

Inquisite Application Service Provider Agreement

IMPORTANT - READ CAREFULLY

This document constitutes a legal agreement ("Agreement") between you ("Customer", "You", "Your") and Inquisite. ("Inquisite") for the annual lease of the Inquisite application ("Software") located at Inquisite's data center. BY USING THE SOFTWARE, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT ACCEPT THESE TERMS, YOU MUST DISCONTINUE USE OF THE SOFTWARE AND NOTIFY INQUISITE IMMEDIATELY OF INTENT TO TERMINATE THIS AGREEMENT.

1. TERM AND RENEWAL

The term of this Agreement shall be annual. This Agreement shall be considered by both parties to be automatically renewed for an additional term upon receipt by Inquisite of Your payment of the latest annual renewal fee associated with the term for which you are renewing.

2. SERVICE

2.1 Access. Upon your acceptance of this Agreement, Inquisite will provide you with login access to the Inquisite ASP application for the term of the Agreement.

2.2 Upgrades. During the term of this agreement, if Inquisite upgrades the version of the Software you are using under this Agreement, you will not be charged an upgrade fee. Should Inquisite offer additional optional software modules in the future that complement the Software, You may elect to purchase the optional software modules for an additional fee, however, You have no obligation to do so.

2.3 No Title. This license confers no title or ownership in the Software and is not a sale of any rights in the Software. This Software is owned by Inquisite and is protected by copyright law and international copyright treaty.

2.4 Non-commercial use. You agree that you will not use the software for hire on behalf of another individual or organization. Commercial use agreements are available from Inquisite for an additional fee.

3. SUPPORT

During the term of this Agreement, Inquisite agrees to provide you with email and telephone access to our Inquisite Support Center during our standard support hours of Monday – Friday, 8:30 AM – 5:00 PM (Central Standard Time) except for standard U.S. Business Holidays. If your organization/company has more than one Inquisite login, You agree to appoint an Authorized Support Contact who will contact the Inquisite Support Team directly on behalf of Your other Inquisite users. You may purchase additional Authorized Support Contacts for an additional fee.

4. PRIVACY

4.1 Ownership of Data. Inquisite considers Your data that You host on our Inquisite website to be Your personal property. As a policy, we do not examine any of your data except at Your request and only for the purposes of providing You with technical support. Inquisite will not use data for Inquisite's benefit or the benefit of a third party, for example for: solicitation or aggregating mailing lists.

4.2 No Spamming. Inquisite has a zero-tolerance policy against email 'spamming'. As a condition of using our website. You agree not to send unsolicited email invitations regarding your use of the software to individuals other than your organization's own employees, partners

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and current customers. You also agree to make best efforts to ensure that any email invitation you send has an 'unsubscribe' option that You will respect in future email campaigns.

4.3 Analysis. Inquisite reserves the right to perform statistical analysis of all of our web sites and our hosting systems. We do this to measure the effectiveness of our web sites, to optimize website performance, and to ensure license compliance.

5. SERVICE LEVEL COMMITMENT

5.1 Inquisite endeavors to ensure that the Inquisite ASP website is available 99% of any Month. Inquisite will also provide nightly backups of Customer data in the unlikely event that emergency recovery is required. Inquisite users have the ability to download their data results on demand for additional backup security and Inquisite strongly encourages them to do so.

5.2 In the event that Inquisite ASP Site Availability falls to below 99% for a given month for You, Inquisite will credit Your account as follows: for 90% to 99.0% availability the credit is (50%) of the currently monthly portion of the annual fee (Annual Fee/12); for 89.9% availability or below the credit is 100% of the monthly portion of the annual fee (Annual Fee/12). This credit will be in the form of partially extending the Term of this Agreement and will not result in a refund of any Customer fees due or previously paid.

5.3 You agree to notify Inquisite immediately if You suspect the Inquisite ASP website is unavailable to You due to a fault of Inquisite. You agree to provide reasonable information as requested by Inquisite for proper diagnosis/repair and for proper calculation of any applicable credit.

5.4 Credit does not apply as a result of

- a) Unavailability due to Scheduled Maintenance as defined below.
- b) Periods of unavailability during which Your account is not in good financial standing or You are in violation of this Agreement.
- c) Circumstances beyond Inquisite's control including, without limitation, acts of any governmental body, war, sabotage, embargo, fire, flood, extended unavailability of Public Utility Service or unavailability or delay in telecommunications, third party Internet Service Providers or non-Inquisite servers.
- d) Your misuse of the Inquisite ASP software.

5.5 Scheduled Maintenance shall mean any maintenance in the data center at which Your Inquisite ASP account is located. Inquisite will notify You via email at least 48 hours in advance of any scheduled maintenance. Inquisite agrees to make reasonable attempts to perform scheduled maintenance during historically low use hours based on average use by its Customers. Inquisite is permitted to conduct emergency maintenance on an 'as needed' basis.

5.6 You agree to inform Inquisite within three (3) business days in advance when you expect to experience unusual transaction activity relating to Your use of the Inquisite ASP website. Unusual transaction activity would include, but is not limited to estimated response rates that will exceed 100% of Your total historical average monthly response rates. Such notice should be made via email to support@inquisite.com and failure to give proper notice will result in a waiver of credit remedy by You for any unavailability during said period.

5.7 Inquisite reserves the right to amend the service level commitment from time to time effective upon notice to You. In the event of any amendment resulting in a material reduction of the service level commitments, You may elect to terminate this Agreement without penalty by providing Inquisite written notice of such termination within 30 days following notice of such amendment. The service level commitments set forth in this section constitute Your sole remedies for any service level claims. Inquisite's records and data shall be the basis for all credit calculations and determinations. Other than as set forth in Section 5.1, and notwithstanding anything else to the contrary, the maximum amount of credit in any calendar

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month under the Agreement shall not exceed the Monthly Fee and/or Set up Fee, which absent the credit, would have been charged for Inquisite service that period.

6. BETA SOFTWARE

During the Agreement Term, You may be given access to software marked as 'BETA' for the primary purpose of soliciting your comments and suggestions regarding future releases of the Software. You acknowledge that You have been given notice that Inquisite 'BETA' Software has not been thoroughly tested by Inquisite and is not suitable for Use in Your production environment. BETA software is not supported under this Agreement. You are under no obligation to test BETA software nor any obligation to provide Inquisite with feedback regarding its BETA Software.

7. WARRANTY OF TITLE

Inquisite hereby represents and warrants to You that Inquisite is the owner of the Software or otherwise has the right to grant to You the rights set forth in this Agreement. As Your sole remedy, in the event any breach or threatened breach of the foregoing representation and warranty, Inquisite shall, at its option, either: (i) procure, at Inquisite's expense, the right for You to use the Software, ii) replace the Software or any part thereof that is in breach with Software of comparable functionality that does not cause any breach, or iii) refund to You the full amount of any fees paid by you to Inquisite.

8. EXPORT REQUIREMENTS

Both parties agree not to export or re-export the Software or any copy or adaptation in violation of any applicable laws or regulations.

9. TIMELY PAYMENT

9.1 Except as otherwise agreed in writing and signed by an authorized officer of both parties, all payments due to Inquisite for Software shall be due and payable in full within thirty (30) days of receipt by You of a proper invoice.

9.2 All past due payments will accrue interest due at a rate of one and one-half percent (1.5%) per month on the unpaid balance from the due date until paid in full.

9.3 Inquisite may, at its option and where permissible by law, elect to terminate this Agreement and restrict Your access to the software for failure to pay any fees associated with use of this software that are past due by more than ninety (90) days.

10. TERMINATION

Either party may elect to terminate this agreement upon written notice of to the other party of a breach of obligations by that party regarding this Agreement unless the breach is cured within 30 days after such notice. All disclaimers of warranties and limitations of liability shall survive any termination of this Agreement.

11. APPLICABLE LAW

This License agreement will be governed by and construed in accordance with the laws of the State of Texas. The federal and state courts of Texas shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of this License Agreement, and you expressly consent to (i) the personal jurisdiction of the state and federal courts of Texas, and (ii) service of process being effected upon You by registered mail.

12. INQUISITE LIMITED WARRANTY STATEMENT

12.1 Inquisite warrants to You that the Software will perform substantially in accordance with its accompanying electronic product documentation for a period of ninety (90) days from the date of original purchase.

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12.2 If Inquisite receives notice of non-performance as stated in section 12.1 during the warranty period, Inquisite will, at its option, either repair or replace the Software that proves to be defective. If Inquisite is unable, within ninety (90) days, to correct a defect that You have notified Inquisite of during the warranty period, You will be entitled to terminate this agreement upon written notice and request a full refund of any fees associated with this Agreement. After the warranty period, you will still be able to terminate this Agreement if Inquisite is unable to correct the defect within ninety (90) days of notice and will be entitled to a pro-rata refund representing the unused portion of the current annual fee.

12.3 Warranty does not apply to defects resulting from improper or inadequate installation, maintenance or configuration of Client Software performed by non-Inquisite employees unless such non-Inquisite employees were retained as contractors or consultants by Inquisite.

12.4 ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS LIMITED TO THE DURATION OF THE EXPRESS WARRANTY SET FORTH ABOVE.

12.5 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL INQUISITE OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF INQUISITE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, INQUISITE'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS LICENSE AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR USE OF THE SOFTWARE.

13. ASSIGNMENT

Either party may assign the Agreement to any entity which has or maintains a controlling interest of 51% or more providing the assignee agrees to abide by the terms and conditions of the Agreement. Notwithstanding, neither party may assign the Agreement to a direct competitor of the other party.

14. NON-WAIVER

The waiver by either party of any default or breach under this Agreement shall not constitute a waiver of any subsequent default or breach of the same or of a different kind.

15. ENTIRE AGREEMENT

15.1 This License Agreement supersedes any prior oral or written statements, agreements, or representations and can be changed only by an amendment designated as such and signed by an authorized officer of both parties.

15.2 In the event that one or more of the provisions of this License Agreement shall be found illegal or unenforceable, then such provisions shall be deemed struck and other provisions of this License Agreement shall remain in full force and effect.