

BA Insight License and Service Agreement



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LICENSE AND SERVICE AGREEMENT

This License and Service Agreement (the "Agreement") is entered into between BA-Insight, LLC, a Delaware limited liability company ("BA Insight") and the Customer identified below or on the Order Form ("Customer") as of the date last signed below or on the Order Form.

The parties agree as follows:

1. DEFINITIONS. For purposes of this Agreement, the following terms have the following meanings:

- (a) "API" means an application program interface, consisting of a set of routines, protocols, and tools for building software applications used to implement or utilize the Software.
- (b) "Enhancements" means, collectively, all new versions, patch maintenance releases, error corrections, enhancements, modifications, updates and bug fixes to the Software and modifications to the documentation created or delivered by BA Insight. Enhancements specifically exclude any new BA Insight releases or upgrades that contain new features and that BA Insight markets separately, such as an upgrade required for a new version of Microsoft SharePoint.
- (c) "Environment" means the working environment for use of the Software specified on an Order Form, including Environments specified for Managed Services.
- (d) "Maintenance Period" means the annual period during which Customer pays fees for Maintenance Services.
- (e) "Maintenance Services" means the annual maintenance and support services described in Section 9.
- (f) "Managed Services" means the BA Insight Managed Services offering pursuant to which BA Insights provides the Software to Customer in a hosted environment described in Section 10.
- (g) "Order Form" means a sales quotation or order form signed by BA Insight and Customer, which identifies the quantities, licensing terms, charges and any applicable Subscription Period for the Software and Services to be provided to Customer. BA Insight may elect to accept an alternative document from Customer as an Order Form.
- (h) "Professional Services" means installation, configuration, project management, training, consulting, and other services described in Section 9.
- (i) "Services" means Maintenance Services, Managed Services and Professional Services.
- (j) "Software" means (i) the BA Insight software specified on the Order Form in object code and any Enhancement(s) provided by BA Insight as part of the subscription license or during the Maintenance Period or Subscription Period whether in a hosted environment or otherwise; and (ii) any documentation provided for the Software.
- (k) "SOW" means a Statement of Work signed by BA Insight and Customer, which captures and defines the work activities, deliverables, and timeline for Professional Services provided by BA Insight to Customer.
- (l) "Subscription Period" means the period specified in an Order Form during which Customer pays the Software subscription fees or the Managed Services fees.

2. LICENSE AND SCOPE OF USE

2.1. License Grant. Subject to the terms and conditions of this Agreement and in consideration of Customer's payment of the license or subscription fees identified on the Order Form, BA Insight hereby grants, to Customer only, a non-transferable, non-exclusive, license solely (i) to install and use the Software only in the Environment, (ii) to use the Software in accordance with any license restrictions outlined on the Order Form, (iii) for subscription licenses, only during the Subscription Period and (iv) for Managed Services, only during the Subscription Period.

2.2. Archival Copy. Customer shall not copy the Software, except for one backup or archival copy or as necessary for installation on its Environment. Customer shall not rent, lease, sublicense, transfer, provide, disclose, or otherwise make the Software available to any third party. Customer shall not modify, decompile, disassemble, or otherwise reverse engineer the Software, except where (i) rights to do so are required by law and (ii) BA Insight has refused to satisfy any conditions to such rights. Customer shall not remove or modify any copyright, trademark, or other notice of BA Insight's proprietary rights. If requested by BA Insight Customer shall provide a certified audit report as to Customer's compliance with this Agreement but not more than one (1) time every twelve (12) months.

3. TITLE AND OWNERSHIP. Title to and ownership of the Software (including any enhancements, improvements or modifications, and all related know-how, whether or not created or conceived of during the course of providing Services), other BA Insight work product, and all patents, copyrights, and trade secret rights in those items are retained by BA Insight and are not transferred to Customer. Customer shall take reasonable action to require its personnel to protect the confidentiality and prevent unauthorized access, copying or use of the Software. No rights or licenses with respect to the Software are granted other than those rights expressly and unambiguously granted in this Agreement and BA Insight reserves all rights to the Software not granted to Customer.

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3.1. ORDERS AND PAYMENT. Customer's execution of an Order Form, or submittal of a purchase order in response to an Order Form, is a legally binding commitment to purchase and pay for the Software licenses and Services on the terms of the Order Form and this Agreement. Customer shall pay BA Insight the fees specified on the Order Form on the terms agreed to on the Order Form, together with any applicable shipping charges, duties, and taxes (excluding taxes based on BA Insight's net income). Services fees and travel expenses are invoiced and due as the Professional Services are delivered. If Customer fails to pay any overdue fees within 30 days' after invoice, BA Insight may terminate or suspend the applicable licenses granted or Services provided. Shipment is F.O.B. origin. All fees payable under this Agreement are payable in U.S. Dollars unless otherwise specified on the Order Form. BA Insight will invoice Services Period renewals as provided on the Order Form unless BA Insight receives a notice of discontinuance pursuant to section 8.4. Customer shall pay renewal invoices before the Subscription Period renewal term and within thirty (30) days of the invoice date unless an alternative date is specified in the Order Form. Undisputed and invoiced amounts that remain unpaid as of the due date bear interest on the unpaid balance at the rate of eighteen percent (18%) per year.

4. LIMITED WARRANTY. BA Insight warrants that all unmodified Software will substantially conform to BA Insight's then-current published specifications (as set forth in the user documentation or on its website) for a period of twelve (12) months from delivery of the download link of the initial provided release, or for subscription licenses, during the Subscription Period. BA Insight disclaims any warranties with respect to third-party software or Managed Services except as specified in Section 11. BA Insight's entire liability and Customer's exclusive remedy under this warranty shall be for BA Insight to make reasonable efforts to remedy any such material non-conformance reported to it in writing within the warranty period or as set forth below. If BA Insight is unable to remedy the failure within a reasonable time after Customer notice, BA Insight shall refund to Customer the unused portion of the fees paid for the then current annual Subscription Period, terminate this Agreement, Customer will have no further rights to the Software and will delete or uninstall the Software and, if requested by BA Insight, certify so in writing.

5. CONFIDENTIALITY. All information submitted by one party to the other party in connection with the Software or Services or expressly identified in writing as confidential, including data, the Software, customer information, product and marketing information, product plans, designs, beta software and any related documentation, shall be used solely to perform the activities contemplated under this Agreement and safeguarded as confidential by the recipient to the same extent recipient safeguards its own confidential information of like importance but with not less than a reasonable degree of care. These obligations do not apply to information that is (i) publicly available, (ii) in recipient's possession prior to its receipt from the other party, (iii) obtained by recipient from third parties without restriction on disclosure, or (iv) independently developed by recipient without reference to the information disclosed. Customer acknowledges that the Software is a commercially valuable proprietary product of BA Insight, the design and development of which involved the expenditure of substantial sums and the use of skilled programmers resulting in certain inventions, proprietary secrets, or confidential information which afford BA Insight a commercial advantage over its competitors.

6. LIMITATION OF LIABILITY. EXCEPT TO THE EXTENT PROHIBITED BY LAW OR AS PROVIDED IN SECTION 5, BA INSIGHT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND SERVICES, INCLUDING, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. BA INSIGHT SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF SOFTWARE OR THE SERVICES. THE ENTIRE LIABILITY OF BA INSIGHT FOR ALL CLAIMS ARISING UNDER THIS AGREEMENT ARE LIMITED TO ACTUAL DIRECT DAMAGES OF CUSTOMER. EXCEPT FOR CLAIMS ARISING UNDER SECTION 8, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER FOR THE SOFTWARE OR SERVICES GIVING RISE TO SUCH CLAIM UNDER THE APPLICABLE ORDER FORM OR SOW IN THE 12 MONTHS PRECEDING THE APPLICABLE INCIDENT. In those states that do not allow for any of the foregoing exclusions of liability, BA Insight's liability is limited to the fullest extent permitted by law.

7. INFRINGEMENT INDEMNITY. BA Insight shall defend any suit or proceeding brought against Customer which alleges that the Software infringes any U.S. patent or copyright, provided Customer (i) promptly notifies BA Insight of the claim, (ii) gives BA Insight full control over the defense of the claim and (iii) cooperates in defending the claim. BA Insight shall pay all resulting damages and costs finally awarded against Customer attributable to a finding of any such infringement but shall not be responsible for any settlement made without BA Insight's consent. If Customer's use of the Software is enjoined based on an infringement claim, BA Insight shall, at its option and expense, (i) replace or modify the Software to avoid such infringement; or (ii) obtain for Customer the right to continue using the Software, or if neither of the foregoing are practicable and commercially reasonable in BA Insight's reasonable judgment, BA Insight may refund the unused portion of the then current annual Subscription Period fees paid for the infringing Software and terminate this Agreement as to such Software. BA Insight disclaims all other liability for infringement claims. BA Insight shall have no liability for any infringement claims based on (i) combination of the Software with software not supplied by BA Insight, without which such infringement would not have occurred, (ii) modification or alteration of the Software by BA Insight in accordance with Customer's instructions or by parties other than BA Insight, without which such infringement would not have occurred, or (iii) actions by Customer or its agents that violate this Agreement.

8. MAINTENANCE AND SUBSCRIPTION SERVICES

8.1. Period. BA Insight will provide Maintenance Services described in this section 8 for the duration of the Subscription Period or Maintenance Period.

8.2. Coverage. During the Subscription or Maintenance Period BA Insight will (i) provide Enhancements to the Software that are generally made available to BA Insight's subscription or maintenance and support customers and (ii) provide help desk support during BA Insight's customer support department business hours (8 a.m. to 6 p.m. ET in the United States and 8 a.m. to 6 p.m. GMT in Europe, Monday through Friday excluding BA Insight holidays) to address issues concerning use and performance of the Software. During the Subscription Period or Maintenance Period, BA Insight will use reasonable efforts to correct significant programming errors and to repair or replace Software not performing substantially in accordance with the applicable user documentation of the current unaltered release of the Software in the form of Enhancements, as selected by BA Insight, provided notice of such is received by BA Insight. BA Insight need not investigate or correct defects found by BA Insight to be (i) in other than

a current, unaltered Software release, or the release immediately preceding the most current release; (ii) caused by Customer's negligence or modification of the Software or its use in combination with software not provided or in an Environment not supported by BA Insight; (iii) caused by improper or unauthorized use of the Software; or (iv) due to external causes including hardware problems, power failure or electric power surges.

8.3. Customer Obligations. To facilitate the receipt of Maintenance Services and as a condition to receiving them, Customer shall (i) appoint and identify up to two suitably experienced and knowledgeable personnel as a technical contact and alternate for Software maintenance and support issues, who are knowledgeable and competent in the use of the Software; (ii) update and maintain its installation of the Software to the then-current release level provided by BA Insight, (iii) install Enhancements within sixty (60) days of receipt; (iv) promptly notify BA Insight's customer support department of software bugs or other problems requiring maintenance service; (v) subject to Customer's reasonable security requirements, provide BA Insight reasonable access and information regarding its systems utilizing the Software, including a connection to Customer's servers as requested by BA Insight; and (vi) delete or uninstall prior Software releases upon installation of a more current release, except for permitted archival copies.

8.4. Notice of Discontinuance. Customer shall notify BA Insight that it intends to discontinue a Subscription Period or Maintenance Services not less than sixty (60) days prior to the commencement of any Subscription Period or Maintenance Period renewal. If a Customer exercises its right to discontinue a Subscription Period, upon expiry of the then Subscription Period, Customer cannot use the Software or access the Managed Services. Prepaid Maintenance Services or subscription fees are nonrefundable.

8.5. Unsupported Software Use. BA Insight will not provide technical support for products where unauthorized modifications such as database changes, custom scripting, or other alterations to core code have been made by anyone other than a current BA Insight employee. Any such changes are made at Customer's own risk, and BA Insight does not and cannot assume any liability for problems arising from those changes. If Customer needs a change to standard Software or database schemes, Customer shall first contact BA Insight.

9. PROFESSIONAL SERVICES

9.1. Professional Services. BA Insight shall provide Professional Services if specified in an Order Form or an SOW.

9.2. License. BA Insight grants to Customer a non-exclusive license to use computer software or documentation created or developed by BA Insight in performing Professional Services to the same extent as, and in conjunction with using, the Software in accordance with this Agreement, and the order form.

10. MANAGED SERVICES.

10.1. Managed Services Period. BA Insight will provide Managed Services described in this Section 10 and the Order Form or an SOW for the duration of the Subscription Period.

10.2. Managed Services Support. During the Subscription Period for Managed Services BA Insight shall also provide (i) management of the system and environment by a service delivery team; (ii) monitoring of the system twenty-four hours per day, seven days per week, 365 days per year; (iii) additional specific deployment services described in the Order Form

10.3. Deployment. BA Insight shall deploy and manage the software and environment as described in the Order Form.

10.4. Service Level Guarantees.

10.4.1. Availability. BA Insight warrants that the Managed Services will be available 98.5% of the time in each month. BA Insight will credit Customer's account 1% of the monthly fee for per hour of downtime outside of that range, up to 50% of Customer's monthly fee for the affected server(s).

10.4.2. Downtime Measurement. Downtime is measured from the time a trouble ticket is responded to until application availability is restored.

10.4.3. Limitations. Customer is not entitled to a credit if Customer is in breach of this Agreement (including Customer's payment obligations) at the time of the occurrence of the event giving rise to the credit until Customer has cured the breach. Customer is not entitled to a credit if the event giving rise to the credit would not have occurred but for Customer's breach of the Agreement or misuse of Customer's Environment. To receive a credit, Customer must contact BAI Finance at [\[email protected\]](#) within ten (10) days of the occurrence of the event giving rise to the credit.

10.5. Further Warranty Limitations. BA Insight's warranty with respect to the Managed Services are limited to those provided in this Agreement and are subject to the further limits set forth in the Azure service terms of use as provided at <https://bit.ly/3dU5qqy>

10.6. IP Address. The IP addresses allocated to Customer's Managed environment during the Managed Services Subscription Period are managed by BA Insight and BA Insight will retain these IP addresses after termination of the Subscription Period. Customer may not transfer or utilize those IP Addresses after termination of the Subscription Period.

10.7. Delays. THE MANAGED SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE THE INTERNET AND ELECTRONIC COMMUNICATIONS. BA INSIGHT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

10.8. No Resale. Customer may not license, sublicense, sell, resell, transfer, assign, distribute or otherwise exploit, commercially or otherwise, the Managed Services or the Managed Services platform or make them available to any third party other than Customer's employees and any other persons that Customer has authorized, with the prior consent of BA Insight, to have access to the Managed Services, who have been supplied user identifications and passwords by Customer.

10.9. Data. Customer shall at all times remain solely responsible for the content of Customer Data and shall indemnify and hold harmless BA Insight from and against any claims by third parties arising from or related to Customer Data, including claims that Customer Data infringes or violates their rights. For purposes of this Agreement, "Customer Data" means any data, information or material created by Customer that is provided to or submitted by Customer to the Managed Service while using the Managed Services.

10.10. Remote Diagnostics. Customer acknowledges that Software in a Managed Services or other hosted environment may transmit to BA Insight technical and related information about Customer's use of the Software. This information may include system performance, capacity usage, hardware faults, internet protocol address, hardware identification, operating system, application software, peripheral hardware, and other non-personally identifiable Software usage statistics to troubleshoot the Software, facilitate the provisioning of updates, support, invoicing or online services, and to enhance, improve, and develop current and future BA Insight products and services. Transmission may occur on a daily or other periodic basis, or upon a failure or crash of the Software.

11. TERMINATION

11.1. Termination. BA Insight may terminate or suspend this Agreement, the licenses granted or the Services provided under this Agreement immediately upon notice if Customer fails to cure, within thirty (30) days of notice, any breach of this Agreement, including Customer's failure to pay fees when due.

11.2. Effect of Termination. Upon termination of any license granted under this Agreement, Customer shall immediately terminate use of the Software for which the license has been terminated and delete or uninstall all copies of such Software and other proprietary materials of BA Insight and certify in writing as to such destruction or return. Sections 3, 5, 6 and 13 shall survive termination of this Agreement.

12. GENERAL

12.1. Assignment. Except for assignment in the case of a merger, or the sale of all or substantially all of the assets or stock of that party which shall be subject to the limits provided in Section 2.1 and as provided on the Order Form, Customer may not assign this Agreement without the prior written consent of the other party.

12.2. Governing Law; Limits; Equitable Remedies. This Agreement is governed by Massachusetts law without regard to its choice of law principles. The parties will operate in good faith to resolve disputes. The exclusive jurisdiction and venue for actions arising out of or related to this Agreement shall be the Commonwealth of Massachusetts and U.S. federal courts serving districts situated in the Commonwealth of Massachusetts. **Each party waives its rights to a jury trial.** No action arising under this Agreement may be brought by either party more than two years after the cause of action arises. The United Nations Convention on International Sale of Goods does not apply to this Agreement. The parties recognize that money damages may not be an adequate remedy for a breach or threatened breach of the obligations under this Agreement, and the parties agree that, in addition to any other remedies available at law, the aggrieved party shall be entitled to an injunction or other appropriate equitable relief against any such continued breach of such obligations. Customer shall pay BA Insight's reasonable costs of collection of any unpaid fees when due, including reasonable attorney's fees.

12.3. Export. Customer shall comply with the export laws of the United States and other applicable governments and shall not export the Software from the country of installation except in compliance with such laws.

12.4. Government. For acquisitions by or for the US Government or pursuant to a US Government contract or associated subcontract, the government agrees the Software is commercial computer software pursuant to applicable federal acquisition regulations, and the terms and conditions of this Agreement apply and supersede any conflicting terms and conditions. For acquisitions governed by DFARS Subpart 227.4 (Oct. 1988) the following applies: Restricted rights: Use, duplication, or disclosure by the Government is subject to restrictions set forth in the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013(c)(1)(ii) (Oct 1988).

12.5. Force Majeure. BA Insight shall not be in default of its obligations to the extent its performance is delayed or prevented by causes beyond its control, including acts of God, acts of Customer, pandemic, fire, staff unavailability due to illness, or labor disturbances.

12.6. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

12.7. Software Performance. The performance of the Software depends on Customer's configuration of the Software and the type of content being deployed. Customer shall, at its expense, obtain the appropriate software license to use any required third-party software necessary to utilize the Software.

12.8. Open Source. The Software may contain or be accompanied by certain third party or open source software products ("Other Products"). Other Products, if any, are identified in, and subject to, special license notices, terms or conditions set forth in a text file, installation file or similar file or folder accompanying the Software. If Other Products are provided by BA Insight, they shall be used only as integrated or in combination with the Software. The limits of liability of Section 6 apply equally to any Other Products.

12.9. API Ownership and Updates. The APIs are BA Insight-developed intellectual property. Customer may not use the API for development of new functionality (e.g. new connectors, integration of SmartHub with other products, etc.), copy or otherwise use any API other than in connection with the use of the Software. Customer may not rent, lease, sublicense, transfer, provide, disclose, or otherwise make any API available to any third party. BA Insight may modify, remove, or add portions of, or otherwise update its API from time to time in its sole discretion, (in each instance, an "API Update"). Customer, or third parties providing software to Customer, shall implement and use the most current version of the BA Insight API and to make any changes to the applications or other offerings required as a result of any API Update, at Customer's or the third parties' sole cost and expense.

12.10. Entire Agreement. This Agreement (together with any executed Order Forms or SOWs) constitutes the entire agreement between them with respect to its subject matter and may be modified only by written agreement of both parties. Different or additional terms contained in and SOW, purchase orders or other Customer-supplied documents shall not apply, except as to quantities, pricing, and payment, if accepted by BA Insight.

12.11. Notices. Any notice or demand required under this Agreement shall be deemed to have been sufficiently given and received when delivered in person or by facsimile transmission, three business days after being sent by registered or certified mail, return receipt requested, postage paid, or one business day after being sent via a nationally recognized overnight delivery service or via acknowledged email, in each case to the intended recipient at the address or facsimile number provided on the Order Form.

12.12. Interpretation. Any principle of construction or rule of law that provides that an agreement shall be construed against the drafter shall not apply to this Agreement. The phrase “without limitation” shall be implied to follow the words “include,” “includes” and “including”. “Or” is not exclusive. Unless the context requires otherwise, references to Sections shall be construed to refer to Sections of this Agreement.

12.13. Counterparts. This Agreement and any Order Form may be executed in counterparts, via electronic or pdf signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, once signed by both parties.

BA INSIGHT, LLC	CUSTOMER (company name)
BY: _____	BY: _____
NAME: _____	NAME: _____
TITLE: _____	TITLE: _____
PHONE #: _____	PHONE #: _____
EMAIL: _____	EMAIL: _____
DATE: _____	DATE: _____