

## **IMPLAN LICENSE AGREEMENT**

### **IMPLAN SYSTEM LICENSE AGREEMENT**

PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY. USE OF THE IMPLAN ECONOMIC MODELING SYSTEM (THE "IMPLAN SYSTEM"<sup>®</sup>) IS SUBJECT TO THIS AGREEMENT. IF YOU ARE SUBMITTING THIS ORDER ON YOUR OWN BEHALF, THIS AGREEMENT WILL APPLY TO YOU PERSONALLY. IF YOU ARE SUBMITTING THIS ORDER ON BEHALF OF YOUR EMPLOYER OR ANY OTHER PARTY, THIS AGREEMENT WILL APPLY TO THE EMPLOYER OR OTHER PARTY. THE PARTY SUBJECT TO THIS AGREEMENT IS REFERRED TO IN THIS AGREEMENT AS "NAMED CLIENT."

BY CLICKING "ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT" YOU AGREE THAT THIS AGREEMENT REPRESENTS THE ENTIRE AND FULLY INTEGRATED AGREEMENT BETWEEN CLIENT AND IMPLAN Group LLC ("IMPLAN") CONCERNING THE USE OF THE IMPLAN SYSTEM, AND THAT THIS AGREEMENT SUPERSEDES ALL PRIOR PROPOSALS, REPRESENTATIONS, OR UNDERSTANDINGS WITH RESPECT TO THE IMPLAN SYSTEM. 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.

**1. IMPLAN SYSTEM.** The IMPLAN System is composed of (i) data files that incorporate economic data and the IMPLAN National Trade Flows data (the IMPLAN Data), (ii) software for use in analyzing and otherwise working with IMPLAN Data (the IMPLAN Software).

**2. IMPLAN SYSTEM LICENSE.** Subject to the terms and conditions of this Agreement, IMPLAN grants the Client a single concurrent connection license for personal and nonexclusive use, for Client's internal business purposes to all the IMPLAN systems ordered and paid for by Client subject to the terms and limitations in Section 3.

### **3. LICENSE LIMITATIONS.**

3.1 Use of the IMPLAN Data and models resulting from the use of the IMPLAN Software and IMPLAN Data ( IMPLAN Models) is limited to Client 's internal use and the provision of reports of the result of such analysis to Client customers. Client reports may incorporate only that portion of IMPLAN Data or IMPLAN Models necessary to provide Client customers with reports that meets the Client customer's needs.

3.2 Use of the IMPLAN Software is limited to the analysis of IMPLAN Data, and the preparation of reports and other results of that analysis as provided in this Agreement. The IMPLAN Software may be used with IMPLAN Data only. No license to use the IMPLAN Software in source code form is granted hereunder. Client may not modify, clone, disassemble, decompile, decrypt or otherwise reverse

engineer any part of the IMPLAN Software, Data, Multipliers or other any features, adopt any part of the IMPLAN Software as its own, or adapt the IMPLAN Software into a computer language in which it was not provided by IMPLAN.

3.3 Except as expressly provided in this Agreement, Client may not (i) incorporate any IMPLAN Data or IMPLAN Model in any other data base or other aggregation of data, or (ii) access or process the IMPLAN Data or any IMPLAN Model with any software other than the IMPLAN Software.

3.4 The IMPLAN software is available for download and registration. The software must be registered to a single, named user. Installed registrations of the software may not be shared. If more than one user accesses a single terminal, each user must register a copy of the software and use their registered copy exclusively.

3.5 Each IMPLAN data order is subject to the Data Order License and is tied to a specific registration of the software and is non-transferable. This license is available for up to five software registrations. This means that a single data order (single or multiple counties or states, state and national packages in one order) may be downloaded to up to five registrations of the software. Once the five registrations are used, the Client may recover a registration using the Unregister feature of the software.

3.6 Subject to all of the restrictions of this Agreement, Client may grant its contractor's access to the IMPLAN Software and IMPLAN Data, but for only such period and only to the extent necessary for the contractors to perform services for Client. Upon request from IMPLAN, Client will identify the contractors that have been given access to the IMPLAN Software and IMPLAN Data.

3.7 Except as provided in Section 3.5 above, (i) the rights granted under this Agreement may not be sold, leased, assigned, sublicensed or otherwise transferred, in whole or in part, directly or indirectly, and (ii) Client may not lend, lease, license or disclose the IMPLAN Software or IMPLAN Data for any reason, except as expressly provided in this Agreement. IMPLAN may include features in the IMPLAN Software and IMPLAN Data that restrict unlicensed use of in the IMPLAN Software and IMPLAN Data.

3.8 Client will not copy the IMPLAN Software, IMPLAN Data or IMPLAN Models, except that Client may make and maintain one (1) copy of the IMPLAN Software, IMPLAN Data and IMPLAN Model for back-up purposes. Client will reproduce in such copies all proprietary and restrictive notices set forth in the IMPLAN Software and such documentations.

3.9 No license to the IMPLAN Software or IMPLAN Data is granted to Client except that expressly provided in this Agreement. Title to the IMPLAN Software, IMPLAN Data will remain in IMPLAN and its suppliers.

**4. INTELLECTUAL PROPERTY.** Client acknowledges and agrees that the IMPLAN Software and IMPLAN Data are the property of IMPLAN. Copyright and other intellectual property right laws protect the IMPLAN Software and IMPLAN Data. Except as expressly provided in this Agreement, the IMPLAN Software, IMPLAN Data and IMPLAN Models may not be disclosed to any party or individual other than the individual user designated at the time the license is purchased.

**5. U.S. GOVERNMENT RIGHTS.** The IMPLAN Software and IMPLAN Data were developed at private expense, and the IMPLAN Software and IMPLAN Data are not in the public domain. The IMPLAN Software and IMPLAN Data 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 Software and 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.**

6.1 IMPLAN warrants that the IMPLAN 3.1 software will be free of defects in materials and workmanship for a period of ninety (90) days after download. IMPLAN's sole obligation and Client's sole remedy for breach of this warranty will be replacement of the software within a reasonable time after notice of the breach.

6.2 IMPLAN does not guaranty (i) any results of Client's use of the IMPLAN System, and (ii) that the information or other content obtained through the IMPLAN System will be useful, profitable or satisfy Client's requirements. Except as expressly provided in Section 6.1 above, the IMPLAN System is provided AS IS. ALL OTHER WARRANTIES WITH RESPECT TO THE IMPLAN SYSTEM, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED AND EXCLUDED BY IMPLAN, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, FREEDOM FROM INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

**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 USE OF THE IMPLAN SYSTEM.

**8. INDEMNIFICATION.** Client will indemnify, defend and hold harmless IMPLAN and its officers, directors and employees against all loss, cost and damage (including reasonable attorney 's fees) that arise from (i) Client 's breach of any provision of this Agreement, and (ii) Client 's use of the IMPLAN System, including but not limited to the information incorporated in the IMPLAN Data.

## **9. TERM AND TERMINATION.**

9.1 This Agreement will take effect for the IMPLAN Data (and the associated IMPLAN Software) ordered by or on behalf of Client, as of the date IMPLAN receives payment for that IMPLAN Data. This Agreement will automatically terminate on the date Client breaches any term of condition of this Agreement. Client may terminate this Agreement at any time, with or without cause.

9.2 Within ten (10) days after the termination of this Agreement for any reason, Client will return the IMPLAN System to IMPLAN Group LLC., and Client will delete all copies of the IMPLAN Software and IMPLAN Data from Client computer systems and storage media of any kind. The parties 's rights and obligations under Sections 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, and 15 of this agreement, and Client 's obligation to make payment of all amounts then or thereafter due and payable, will remain in effect after termination of this Agreement for any reason.

**10. AUDITS.** To ensure compliance with the terms of this Agreement, IMPLAN will have the right to conduct an inspection and audit of Client's computer systems all of Client's relevant records and to make copies of those records.

**11. NOTICES.** Notices permitted or required to be given hereunder will be deemed sufficient if given.

**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. Client waives sovereign immunity and related defenses with respect to this Agreement, including but not limited to the breach of this Agreement.

**13. 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.

**14. 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.

**15. CHANGES TO THESE TERMS AND CONDITIONS.** IMPLAN may change this Agreement at any time upon thirty (30) days' notice to Client. Orders submitted by Client will be subject to the form of agreement in place at the time of order.

**16. ASSIGNMENT.** Client may not assign or otherwise transfer Client's rights and obligations under this Agreement except with the prior written consent of IMPLAN. A successor to IMPLAN by assignment of this Agreement, or by merger, operation of law, purchases or otherwise, will acquire all interest of IMPLAN hereunder. Any prohibited assignment will be null and void.

( ) I accept the terms and conditions of this Agreement, and I represent that I have the authority to accept these terms and conditions on behalf of Client.

#### **Software data Refunds / Returns**

If you are not satisfied with the software purchased directly from our online store, contact us within 15 days of your purchase to receive a refund. Refunds requested more than 15 days after your initial purchase date will not be issued unless the transaction was subject to a fraudulent purchase or other extraneous circumstances.

The full credit will be issued in the following cases:

You are having problems during installation which cannot be resolved by our Customer Service or Technical Service representatives, the software and/or data you have purchased does not function correctly.

#### **Training Venues.**

All payments, whether by credit card or other form acceptable by IMPLAN Group LLC must be received at least fifteen (15) days prior to the commencement of Training. For reservations made within fifteen (15) days of Training, payment must be received prior to the commencement of Training. Should the attendee cancel with less than fifteen (15) days before the start of training a 50% cancellation fee will be deducted from any refund.

**Attention Purchasing Agents:**

If your state imposes an e-procurement fee or other deduction on purchase orders you must call the IMPLAN Group LLC office to place your order as we will include the cost of the e-procurement fee into the cost of the software/data that you are purchasing.

**Example calculation:**

New price = Old Price / (1-%) where % is fee charged vendor by purchaser. Round to the nearest dollar.

FL fee = .01 NC fee = .0175

Sample calculation for Florida State Package for FL state agency:  $\$2,020.20 = \$2,000 / (1-.01)$ ; round to \$2,020.

This applies to but is not limited to FL, VA and NC state agencies.

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