

## 20/20 INSIGHT GOLD and WebResponse TERMS OF SERVICE

Carefully read the Terms of Service *before* installing and using any 20/20 Insight GOLD software. By installing or otherwise using the software you indicate your acceptance of the terms of this Agreement. If you do not accept the terms of this Agreement, promptly notify Performance Support Systems, Inc. (PSS), 757-656-4765, 8270 Little England Rd., Hayes, VA 23072, for a refund.

Your purchase of 20/20 Insight Gold includes:

- Administration Software
- User's Guide
- 20/20 PowerUser
- Free Training-on-Demand videos
- Free Technical Support for 1 year (See IV. User Support, for terms and conditions.)
- Free Software upgrades
- Free access to WebResponse (the online component of the software)

### I. Definitions

The following definitions apply to the terms as they appear in this Agreement:

**PSS** means the licensor of the Software, Performance Support Systems, Inc.

**Software** means the 20/20 Insight Gold computer program, Usage Licenses, and documentation contained in 20/20 Insight Gold and any and all copies, modifications, enhancements and updates thereof.

**WebResponse** means the 20/20 Insight GOLD WebResponse Hosting Service, which is provided 24 hours per day, 7 days per week.

**Subject** means each individual or entity evaluated using the Software.

**User** means the individual or organization that purchases the Software License from PSS.

### II. 20/20 Insight GOLD License Grants and Warranty

#### Software License Grant

**License.** Subject to the terms of this Agreement, PSS grants User a non-exclusive, non-transferable license to use the Software, 20/20 Insight GOLD. User may install the Software on *a single computer or network drive* belonging to the User. User may change the computer on which it installs the Software only if the Software is removed from the former computer. User is strongly advised to contact PSS for instructions prior to changing computers.

**Confidentiality of Subjects.** User acknowledges the sensitive nature of assessment data gained from use of the Software, and User agrees to: use the Software responsibly for its designated purposes, only by appropriately trained employees; to preserve the confidentiality of all assessment data; to inform

Subjects of the purpose and use of the assessment data; and to explain fully any assessment information given to Subjects.

### **Usage License Grant**

PSS grants User the non-exclusive right to purchase and use either of the Usage licenses defined below. Licenses are not transferable; if User purchases one type of license, User will not be given a refund or credit toward the purchase of another type of license.

- **Single Usage License (SUL).** The Single Usage License permits one Subject to be assessed one time.
- **Unlimited Usage License (UUL).** The Unlimited Usage License permits one Subject to be assessed an unlimited number of times. Using any terms other than the Subject's name or using a Usage for more than one Subject is not permitted. Violations will result in immediate termination of this Agreement.

### **Software Warranty**

PSS warrants that the Software will perform substantially in accordance with the specifications provided with the Software for a period of 90 days from User's receipt of the Software. If the Software fails to comply with this limited warranty, PSS's entire liability and User's exclusive remedy will be, at PSS's option, repair or replacement of the defective Software. PSS's agents, employees and distributors are not authorized to make modifications to this warranty. PSS DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. This warranty does not cover damage caused by improper use or neglect. The Software is furnished without warranty as to the performance or results User may obtain by using the Software. The entire risk as to the results and performance of the Software is assumed by User. PSS does not represent or warrant that the Software is error-free or that it will perform without interruption.

### **III. WebResponse License Grant and Warranty**

**License.** Subject to the terms of this License Agreement, PSS grants User a non-exclusive, non-transferable license to use the 20/20 Insight GOLD WebResponse Hosting Service.

**Confidentiality of Data.** User acknowledges the sensitive nature of assessment data stored on WebResponse, and User agrees to implement and maintain reasonable security measures relating to accessing data stored on WebResponse, including assignment and administration of all usernames and passwords authorizing such access to WebResponse.

PSS has in place appropriate technical and organizational measures to protect data on WebResponse from loss, misuse, unauthorized access, disclosure and alteration and destruction.

### **WebResponse Warranty**

PSS warrants that the Service will be provided in a professional and workmanlike manner and will conform to PSS applicable published specifications. PSS does not warrant that the operation of the

Service will be uninterrupted or error free. This warranty extends only to the User, and may not be assigned to a third party.

PSS's express warranty is contingent upon the proper use of the Service in accordance with PSS specifications and instructions. The warranty does not apply to Service failure due to:

- disaster, accident or misuse by User;
- failure or defect of electrical power or external circuitry;
- User's inability or difficulty to connect to the Internet.

EXCEPT AS EXPRESSLY STATED ABOVE, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, OF SERVICES SOLD OR FURNISHED UNDER THIS AGREEMENT OR IN CONNECTION HERewith. PSS DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This warranty does not cover damage caused by improper use or neglect by the User. The Service is furnished without warranty as to the performance or results User may obtain by using the Service. The entire risk as to the results obtained using the Service is assumed by the User. PSS does not represent or warrant that the Service will perform without interruption. PSS's EXPRESS WARRANTIES WILL NOT BE ENLARGED, DIMINISHED OR AFFECTED BY, AND NO OBLIGATION OR LIABILITY WILL ARISE OUT OF, PSS RENDERING TECHNICAL OR OTHER ADVICE IN CONNECTION WITH THE SERVICE. IN NO EVENT WILL PSS BE LIABLE FOR ANY DELAY IN FURNISHING SERVICES.

#### **IV. User Support**

PSS maintains a toll-free telephone line (800-448-6463 x1) for User's convenience when calling for User support. User support is provided from 9:00 a.m. through 5:00 p.m. Eastern Time by telephone, Skype or email Monday through Friday, exclusive of PSS holidays.

PSS offers three types of User support:

- 1) Training-on-Demand (TOD) videos.
- 2) Technical Support. PSS gives free technical support for one year from the date of purchase of 20/20 Insight GOLD.
  - After the first year of free technical support has expired, User may purchase a standard annual technical support contract or use the pay-per-call option at the current published rate.
  - When using the pay-per-call option, User is expected to pay for the support via credit card at the time of the call. PSS accepts VISA, M/C and AMEX.
- 3) Consulting Support. Consulting support, available for instructing Users how to use the Software or implement a feedback project, is available on a pay-per-call basis.
  - When receiving consulting support, User is expected to pay for the support via credit card at the time of the call. PSS accepts VISA, M/C and AMEX.

See the User's Guide included with the Software for further details.

**Updates.** PSS may from time to time provide Software updates or information that will enhance the knowledge and skill of User.

## **V. General Conditions**

**Intellectual Property.** PSS owns various trademarks, copyrights, service marks and other proprietary rights in all intellectual materials, products and support materials. PSS will indemnify, defend, and hold harmless User, its respective officers, directors, agents, and employees from and against any claims and expenses (including reasonable attorneys' fees) based on the Software or WebResponse infringing any copyrights, trade secrets, patents, trademarks, licenses, or proprietary rights of any third party.

**Title and Use Restrictions.** The Software, WebResponse and all applicable rights to patents, copyrights, trademarks, trade secrets and all other proprietary rights in same, are and shall at all times be and remain the sole property of PSS. User may not: (i) copy the Software or WebResponse; (ii) modify or translate the code to another computer language, or merge the Software or WebResponse with another program; (iii) reverse-engineer, disassemble, decompile, or make any attempt to discover the source code of, or make derivative works from, the Software or WebResponse; (iv) sublicense, rent, lease, transfer, reproduce or otherwise distribute all or any portion of the Software or WebResponse, including Usage Licenses, without the written permission of PSS. User shall notify PSS immediately of any unauthorized use of the Software or WebResponse.

**Limitation of Liability.** In no event shall PSS or its distributors be liable to User or any other party for any incidental, collateral, special, or consequential damages. PSS's liability for any and all claims and losses arising out of this Agreement or the Software and WebResponse will be strictly limited to the price paid by the User for the Software and WebResponse. Under no circumstances shall PSS be liable for any act, omission, debt or other obligation of User relating to use of the Software or WebResponse. User shall indemnify and hold PSS harmless against any such claim and the cost of defending against any such claim. The obligation and rights of this provision shall continue beyond the expiration or termination of this Agreement.

**Force Majeure.** PSS shall not be held responsible for any delay or failure in performance of any part of this agreement to the extent such delay or failure is caused by fire, flood, explosion, earthquake, war, strike, embargo, government requirement, civil or military authority, act of God, internet traffic congestion, or other similar causes beyond its control and without the fault or negligence of PSS or its subcontractors.

**Returns.** Once the Software has been received and installed by User, the Software may not be returned. Licenses are not refundable after 30 days from purchase date or after activation within User's Software.

**Termination.** User's rights to use the Software will terminate immediately at the option of PSS if User does not comply with any terms or conditions of the Agreement. If User's rights under this Agreement are terminated, User must promptly remove the Software from all computers and forward an affidavit to PSS stating that they have done so.

**Privacy.** Any information you provide while using 20/20 Insight and WebResponse is subject to our strict **Privacy Policy**, which governs our collection and use of your information. You understand that through your use of the services you consent to the collection and use (as set forth in the Privacy Policy) of this

information, including the transfer of this information to the United States and/or other countries for data storage, processing and use by PSS.

**Passwords.** You are responsible for safeguarding the password that you use to access the Software (if you choose to password protect it) and WebResponse services and for any activities or actions under your password. We encourage you to use “strong” passwords (passwords that use a combination of upper and lower case letters, numbers and symbols). PSS cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

## **VI. Miscellaneous.**

User will not assign or transfer any part or all of this Agreement or any of User’s rights or obligations hereunder without the prior written consent of PSS.

Either party's failure to enforce any provision of this Agreement will not be deemed a waiver of that provision or of the right to enforce it in the future.

This Agreement will be governed by the laws of The Commonwealth of Virginia and the parties agree to personal jurisdiction in state and federal courts situated in Newport News and Norfolk, Virginia. Any legal action by User against PSS must be brought and maintained in such courts.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

**Entire Agreement.** This agreement constitutes the entire agreement between User and PSS and supersedes any prior agreement concerning the matters addressed by this agreement. It shall not be modified except by written agreement between User and PSS. PSS is not bound by any provision of any purchase order, receipt, acceptance, confirmation, correspondence, or otherwise, unless PSS specifically agrees to the provision in writing.

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