



**COMMERCIAL SERVICE
AGREEMENT**

Commercial Service Agreement

IMPORTANT - READ CAREFULLY

BY UTILIZING THE INSITE SERVICES YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.

This is a legal agreement between You and InSite Survey Systems, Ltd. ("InSite"), for use of the services which You selected on InSite's website and described in the Offer Details ("Services"). "You" refers to the individual who provided InSite his or her credit card or other payment mechanism for the Services or, if the Services are being purchased on behalf of an entity by an individual authorized to purchase the Services on behalf of such entity, then "You" refers to such entity.

Any software associated with the Services is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.

1. SERVICES

The features for the Services You have selected are described on the insitesurveys.com website. InSite will set up a survey system for You from which You can design, dispatch, track and report surveys using InSite's survey system for "Commercial Use" and will notify You of the URL or customer number for Your account and the date that the Services are available ("Service Start Date"). Such Service Start Date will occur approximately two (2) business days after You sign up for the Services. InSite may at its sole discretion modify the features of the Services from time to time.

2. NAMED LICENSEES

2.1

You have elected to purchase the Services under the "Named Licensee" model. A Named Licensee is any survey administrator who may configure an unlimited number of surveys ("Survey(s)") and maintain an unlimited number of respondents ("Respondent(s)") using the Services. Each Survey must be administered by a Named Licensee.

2.2

Named Licensee accounts are individualized and may not be shared or used by anyone other than the one subscriber to whom the Named License account is assigned. The identification of Named Licensee's must be unique to an individual and may not be of a generic nature. You shall identify those employees/subscribers assigned to Named Licensee accounts on a "Managed Licensee" list (the "List"). The List will be maintained by Your system administrator who will update the List so that it is current at all times. A Named Licensee account may not be transferred to another subscriber except upon (a) termination of the Named Licensee's employment with You, or (b) in all other instances, InSite's prior written approval. InSite will have the right to invoice You for any additional Named Licensee accounts issued by You.

2.3

You may purchase additional Named Licenses at: <http://www.insitesurveys.com/buy-insite-licenses.htm>.

2.4

InSite may have the right, upon reasonable notice, to audit Your records (including but not limited to the List) during normal business hours to ensure Your compliance with the requirements of this Agreement. InSite will pay the cost of the audit unless it is found that You are misusing the Services by, for example, assigning more Named License accounts than You have subscribed to, sharing a Named Licensee account among multiple subscribers, or providing a Named Licensee account to a third party.

3. RESPONSIBILITY FOR CONTENT OF YOUR COMMUNICATIONS

You agree that You are solely responsible for the content of all visual, written or audible communications sent by You in InSite's survey system administered by You. You agree that You will not use the Services to send unsolicited commercial e-mail or surveys outside Your company or organization in violation of applicable law. You further agree not to use the Services to communicate any message, survey or material that is harassing, libelous, threatening, obscene, indecent, that would violate the intellectual property rights of any party or is otherwise unlawful, that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law or regulation. Although InSite is not responsible for any such communications, surveys, or contents posted to its systems by You, InSite may delete any such communications or surveys of which InSite becomes aware, at any time without notice to You.

4. COMMERCIAL USE AND FEES

In addition to using the Services for survey administration in which You are an active participant, and as permitted under the terms and conditions of this Agreement or other written agreements between You and InSite, You acknowledge and agree that the Services will be used commercially through the operation of a Web-site or otherwise to generate income from the Services as a Service Bureau or Agent.

4.1

The following fees are applicable to all Commercial Service Agreements and billed to You as Charges (Section 5).

Account Set-Up Fee \$1999

Monthly Fee per Named Licensee \$130

.10 per target respondent

.10 per survey question

5. CHARGES

You agree that InSite may charge to Your credit card account (“Your Account”) all amounts due and owing for the Services, including monthly subscription fees, set up fees, project management fees, consulting fees, target respondent feed, question fees, or any other fee or charge associated with Your use of the Services. The initial term of Your agreement will commence on the Service Start Date. At the conclusion of each term, the Agreement will automatically renew for an additional term unless the Agreement is terminated in accordance with Section 7. The Initial and Renewal Term of this agreement is set forth in the Offer Details. Your Account will be charged each month. Recurring monthly subscription fees are charged in advance. Other fees associated with Your actual usage will be charged in arrears. InSite may also change prices at any time by providing written notice to You. Such price changes will be effective at the beginning of the first term that occurs at least thirty (30) days after the date of the notice. If You do not want to continue the Services after being notified of a price change, You may terminate the Services in accordance with Section 7, below. You agree that in the event InSite is unable to collect the fees owed to InSite for the Services through Your Account, InSite may take any other steps it deems necessary to collect such fees from You and that You will be responsible for all costs and expenses incurred by InSite in connection with such collection activity, including collection fees, court costs and attorneys’ fees. You further agree that InSite may collect interest at the lesser of 1.5% per month or the highest amount permitted by law on any amounts not paid when due.

1. A setup fee
2. A monthly license fee per user
3. \$.10 per target respondent
4. \$.10 per survey question

6. PROPRIETARY RIGHTS

InSite and/or its suppliers, as applicable, retain ownership of all proprietary rights in the Services and in all trade names, trademarks and service marks associated or displayed with the Services. You will not remove, deface or obscure any of InSite’s or its suppliers’ copyright or trademark notices and/or legends or other proprietary notices on, incorporated therein, or associated with the Services.

7. TERMINATION

You may terminate this Agreement effective at the end of the then-current term by providing written notice to InSite via e-mail to support@insite.com at least thirty (30) days prior to the end of such term. If You fail to comply with any provision of this Agreement, InSite may terminate this Agreement immediately without notice. Sections 3 through 12, inclusive, shall survive any termination of this Agreement. Upon any termination of this Agreement, You must cease any further use of the Services and destroy any copies of associated software within Your possession and control.

8. EXPORT RESTRICTIONS

You acknowledge that the Services, or portion thereof may be subject to the export control laws of the United States and Canada. You will not export, re-export, divert, transfer or disclose any portion of the Services or any related technical information or materials, directly or indirectly, in violation of any applicable export law or regulations.

9. INJUNCTIVE RELIEF

You acknowledge that any use of the Services contrary to this Agreement, or any transfer, sublicensing, copying or disclosure of technical information or materials related to the Services, may cause irreparable injury to InSite, its affiliates, suppliers and any other party authorized by InSite to resell, distribute, or promote the Services (“Resellers”), and under such circumstances InSite, its affiliates, suppliers and Resellers will be entitled to equitable relief, without posting bond or other security, including, but not limited to, preliminary and permanent injunctive relief.

10. NO WARRANTIES

YOU UNDERSTAND AND AGREE THAT THE SERVICES ARE PROVIDED “AS IS” AND INSITE, ITS AFFILIATES, SUPPLIERS AND RESELLERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. INSITE, ITS AFFILIATES, SUPPLIERS AND RESELLERS MAKE NO WARRANTY OR REPRESENTATION REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES, REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES, REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SERVICES, REGARDING ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICES OR THAT THE SERVICES WILL MEET ANY USER’S REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. USE OF THE SERVICES IS AT YOUR SOLE RISK. ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOU RESULTING FROM THE USE OF THE SERVICES. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SERVICES REMAINS WITH YOU. You agree to indemnify, defend and hold harmless InSite, its affiliates, officers, directors, employees, consultants, agents, suppliers and Resellers from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys fees) arising from Your use of the Services, Your violation of this Agreement or the infringement or violation by You or any other user of Your account, of any intellectual property or other right of any person or entity. Without limiting the foregoing, the Services are not designed or licensed for use in hazardous environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation/communication systems, air traffic control, and life support or weapons systems. Without limiting the generality of the foregoing, InSite, its affiliates, suppliers and Resellers specifically disclaim any express or implied warranty of fitness for such purposes.

11. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL INSITE OR ITS AFFILIATES, SUPPLIERS OR RESELLERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS OR DAMAGE) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES OR THE PROVISION OF OR FAILURE TO PROVIDE TECHNICAL OR OTHER SUPPORT SERVICES, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE) CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF INSITE, ITS AFFILIATES, SUPPLIERS OR RESELLERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, INSITE’S, ITS AFFILIATES’, SUPPLIERS’ AND RESELLERS’ MAXIMUM CUMULATIVE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SERVICES (IF ANY). Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to You.

12. MISCELLANEOUS

12.1 Choice of Law and Forum

This Agreement shall be governed by and construed under the laws of the Province of British Columbia Canada, exclusive of its choice of law principles. The parties consent to the exclusive jurisdiction and venue of the courts located in and serving Vancouver, BC.

12.2 Waiver and Severability

Failure by either party to exercise any of its rights under, or to enforce any provision of, this Agreement will not be deemed a waiver or forfeiture of such rights or ability to enforce such provision. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be amended to achieve as nearly as possible the same economic effect of the original provision and the remainder of this Agreement will remain in full force and effect.

12.3 General Provisions

This Agreement embodies the entire understanding and agreement between the parties respecting the subject matter of this Agreement and supersedes any and all prior understandings and agreements between the parties respecting such subject matter. InSite may change the terms of this Agreement at any time by posting modified terms on its website. This Agreement has been prepared in the English Language and such version shall be controlling in all respects and any non-English version of this Agreement is solely for accommodation purposes. All notices or other correspondence to InSite under this Agreement must be sent to the address provided in Section 7 above, or other address as provided by InSite for such purpose. Any and all rights and remedies of InSite upon Your breach or other default under this Agreement will be deemed cumulative and not exclusive of any other right or remedy conferred by this Agreement or by law or equity on InSite, and the exercise of any one remedy will not preclude the exercise of any other. The captions and headings appearing in this Agreement are for reference only and will not be considered in construing this Agreement.

Copyright © 2007 InSite Survey Systems, Ltd. All rights reserved.



Toll Free 1.888.747.9934
www.insitesurveys.com