

IMPLAN TERMS AND CONDITIONS OF USE – Custom Data
April 24, 2020 - Version 2.3

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 BY IMPLAN GROUP LLC ("IMPLAN") TO YOU ("CLIENT") IN SPREADSHEET OR DATABASE FORM OR OTHERWISE OBTAINED BY YOU FROM IMPLAN (COLLECTIVELY, "IMPLAN DATA"), IS SUBJECT TO THE TERMS OF YOUR ORDER, WHETHER EFFECTED BY YOUR EXECUTION OF AN INVOICE OR OTHER ORDERING DOCUMENT, ELECTRONICALLY OR OTHERWISE (YOUR "ORDER"), AND THESE TERMS AND CONDITIONS, WHICH ARE INCORPORATED BY REFERENCE INTO YOUR ORDER (TOGETHER WITH YOUR ORDER, THIS "AGREEMENT"). YOU AGREE THAT THIS AGREEMENT REPRESENTS THE ENTIRE AND FULLY INTEGRATED AGREEMENT BETWEEN YOU AND 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, and (ii) IMPLAN Data-generated multipliers describing rates of change across variables ("Multipliers"). Access to the IMPLAN Data may be provided via a spreadsheet or other database or otherwise made available to Client by IMPLAN.

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 Use of the IMPLAN Data 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 and/or no more than twenty-five (25) commodities. All Reports must include attribution to IMPLAN in a form approved by IMPLAN. Client may not include Multipliers in Reports and may not otherwise publish or make publicly available any IMPLAN Data without IMPLAN's prior written consent. All Reports shall be delivered to Client's customers subject to confidentiality and use restrictions at least as protective of IMPLAN and the IMPLAN Data as those set forth in this Agreement.

3.2 Client shall not use the IMPLAN Data 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 Data, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the IMPLAN Data to any third party except as otherwise expressly permitted herein; (iii) remove any proprietary notices from the IMPLAN Data; or (iv) use the IMPLAN Data 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 or Report generation subject to Section 3.1 and for no other purposes. For the avoidance of doubt, outputs of such use of the IMPLAN Data are likewise restricted solely to Client's internal business uses or as set forth in Section 3.1, as applicable.

4. INTELLECTUAL PROPERTY.

4.1 Client acknowledges and agrees that (a) the IMPLAN Data is an original compilation protected by United States copyright laws; (b) IMPLAN has dedicated substantial resources to collect, manage, and compile the IMPLAN Data; and (c) the IMPLAN Data constitutes trade secrets of IMPLAN. Client acknowledges and agrees that if Client contests any of IMPLAN's right, title, or interest in or to the IMPLAN Data, including, without limitation, in a judicial proceeding anywhere throughout the world, such conduct shall constitute a material breach of this Agreement. Except as expressly permitted in this Agreement, Client may not disclose the IMPLAN Data 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 Data 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 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 or enhancements 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 Data was developed at private expense and is not in the public domain. The IMPLAN Data is a "Commercial Item" as defined in 48 C.F.R. § 2.101. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose the IMPLAN Data 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 DATA IS 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 DATA, 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 claim, suit, action, or proceeding (“Claim”) based on Client’s (i) negligence or willful misconduct; (ii) use of any IMPLAN Data in a manner not authorized by this Agreement; (iii) breach of any provision of this Agreement; (iv) use of the IMPLAN Data (other than Claims subject to Section 8.1); and/or (v) provision of Reports pursuant to Section 3.1; provided that, in each case, Client may not settle any Claim against IMPLAN unless IMPLAN consents to such settlement, and provided further that IMPLAN

will have the right, at its option, to defend itself against any such Claim or to participate in the defense thereof by counsel of its own choice.

9. CONFIDENTIAL INFORMATION.

9.1 From time to time during the term of this Agreement, 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 IMPLAN Data and all software, methods, algorithms, structure and logic, technical infrastructure, techniques and processes used by IMPLAN in developing, producing, marketing and/or licensing the IMPLAN Data. 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 or as otherwise expressly permitted 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.

9.2 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; provided that the foregoing obligation to return or destroy Confidential Information is inapplicable to portions of IMPLAN Data incorporated into Client’s internal reports or Reports; provided further that all such retained IMPLAN Data shall remain subject to the terms and conditions of this Agreement after expiration or termination for as long as such IMPLAN Data is so retained (and thereafter to the restrictions set forth at Section 9.3, if such restrictions remain applicable), and any IMPLAN Data retained in Client’s internal reports or Reports may not be utilized to generate any additional internal Reports or Reports after the date of expiration or termination in accord with Section 10.3.

9.3 Each party’s obligations of non-disclosure with regard to Confidential Information are effective as of the effective date set forth in the Order and will expire five (5) 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 set forth in the Order 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 (ii) Client's license to use the IMPLAN Data, or subsets thereof, each terminates as of the expiration or termination of this Agreement, subject to the retention rights set forth at Section 9.2.

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 Data may be subject to U.S. export control laws, including the U.S. Export Administration Act, the Export Control Reform Act and their respective associated regulations. Client shall not, directly or indirectly, export, re-export, or release the IMPLAN Data, or make the IMPLAN Data 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 any IMPLAN Data available outside the U.S.

17. SECURITY. Client shall use all commercially reasonable legal, organizational, physical, administrative, and technical measures, and security procedures to safeguard and ensure the security of the IMPLAN Data and to protect the IMPLAN Data from unauthorized access, disclosure, duplication, use, modification, or loss.

18. 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").

19. 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.