

Terms and Conditions

1. Services and Support

1.1 Our products, content, and services (the "Services") are diverse and sometimes additional terms may be required for new Services that Company introduces. If additional terms are required, those terms will be presented to Customer for approval in a separate addendum, amendment, order schedule, or agreement which upon both parties' acceptance will become part of this Agreement.

1.2 Company retrieves, stores and analyzes data from a variety of third-party cloud infrastructure, platform and software providers, as well as any Company collector agents embedded in the Customer's infrastructure. Services may include analytics, data, reporting, automation and optimization software made available from Company websites, as well as consulting and professional services. Such Services will be further detailed in a Services Order Form. We reserve the right to change the Services (including the content, appearance, design, functionality and all other aspects there), access procedures, and documentation at any time for any reason as long as the overall functionality of the Services do not materially decrease.

1.3. In order to access and use the Services, Customer will need to provide certain personal information and establish usernames and passwords. Please see Company's privacy policy, available at <https://www.computesoftware.com/privacy-policy/>, which governs Company's handling and use of data and information that Customer may provide Company.

1.4 By submitting information, data, passwords, usernames, PINs, other log-in information, materials and other content through the Services about Customer's use of third-party cloud services ("Cloud Service Account Information"), Customer grants to Company a worldwide, non-exclusive, royalty-free, license to use, distribute, reproduce, and store the Cloud Service Account Information solely for the purposes expressly authorized herein. This license may also be exercised on behalf of Company by third parties acting on Company's behalf (e.g., technology partners, service providers, and independent contractors). Customer is responsible for the accuracy, quality, integrity and legality of Customer's Cloud Service Account Information (and of the means through which it was acquired by Customer or Customer's employees, contractors, or other agents).

1.5 Customer is responsible for authorizing and enabling Company to submit Customer's Cloud Service Account Information (including usernames and passwords) to third-party services, websites or APIs that Customer designates, for the purposes of retrieving cost, usage, billing, and other data, statistics, or information necessary for providing the Services ("Service Data"). Customer acknowledges and agrees that when Company accesses and retrieves Service Data from third parties, Company does so at Customer's request.

1.6 Certain aspects of the Services may require Customer to register with, and agree to the terms of, third-party service providers in order to utilize such Services. Company may also provide links or other access to other third-party service providers as a convenience to Customer. Any use by Customer of the services of any third party service providers is at Customer's sole risk. Company has no liability whatsoever arising from or relating to Customer's use of any such third-party services, and Company makes no representations or warranties with respect to such third-party services. Please be sure to read any terms and policies that may apply to the third-party services. Company may exchange information with third-party service providers in order to facilitate the provision of Services (and related third-party services). Where such information consists of Personal Information (as defined in the Privacy Policy), it will only be shared in accordance with the Privacy Policy.

1.6 Subject to the terms of this Agreement, during the Service Term, Compute Software will adhere to its then-current Service Level Standards overview, each available at the Site, and will provide the support services for the Services detailed in its then-current customer support services policy available at www.computesoftware.com/terms (the "Site"). Notwithstanding anything to the contrary, in order to keep pace with advances in technology and industry standards, Compute Software may from time to time apply, reasonable modifications to the Site provided that any such modifications do not degrade the functionality, support, security, or overall level of beneficial service provided to Customer in any material respect or impose additional, new obligations on Customer, in which case the previous version will remain applicable.

1.7. Compute Software will comply with its then-current Information Security Framework available at the Site, which describes the safeguards for the Services designed to protect against the accidental or unauthorized access, use, alteration or disclosure of data properly loaded to the Services.

2. Professional Services

2.1 The parties may enter into by mutual execution separate Statements of Work for the provision by Compute Software of Professional Services to Customer (each a "SOW") for the provision by Compute Software of any configuration, deployment, guided services, consultation, education or training services provided by Compute Software ("Professional Services") to Customer, or Professional Services may be provisioned via reference to service packages in the Services Order Form. Compute Software will provide the Professional Services as set forth in any SOW(s) or Services Order Form(s). The fees for such services will be as provided in the SOW or the applicable Services Order Form. Unless provided otherwise in the SOW or Services Order Form, fees stated for Professional Services do not include expenses. Customer will reimburse Compute Software for actual, travel-related expenses reasonably incurred by Compute Software while providing the Professional Services, including, but not limited to, air and surface transportation, lodging, car rental, and meals. Such travel expenses will be invoiced to Customer on a monthly basis in arrears. Either party may propose changes in the Professional Services to be performed under a SOW or Services Order Form. Any such change in the Professional Services to be provided under any SOW or Services Order Form must be agreed to in writing by the parties.

2.2. Compute Software will (if requested by Customer at any time during the Service Term of this Agreement) furnish reasonable information concerning the qualifications of any individual who Compute Software intends to assign to perform any Professional Services. Customer may review such information in order to assess their qualifications. Compute Software will make commercially reasonable efforts to maintain staffing consistency with respect to assigning personnel to perform any Professional Services under this Agreement. Compute Software shall ensure that its personnel will not hold themselves out as employees or agents of Customer, nor seek to be treated as employees of Customer for any purpose, including claims of entitlement to fringe benefits provided by Customer, or for disability income, social security taxes or benefits, unemployment compensation taxes, unemployment insurance benefits or income tax withholding at source. Compute Software will file all applicable tax returns for its personnel assigned hereunder, and make all required payments and deposits of taxes, in a manner consistent with its status as an independent contractor of services. Compute Software personnel who have access to Customer's Confidential Information (including Customer Data), production instance and/or Customer's IT systems shall be vetted with appropriate background checks in accordance with Compute Software's then-current industry standard background screening processes and procedures and local law.

3. Restrictions and Responsibilities

3.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services; modify, copy, rent, loan, lease, sublicense, distribute, translate, or create derivative works based on the Services (except to the extent expressly permitted by Company or authorized within the Services); use the Services for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels. Customer will not: (i) sell, resell, lease, lend, or the functional equivalent thereof, the Services in whole or in part, to a third party, or (ii) transmit any viruses or malware through the Services. With respect to any Services that are distributed or provided to Customer for use on Customer premises or devices, Company hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable license to use such Services during the Service Term only in connection with the Services.

3.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S.

Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

3.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's standard published policies then in effect (the "Policy") and all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services. Although Company has no obligation to monitor Customer's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

3.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3.5 Company will maintain administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of Customer's Cloud Service Account Information, in accordance with applicable industry standards. Company may access Cloud Service Account Information or Service Data as necessary to identify or resolve technical problems or to provide Customer with support.

4. Confidentiality; Proprietary Rights

4.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

4.2 With the exception of Cloud Service Account Information, Customer shall own all right, title and interest in and to the Customer Data. Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with support, and (c) all intellectual property rights related to any of the foregoing.

4.3 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived there from), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic, and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

4.4 Company shall have the right to publish a "win announcement" press release that announces that Customer has selected Company to perform the Services. Company shall further have the right to use and display its relationship with Customer in its marketing and sales promotions activities by using Customer's name and logo on Company's website and in customer listings during the term of the Agreement.

5. Payment of Fees

5.1 Company offers access to the Services for a fee. To enable and use the Services, Customer is required to execute an order for such Services ("Services Order"), and pay the fees detailed in the Services Order. The service term and fees for the Services can be found in the Services Order executed when procuring the Service.

5.2 Unless otherwise specified in the Services Order, fees for the Company's Services are based on a Customer's cloud spend ("Cloud Spend"). Cloud Spend is all fees from third-party cloud providers as reflected in Customer's billing data including, without limitation, support, taxes, and third-party marketplace products, and prior to the application of any one-time or recurring credits, discounts and refunds.

5.3 Subscriptions to the Company's Services include a flat fee for use of the Services up to the Cloud Spend limit specified in the Services Order ("Subscription Fee"). Unless otherwise specified in the Services Order, Subscription Fees are billed and payable annually in advance of the Service Term. Subscriptions also include fees for additional usage above and beyond the Cloud Spend limit ("Additional Usage Fees") within the Service Term. Unless otherwise specified in the Services Order, Additional Usage Fees are billed (i) as a percentage of Cloud Spend in excess of the Cloud Spend limit specified in the Services Order and (ii) in each month as they occur.

5.4 Company's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer is responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on Company's income. Customer is responsible for paying all taxes associated with Customer's purchase of any Services. If Company has the legal obligation to pay or collect taxes for which Customer is responsible, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority.

5.5 Company may choose to bill through an invoice, in which case, full payment in USD currency, via wire transfer or debit/credit card, for invoices issued in any given month must be received by Company thirty (30) days after the electronic mailing date of the invoice. All payment obligations are non-cancelable and all amounts paid are nonrefundable. Customer is responsible for providing complete and accurate billing and contact information to Company notifying Company of any changes to such information. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Services.

5.6 If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 30 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit.

5.7 Customer agrees that Customer purchases are not contingent on the delivery of any future release of new features, functionality, nor are Customer's purchases dependent on any oral, written or public comments made by Company regarding such features, functionality or services.

5.8 Company reserves the right to modify Customer prices and fees and to introduce new fees upon thirty (30) days prior to notice to Customer. Any such changes will only become effective upon renewal of a Service Term.

6. Term and Termination

6.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Services Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Service Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

6.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon five (5) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Company may, but is not obligated to, delete stored Customer Data. All sections of this

Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6.3 Compute Software represents and warrants that the Professional Services will be provided in a workmanlike and professional manner in compliance with applicable industry standards. If Compute Software receives written notice pursuant to Section 6.2 from Customer detailing non-conformance with this warranty either during performance or within 90 days of completion of such nonconforming work, Compute Software shall reperform such nonconforming work in compliance with this warranty at no additional cost to Customer. Customer may terminate the applicable SOW or provision of Professional Services purchased under a Services Order Form (e.g. a Professional Services service package) (in whole or in part) in conformity with Section 6.2 if Compute Software does not cure such nonconformance within the cure period set forth therein.

6. Data Privacy

Compute Software complies with all applicable data protection laws, including, without limitation, the GDPR and CCPA, where and as applicable, and Customer authorizes Compute Software to use the subprocessors available at <https://www.computesoftware.com/terms/>.

7. Warranty and Disclaimer

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. However, Company does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

8. Indemnity

Company shall hold Customer harmless from liability to third parties resulting from infringement by the Services of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Services (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Services is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the Services to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Services, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Services.

9. Limitation of Liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF

PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 6 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Miscellaneous

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Any action or proceeding arising from or relating to this Agreement must be brought in a federal court in the Northern District of California, or in a state court in Santa Clara, California, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.