge that Company has no obligation to retain Customer Data.

12. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into and be bound by this Agreement. Company represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will (a) perform substantially in accordance with the Company's online help documentation under normal use and circumstances and (b) be accessible using any standard web browser defined in the support. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

13. Mutual Indemnification

You shall indemnify and hold the Company, its licensors and each such party's parent organizations, subsidiaries,

affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement; provided in any such case that Company (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Company of all liability and such settlement does not affect Company's business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

Company shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; provided that you (a) promptly give written notice of the claim to Company; (b) give Company sole control of the defense and settlement of the claim (provided that Company may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to Company all available information and assistance; and (d) have not compromised or settled such claim. Company shall have no indemnification obligation, and you shall indemnify Company pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(es).

In addition to, and not in lieu of, Company's indemnity obligations, if any Services become, or are likely to become, the subject of any third party claim, then Company (at its sole expense) will either: (1) procure the right for you to continue using the Services without modification; (2) modify the Services to render them non-infringing (provided any modification does not degrade the performance, functioning or operation of the software); or (3) replace the Services with equally suitable, functionally equivalent, compatible, non-infringing software. If you are not permitted to continue using the Services despite Company's mitigation efforts, then you may terminate the applicable order (in whole or in part) upon written notice to Company.

14. Disclaimer of Warranties

COMPANY AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. COMPANY AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY COMPANY AND ITS LICENSORS.

15. Internet Delays

THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

16. Limitation of Liability

IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY EXCEED THE LESSER OF US\$ 1,000 OR ONE HALF OF THE AMOUNTS ACTUALLY PAID BY YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. EXCEPT WITH RESPECT TO YOUR BREACH OF SECTIONS 1 OR 5, IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. Additional Rights

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so those certain portions of the exclusions set forth above that are not allowed under such laws may not apply to you.

18. Local Laws and Export Control

This site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. If you use the Service from outside the United States of America, you are responsible for compliance with any and all applicable controls, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States law is prohibited.

19. Notice

Company may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in Company's account information, or by written communication sent by first class mail or pre-paid post to your address on record in Company's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after domestic mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Company (such notice shall be deemed given when received by Company) at any time by any of the following: letter sent by nationally recognized overnight delivery service or first class postage prepaid mail to Company at the following address: Ensign, Inc. 11455 El Camino Real, Suite 140, San Diego, CA 92130 addressed to the attention of: Chief Executive Officer.

20. Modification to Terms

Company reserves the right to modify this Agreement, but not a Quote (except for fee increases allowed under Section 7) or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

21. Assignment; Change in Control

Your right to use the Service may not be assigned by you without the prior written approval of Company. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of Company directly or indirectly owning or controlling 50% or more of you shall entitle Company to terminate your right to use the Service for cause immediately upon written notice.

22. General

This Agreement shall be governed by California law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in San Diego County, California. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be

invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and Company as a result of this Agreement or use of the Service. The failure of Company to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Company in writing. This Agreement comprises the entire agreement between you and Company and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

23. Definitions

As used in this Agreement:

“Agreement” means this Agreement and related Quote, whether written or submitted online, and any materials available on the Company website specifically incorporated by reference herein, as such materials;

“Company PII” means the collection, storage, transfer and any other processing of any “personally identifiable information” (as that term is defined under applicable state privacy laws) collected or used by Company in any manner or maintained by third parties having authorized access to such information;

“Content” means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service;

“Customer Data” means any data, information or material provided or submitted by you to the Service in the course of using the Service;

“Effective Date” means the date set forth in a Quote;

“Initial Term” means the initial period set forth in a Quote (if the billing schedule is not set forth in the Quote, invoices will be billed a month in advance);

“Intellectual Property Rights” means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;

“Quote” means the online or written form evidencing your initial subscription for the Service and any subsequent Quotes submitted online or in written form (in the event of any conflict between this Agreement and the terms of any such Quote, this Agreement shall prevail);

“Company” means Ensign, Inc., a California limited liability company, having its principal place of business at 11455 El Camino Real, Suite 140, San Diego, CA 92130;

“Company Technology” means all of Company’s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Company in providing the Service;

“Service(s)” means Company’s online applications other services identified during the ordering process, developed, operated, and maintained by Company, accessible via <https://ensightcloud.com/>, <http://www.assuranceapp.com> or another designated web site or IP address, or ancillary online or offline products and services provided to you by Company, to which you are being granted access under this Agreement, including Company Technology and the Content;

“User(s)” means your employees, representatives, consultants, contractors or agents who are authorized to use the Service as provided in a Quote and have been supplied user identifications and passwords by you (or by Company at your request);

“You” or “Your” refers to Customer and its representatives.

Questions or Additional Information:

If you have questions regarding this Agreement or wish to obtain additional information, please send an e-mail to support@ensightcloud.com.

EXHIBIT A

Support Terms

Company will provide Technical Support to you via both telephone and electronic mail on weekdays during the hours of 7:00 am through 5:00 pm Pacific time, with the exclusion of Company and Federal Holidays (“**Support Hours**”).

You may initiate a helpdesk ticket during Support Hours by calling 888-986-8157 or any time by emailing support@ensightcloud.com.

Company will use commercially reasonable efforts to respond to all Helpdesk tickets within one (1) business day.

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