

## IMPLAN SYSTEM TERMS AND CONDITIONS OF USE – Custom Data

July 9, 2019 - Version 2.2

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. USE OF IMPLAN'S CEW, TIME SERIES, PANEL SERIES, SHANNON WEAVER INDEX DATA, COMPLETE SOCIAL ACCOUNTING MATRIX, TRADE FLOW DATA, OR ANY OTHER CUSTOM DATA DELIVERED IN SPREADSHEET OR DATABASE FORM ("IMPLAN DATA"), IS SUBJECT TO THE TERMS OF YOUR ORDER, WHETHER EFFECTED ELECTRONICALLY OR OTHERWISE (YOUR "ORDER", AND TOGETHER WITH THESE TERMS AND CONDITIONS, THIS "AGREEMENT"). BY SIGNING BELOW YOU AGREE THAT THIS AGREEMENT REPRESENTS THE ENTIRE AND FULLY INTEGRATED AGREEMENT BETWEEN YOU ("CLIENT") AND IMPLAN GROUP LLC ("IMPLAN") CONCERNING THE USE OF THE IMPLAN DATA, AND THAT THIS AGREEMENT SUPERSEDES ALL PRIOR PROPOSALS, REPRESENTATIONS, OR UNDERSTANDINGS WITH RESPECT TO THE IMPLAN DATA. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NO OTHER COMMUNICATION WILL BE CONSTRUED AS, OR CONSTITUTE, A WAIVER OF THIS AGREEMENT, OR ACCEPTANCE OF ANY ADDITIONAL TERMS, CONDITIONS OR SPECIFICATIONS, AND IMPLAN HEREBY OBJECTS TO ANY SUCH ADDITIONAL OR CONTRARY TERMS, CONDITIONS OR SPECIFICATIONS. IF YOU ENTER THIS AGREEMENT ON YOUR OWN BEHALF, THIS AGREEMENT WILL APPLY TO YOU PERSONALLY. IF YOU ENTER THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE AUTHORITY TO BIND SUCH ENTITY.

**1. IMPLAN DATA.** IMPLAN Data is comprised of (i) data that includes, without limitation, regional economic data, national structural matrix data, inter-regional commuting data, and inter-regional commodity trade data (collectively, the "IMPLAN Data"), and (ii) IMPLAN Data-generated multipliers describing rates of change across variables ("Multipliers"). Access to the IMPLAN Data is provided via a spreadsheet or other database.

**2. IMPLAN LICENSE.** Subject to the terms and conditions of this Agreement, IMPLAN grants the Client a limited, nonexclusive, non-sublicensable and nontransferable license to use the IMPLAN Data for the price terms set forth in Client's Order, and subject to additional limitations set forth in Client's Order, if any.

### **3. PERMITTED USE AND LICENSE LIMITATIONS.**

3.1 Subject to Client's publication rights at Section 4.4, use of the IMPLAN Data and models resulting from the use of the IMPLAN Data ("IMPLAN Models", and together with the IMPLAN Data, collectively, "IMPLAN Materials") is limited to Client's internal use and the provision of reports by Client to its customers ("Reports"). Reports may contain summary information (e.g., average output per worker, average labor income per worker and aggregated demographic information), and each data point in any Report may be included for no more than twenty-five (25) industries. All Reports must include attribution to IMPLAN, in a form approved by IMPLAN. Client may not publish Multipliers in Reports, in connection with Client's publication rights as set forth at Section 4.4, or otherwise without IMPLAN's prior written consent.

3.2 Client shall not use the IMPLAN Materials for any purposes beyond the scope of the rights granted in this Agreement. Client shall not at any time, directly or indirectly: (i) modify, clone, disassemble, decompile, decrypt, decode, otherwise reverse engineer or create derivative works of any IMPLAN

Materials, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the IMPLAN Materials (except for Report distribution in accord with Section 3.1 and Client's publication rights as set forth at Section 4.4); (iii) remove any proprietary notices from the IMPLAN Materials; or (iv) use the IMPLAN Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

3.3 Client may use the IMPLAN Data with third-party software only for Client's internal business purposes and for no other purposes. For the avoidance of doubt, outputs of such access or processing are likewise restricted solely to Client's internal business uses.

3.4 Subject to all of the restrictions of this Agreement, Client may grant its contractors access to the IMPLAN Data only to the extent necessary for such contractors to perform services for Client; provided, however, that Client is obligated for its contractors' compliance with this Agreement. Upon request from IMPLAN, Client will identify contractors to whom it has granted access to the IMPLAN Data.

#### **4. INTELLECTUAL PROPERTY.**

4.1 Client acknowledges and agrees that the IMPLAN Materials are the property of IMPLAN and that copyright and other intellectual property right laws protect the IMPLAN Materials. Except as expressly permitted in this Agreement, Client may not disclose the IMPLAN Materials to any third party.

4.2 Client acknowledges that, as between Client and IMPLAN, IMPLAN owns all right, title, and interest, including all intellectual property rights, in and to the IMPLAN Materials and any and all intellectual property provided to Client in connection therewith (collectively, the "IMPLAN IP").

4.3 IMPLAN reserves all rights not expressly granted to Client in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants to Client or any third party, by implication, waiver, estoppel, or otherwise, any intellectual property rights or other right, title, or interest in or to the IMPLAN IP.

4.4 All output from the IMPLAN Data, including, without limitation, IMPLAN Models, is subject to copyright held by IMPLAN. Subject to the prohibition on Client publication of Multipliers at Section 3.1, Client may use, display, reproduce and publish such output in analyses, reports, presentations, and publications; provided that Client includes a notation in such output, based on citation guidelines posted at <http://implan.com/citation-guidelines/>; provided further, that such publications may contain summary information, and each data point in any such publication may be included for no more than twenty-five (25) industries.

4.5 Client hereby assigns to IMPLAN on Client's behalf, and on behalf of its employees, contractors and agents, all right, title, and interest in and to any ideas, know-how, concepts, techniques, or other intellectual property rights contained in Feedback (defined below), and IMPLAN is free to use (but not required to use) Feedback, without any attribution or compensation to any party, for any purpose whatsoever. "Feedback" means any communications or materials transmitted to or shared with IMPLAN by Client or any of its employees, contractors or agents by mail, email, telephone, or

otherwise, suggesting or recommending changes to the IMPLAN IP, including, without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like.

**5. U.S. GOVERNMENT RIGHTS.** The IMPLAN Materials were developed at private expense and are not in the public domain. The IMPLAN Materials are "Commercial Items" as defined in 48 C.F.R. § 2.101. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose the IMPLAN Materials are limited to the rights set forth in this Agreement as provided in 48 C.F.R. § 12.212, or to the limited rights restrictions of DFARS 252.227-7015(b) (2), as applicable.

**6. WARRANTY DISCLAIMER.** THE IMPLAN MATERIALS ARE PROVIDED "AS IS" AND IMPLAN HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE IN CONNECTION THEREWITH. IMPLAN SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. IMPLAN MAKES NO WARRANTY OF ANY KIND THAT THE IMPLAN MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULT, OR BE ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

**7. LIMITATION OF LIABILITY.** IN NO EVENT WILL IMPLAN'S LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED ON TORT (INCLUDING LIABILITY FOR NEGLIGENCE BUT EXCLUDING LIABILITY RESULTING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF IMPLAN), CONTRACT OR ANY OTHER THEORY, (A) INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, EVEN IF IMPLAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE, (B) INCLUDE DAMAGES FOR LOST PROFITS, OR (C) EXCEED THE AMOUNT PAID FOR THE IMPLAN DATA.

## **8. INDEMNIFICATION.**

8.1 IMPLAN shall indemnify, defend, and hold harmless Client from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("Losses") incurred by Client resulting from any third-party claim, suit, action, or proceeding ("Third-Party Claim") that the IMPLAN Data or any use of the IMPLAN Data in accordance with this Agreement, infringes or misappropriates such third party's United States patents, copyrights, or trade secrets; provided that Client promptly notifies IMPLAN in writing of the Third-Party Claim, cooperates with IMPLAN, and allows IMPLAN sole authority to control the defense and settlement of such Third-Party Claim. If such a claim is made or appears possible, Client agrees to permit IMPLAN, at IMPLAN's sole discretion, to (A) modify or replace the IMPLAN Data, or component or part thereof, to make it non-infringing, or (B) obtain the right for Client to continue use. If IMPLAN determines that neither alternative is reasonably available, IMPLAN may, subject to Section 10, terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Client. This Section 8.1 will not apply to the extent that the alleged infringement arises from any allegation of or relating to any: (A) use of the IMPLAN Data in combination with data, software, hardware, equipment, or technology not provided by IMPLAN or authorized by IMPLAN in writing; (B) modifications to the IMPLAN Data not made by IMPLAN; (C) Losses for which Client is obligated to indemnify IMPLAN pursuant to Section 8.2. This Section sets forth Client's sole remedies and IMPLAN's sole liability and obligation

for any actual, threatened or alleged claims that this Agreement or any subject matter hereof infringes, misappropriate or otherwise violates any intellectual property rights of any third party.

8.2 Client shall indemnify, hold harmless, and, at IMPLAN's option, defend IMPLAN and its officers, directors, employees, contractors and agents from and against any Losses resulting from any Third-Party Claims based on Client's (i) negligence or willful misconduct; (ii) use of the any IMPLAN Materials in a manner not authorized by this Agreement; (iii) breach of any provision of this Agreement; (iv) use of the IMPLAN Materials (other than Third-Party Claims subject to Section 8.1); (v) provision of Reports pursuant to Section 3.1; (vi) publication pursuant to 4.4; provided that, in each case, Client may not settle any Third-Party Claim against IMPLAN unless IMPLAN consents to such settlement, and further provided that IMPLAN will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

**9. CONFIDENTIAL INFORMATION.** From time to time during the Term, either party may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). For avoidance of doubt, Client acknowledges that IMPLAN's Confidential Information includes the source code for the IMPLAN Software and the methods, algorithms, structure and logic, technical infrastructure, techniques and processes used by IMPLAN in developing, producing, marketing and/or licensing the IMPLAN Software, the IMPLAN Models, and the Multipliers. Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

**10. TERM AND TERMINATION.**

10.1 This Agreement is effective as of the date of last signature below and shall continue unless otherwise terminated in accordance with the terms hereof.

10.2 Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured fifteen (15) days after the non-breaching party provides the breaching party with written notice of such breach.

10.3 For the avoidance of doubt, (i) Client's right to generate Reports pursuant to Section 3.1 and Section 4.4 and (ii) Client's license to use the IMPLAN Materials, including, without limitation, IMPLAN Data, or subsets thereof, each terminates as of the expiration or termination of this Agreement.

**11. NOTICES.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the applicable party at its address set forth in the Order (or to such other address as designated by such party from time to time in accordance with this Section 11). All Notices must be delivered by nationally recognized overnight courier (with all fees pre-paid) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Each Notice is effective as of the date of confirmation of delivery to the receiving party.

**12. GOVERNING LAW.** This Agreement will be interpreted and construed in accordance with the laws of the State of North Carolina. All actions arising out of, or relating to this Agreement, may be brought in courts situated in North Carolina, and Client consents to the jurisdiction of such courts. To the extent permitted by applicable law, Client waives sovereign immunity and related defenses with respect to this Agreement, including but not limited to the breach of this Agreement.

**13. EQUITABLE RELIEF.** Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 9 or, in the case of Client, Section 3, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to seek equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

**14. SEVERABILITY.** If any of this Agreement conflict with any applicable statute or rule of law, the affected terms and conditions will be deemed inoperative, but the remaining portions will remain in full force and effect.

**15. WAIVER.** No failure by either party to take any action or assert any right under this Agreement will be deemed to be a waiver of that right in the event of the continuation or repetition of the circumstances giving rise to that right.

**16. EXPORT REGULATION.** The IMPLAN Materials utilize software and technology that may be subject to US export control laws, including the U.S. Export Administration Act and its associated regulations. Client shall not, directly or indirectly, export, re-export, or release the IMPLAN Materials

or the underlying software or technology to, or make the IMPLAN Materials or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Client shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the underlying software or technology available outside the U.S.

**17. FORCE MAJEURE.** Neither party shall be liable for any delays or non-performance of its obligations (excluding the obligation to pay fees due hereunder) arising out of causes not within such party’s reasonable control, including, without limitation, actions or decrees of governmental authorities, criminal acts of third parties, earthquakes, flood, other natural disasters, war, terrorism, acts of God, or fire (each, a “Force Majeure Event”).

**18. ASSIGNMENT.** Client may not assign or otherwise transfer Client’s rights and obligations under this Agreement except with the prior written consent of IMPLAN. Any prohibited assignment will be null and void. IMPLAN may assign this agreement without notice and without restriction. This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.

The individuals signing below hereby represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of their organization and that this Agreement is binding upon each party and organization in accordance with its terms.

For IMPLAN Group LLC

For Client

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date