

MAPP MASTER AGREEMENT ESP

1. DEFINITIONS

The definitions from this Master Agreement are also applicable to the Order and to any Addenda. In case of conflicting definitions in the Order and/or any Addenda, the definitions from the Order and/or Addenda shall prevail.

- 1.1 "Affiliates" means entities which are more than 50%-owned by or more than 50%-owner of the entity signing the Agreement, and entities which are more than 50%-owned by any of the foregoing.
- 1.2 "Agreement" means any Order incorporating this Master Agreement and any addenda.
- 1.3 "Business Day" means a working day other than Saturday, Sunday or public holiday at Mapp's registered address.
- 1.4 "Cloud Software" means both SaaS and Hosted Software and excludes On-Premise Software.
- 1.5 "Confidential Information" means proprietary information disclosed by a party to the other related to the disclosing party, the Agreement or Products and Services, including without limitation technologies, methodologies, business plans, business records, requests for proposals ("RFPs"), requests for information ("RFIs"), responses to RFPs and/or RFIs, bids, pricing and discussions regarding potential future business between the parties. Customer's data values stored in or processed by computers, individually identifiable information, Personal Data, customer records/lists, financial/account records, employee records, medical/health records, business plans, pricing, software in human-readable form (e.g., source code), data models, diagnostic tools, and any other information that, by its nature or on its face, reasonably should be understood by the receiving party to be confidential - whether or not it is marked as "Confidential Information". Otherwise, information disclosed in documents or other tangible form must be marked as confidential at the time of disclosure, and information in oral or other intangible form must be identified as confidential at the time of disclosure, and summarized in tangible form marked as confidential and delivered to the recipient within 10 days after disclosure to be considered as "Confidential Information". "Confidential Information" does not include information that the recipient can document that (a) was already known to the recipient prior to disclosure; (b) is independently developed by or for the recipient without reference to or use of the Confidential Information of the disclosing party; or (c) which at the time of disclosure by the disclosing party is generally available to the public or thereafter becomes generally available to the public other than through a breach of any obligation under this Agreement caused by an act or omission on the part of the receiving party.
- 1.6 "Customer" means any person or entity which concluded the Agreement for the purpose of receiving any service (including Products, Services or Support and Maintenance) hereunder from Mapp.
- 1.7 "Deliverables" means items created by Mapp which result from the performance of Services under the Agreement and as stated within a Statement of Work between the parties (e.g., code, configurations, integrations, training materials, documentation, design material and/or any intellectual property) and items that can be reduced to tangible form (e.g., electronic files).
- 1.8 "Documentation" means all materials (whether in hard copy or in electronic format) supplied in connection with the Products, including any and all manuals, instruction guides, online documentation, any written materials accompanying the Products or other materials provided to Customer by Mapp which describe the functionality and/or specifications of any of the Products, and any other documentation that is generally provided by Mapp to its customers with respect to any Products.
- 1.9 "Force Majeure" means acts of God or government, civil commotion, military authority, war, riots, terrorism, strikes, fire, or other causes beyond the parties' reasonable control.
- 1.10 "Hosted Software" means a separate single-tenant instance of the Software, hosted and operated by Mapp and accessed by Customer remotely.
- 1.11 "Intellectual Property Rights" means any patents, trademarks and trade names, rights in designs, trade, business or domain names, copyrights including moral rights and rights in computer software and databases (including database rights), mask works and topography rights (in each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them (including any continuations or extensions of such applications)), and where applicable any goodwill therein, rights in inventions, know-how, trade secrets and other confidential information, or any other intellectual property rights. Intellectual Property Rights shall also include (a) any derivatives and modifications of the above, and (b) all rights to sue for any infringement of any of the foregoing rights and the right to all income, royalties, damages and payments with respect to any of the foregoing rights.
- 1.12 "Internal Use" means use of the Products provided under the Agreement for Customer's general business use and for the processing of Customer's data only, but does not include use of the Products to conduct service bureau, application service provider or time-share activities for third parties.
- 1.13 "On-Premise Software" means Software installed and operated on Customer's premises/in Customer's data center and not hosted and operated by Mapp.
- 1.14 "Open Source Software" means software which either are contained on media or in files marked as "Open Source" or are designated as open source on the Agreement, or are otherwise subject to written free or open source license terms.

- 1.15 “Personal Data” means any information relating to an identified or identifiable natural person as defined by the applicable data protection laws.
- 1.16 “Products” means Software and Deliverables ordered, licensed, or acquired from Mapp during the term of the Agreement.
- 1.17 “Professional Services” includes “Extended Services and “Managed Services” and means the subcategory of Services comprised of consulting, development, implementation, and like tasks performed under a statement of work or other Order for such Services.
- 1.18 “SaaS” means “Software as a Service” and refers to a centralized instance of the Software serving multiple Customers, hosted and operated by Mapp and accessed by Customer remotely.
- 1.19 “Services” means work performed under the Agreement to install, maintain, support, fix, repair, modify, consult, implement, operate, design, develop, create, program, train, or perform other tasks and includes, but is not limited to, Support and Maintenance and Professional Services.
- 1.20 “Software” means any Mapp Marketing Applications standard software, excluding deliverables, modifications and customizations, licensed to Customer under the Agreement. Where context requires, the term “Software” shall include any agent or SDK allowing its functionality on or with Customer’s products or services.
- 1.21 “Support and Maintenance” has the meaning as defined in the Support and Maintenance Addendum.
- 1.22 “Third-Party Products” means software and deliverables branded under the name of a third party and distributed by Mapp to Customer.

2. USAGE RIGHTS AND IP RIGHTS

- 2.1 Mapp grants Customer a revocable, non-exclusive, non-assignable, non-transferable worldwide right to use the Software during the term. Customer may only use the Software to the extent indicated in the Agreement and in accordance with the limitations set out in the Agreement. Customer is not entitled to receive the source code of the Software. Customer may use the Software only for its Internal Use.
- 2.2 Each party will retain the exclusive ownership of all its pre-existing Intellectual Property, Confidential Information and materials, including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology that are owned by a party prior to the commencement of the Agreement, or that are otherwise developed by or for such party outside the scope of the Agreement (“Pre-Existing Technology”).
- 2.3 Except as otherwise expressly set forth in the Agreement, Mapp owns and will continue to own all right, title and interest in and to the Products, data collection tools, reports, scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by Mapp (or a third party acting on Mapp’s behalf) pursuant to the Agreement, including modifications, enhancements, improvements or derivative works of any of the foregoing, regardless of who first conceives or reduces to practice, and all Intellectual Property in any of the foregoing (collectively, “Mapp Intellectual Property”). Any and all modifications, developments or enhancements with respect to the Products or Services which are made by the Customer, shall be solely owned by Mapp and shall be considered as Mapp Intellectual Property.
- 2.4 As between Customer and Mapp Customer shall at all times retain all right, title and interest in and to all of Customer’s Pre-Existing Technology and all Intellectual Property that is developed by Customer or by a third party on Customer’s behalf thereafter, other than Mapp Intellectual Property.
- 2.5 Third-Party Products shall be owned by the applicable third party, and will be subject to any applicable third party license terms.
- 2.6 The Software may include Open Source Software components. Any use of the Open Source Software components shall be governed by, and subject to, the terms and conditions of the Open Source Software licence(s) accompanying it, included with it, or referenced in it. Nothing in the Agreement shall limit or otherwise affect Customer’s rights or obligations, or conditions to which Customer may be subject, under such Open Source Software license terms. In the event of any inconsistencies or conflicting provisions between the provisions of the Open Source Software licenses and the provisions of this Agreement, the provisions of the Open Source Software licenses shall prevail.
- 2.7 The right to use the Software also applies to any fixes, patches, derivatives, updates and upgrades to which Customer is entitled under the Agreement or which Mapp otherwise provides to Customer.
- 2.8 Mapp shall provide Documentation for the use of the Software in electronic format in English and/or local language.
- 2.9 Except as expressly permitted in the Agreement, or as specifically required by applicable local law or applicable Open Source Software license terms, Customer shall not attempt to, and shall not permit other persons to attempt to:
 - a) use the Products or Services for any illegal, immoral or unauthorized purposes.
 - b) copy the Software, in whole or in part;
 - c) modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of the Software;

- d) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- e) reverse engineer, disassemble, decompile, decode or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;
- f) take any action that may cause damage to our system, platforms or servers;
- g) bypass or breach any security device or protection used for or contained in the Software;
- h) remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks or serial numbers on or relating to any copy of the Software or Documentation;
- i) use the Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right, privacy right or other right of any Person, or that violates any applicable law,
- j) use the Software for purposes of: (i) benchmarking or competitive analysis of the Software; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to Mapp's detriment or commercial disadvantage; or
- k) use the Software in or in connection with the design, construction, maintenance, operation or use of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Software could lead to personal injury or severe physical or property damage.

3. USAGE REPORTING AND AUDIT

During the term of the Agreement and for a period of one (1) year thereafter, Customer will maintain complete and accurate books, records and electronic backups in connection with its use of the Software, in sufficient detail to permit Mapp to verify Customer's compliance with the terms and conditions of the Agreement. Mapp and its agents will have the right to inspect Customer's facilities, equipment and relevant records, including access to the Software (irrespective of whether the Software is installed on premise at the Customer or hosted by Mapp or a third party), to verify compliance with the terms and conditions of the Agreement, including the amounts payable to Mapp hereunder. Any such audit will follow Customer's reasonable security requirements, and will not interfere unreasonably with Customer's business activities. Mapp shall only examine information directly related to Customer's use of the Software. All information disclosed to Mapp shall be treated as Customer's Confidential Information. If an audit reveals that Customer has underpaid the total fees or charges to Mapp by more than 5 % for the period covered by the audit, then Customer will pay Mapp's reasonable costs of conducting the audit, in addition to the underpaid amount and Mapp shall, in addition to any other rights or remedies it may have, be entitled to conduct an additional audit within the same year.

4. WARRANTIES

4.1 Mapp warrants that:

- a) each Product will be free from material defects in material and workmanship under normal use and will substantially conform to the Documentation for a period of thirty (30) days from the date of Delivery,
- b) Services will be performed in a professional manner consistent with industry standards by trained and experienced personnel; and
- c) Mapp has all rights necessary to license and distribute the Products.

4.2 Mapp warrants that, to the best of its knowledge, at the time of Delivery there are no viruses in any portion of the Software and that it has used commercially reasonable efforts to ensure that the Software is free of computer viruses and has undergone virus checking procedures consistent with industry standards. The term "virus" as used hereunder means any computer code with an undocumented feature designed to a) disable, disrupt or damage Customer's use of the Software or Customer's computer or network, or b) damage or destroy any data or files residing on Customer's equipment without Customer's consent. Mapp further warrants that to the best of its knowledge, Software does not contain any undocumented "back door," "time bomb," "drop door" or other malicious software routine designed to disable the software or to permit unauthorized access, to disable, erase or otherwise harm the Software, equipment, or data.

4.3 Customer shall submit warranty claims within a reasonable time of the Product's non-conformance. For the above warranty claims, Mapp will, at no additional charge to Customer, correct, re-perform, repair, or replace the nonconforming Product to make it conform.

4.4 If Mapp fails to conform a Product to its warranties within a reasonable time after receiving Customer's warranty claim, Customer may return it to Mapp, and after it is returned to Mapp, Mapp will refund the amount paid to Mapp for it.

4.5 If Mapp fails to conform Services to its warranties within a reasonable time after receiving Customer's warranty claim, Customer may request a refund of amounts paid for the Services that do not meet the warranty, and Mapp will refund the amount paid to Mapp for it. A warranty refund for a nonconforming Service paid for on a recurring basis will not exceed the pro-rated portion of the advance payment made to Mapp for it for the then-current periodic (e.g., annual) billing period.

- 4.6 Mapp's warranties do not cover any problem with or damage to a Product to the extent caused by: (i) negligence, abuse, misuse, improper handling, improper use, improper storage or modifications by anyone other than Mapp or its contractors; (ii) the combination of any Product with equipment or software not authorized or provided by Mapp or otherwise approved by Mapp in the Documentation; (iii) failure to operate a Product in accordance with its Documentation; (iv) Force Majeure.
- 4.7 To the maximum extent permitted by law, the sole and exclusive warranties and warranty remedies are set forth in the Agreement. There are no warranties of merchantability or fitness for a particular purpose. There are no other warranties or warranty remedies, oral or written, express or implied. Mapp does not warrant that any Product or item ordered will (i) yield any particular business or financial results; (ii) be free from all bugs and errors; or (iii) operate without interruption, or that data, reports or analysis will be totally accurate.
- 4.8 If any condition, representation, warranty or undertaking is implied into this Agreement pursuant to any legislation and the exclusion of such condition, representation, warranty or undertaking is prohibited or restricted by such legislation, Mapp's liability for breach of the condition, representation, warranty or undertaking is limited at Mapp's option to (i) the replacement, repair or repurchase of any defective goods (or part thereof) at Mapp's election; and (ii) re-performance of any service, which was defectively performed, or the refunding of monies paid to Mapp in respect of such services at Mapp's election.

5. INFRINGEMENT CLAIMS

- 5.1 Mapp will, at its expense, defend, indemnify and hold Customer harmless from any claim or suit brought against Customer alleging that a Product infringes a patent, copyright or trade secret, and Mapp will pay all costs and damages in a settlement or award resulting therefrom, if Customer promptly notifies Mapp of the claim and gives Mapp reasonably requested information and cooperation and sole authority to defend and settle the claim.
- 5.2 In handling the claim, Mapp may obtain, at no additional charge to Customer, the right for Customer to continue using the Product at issue, or replace or modify it so that it becomes non-infringing. If Mapp is unable to reasonably secure those remedies, and if Customer must discontinue use of an infringing Product then, in addition to providing the defense and indemnification set forth above, Mapp may terminate the license to the infringing Product and refund to Customer, on a pro rata basis, the share of any license fees prepaid by Customer for the future portion of the term that would have remained but for such termination.
- 5.3 Mapp's indemnification does not apply, and Customer correspondingly will defend, indemnify and hold Mapp harmless, to the extent that the alleged infringement is caused by: (i) use of a Product in connection with goods, computer code, or services not furnished by Mapp; (ii) if the Product is combined with other non-Mapp products, applications or processes not authorized by Mapp, but solely to the extent the alleged infringement is caused by such combination; (iii) Mapp's compliance with Customer's instructions, designs or specifications; or (iv) modifications by anyone other than Mapp or its contractors.
- 5.4 Each party's obligations and liabilities to the other for third party intellectual property infringement claims, and each party's rights and remedies against the other for such claims, are solely and exclusively set forth in this Section of the Agreement.

6. LIMITATION OF LIABILITY

- 6.1 Neither party will be liable to the other for any indirect, incidental, consequential, special or punitive damages, for loss of profits or revenue (other than the profits and revenue included in the price for an action by Mapp to recover payment of a price owed) or loss of time, opportunity or value of data, whether in an action in contract, tort, product liability, strict liability, statute, law, equity or otherwise.
- 6.2 Neither party will be cumulatively liable to the other for any amount greater than the purchase price, fees and charges paid by Customer to Mapp under the Agreement at issue over the twelve months period preceding the event giving rise to the damage or, if the Agreement at issue was not yet running for a full 12 months period at the time of the event giving rise to the damage, for any amount greater than the fixed prices, fees and charges to be paid under the Agreement at issue for the initial 12 months period.
- 6.3 Notwithstanding the above provision of this Section, a party's liability for:
- a) personal injury, including death to the extent caused by its negligence or willful misconduct is not limited by this Section;
 - b) physical damage to tangible real or personal property to the extent caused by its negligence or willful misconduct is limited to direct damages up to USD 5 million per occurrence and per year;
 - c) an express obligation under the Agreement to indemnify, defend and hold the other harmless from third party intellectual property infringement claims is not limited by this Section; and
 - d) violating the other party's intellectual property rights or intentionally breaching the confidentiality provisions of the Agreement is not limited by this Section.
- 6.4 Unless otherwise agreed upon in the Agreement, Mapp is not responsible for (a) data used in connection with a Product, including Customer's compliance with applicable laws, regulations, or other duties or restrictions which apply to Customer's collection, processing, use, disclosure, or distribution of data (including, but not limited to, Personal Data); (b) Customer's export of Products or information; or (c) disposal of Products.

- 6.5 Each party will, at its own expense, maintain not less than: statutory minimum workers' compensation coverage regarding its employees, statutory minimum automobile insurance coverage regarding its vehicles used in relation to this Agreement and USD 1 million per occurrence in General Liability insurance coverage.
- 6.6 Neither party will be liable for failing to fulfill its obligations (other than obligations to make payment) due to Force Majeure. The party suffering a Force Majeure event i) will give notice to the other party, stating the period of time the occurrence is expected to continue, and ii) will use diligent efforts to end the failure or delay and to ensure the effects of such event are minimized. If a Force Majeure event continues to prevent performance of an obligation for more than 30 days, either party may terminate the Agreement.
- 6.7 A reference to a party in this Section shall include a party's affiliates, employees, contractors or suppliers, when acting in such capacity with respect to the Agreement. Each clause of this Section is separate from each other clause of this Section and from the remedy limitations and exclusions elsewhere in the Agreement, and will apply notwithstanding any failure of essential purpose of a remedy or any termination of the Agreement.

7. CUSTOMER RESPONSIBILITIES

- 7.1 Customer shall be responsible for its usage of the Software and shall comply with all applicable laws and regulations with respect to its usage of the Software, including its processing of Personal Data via the Software.
- 7.2 Unless otherwise specifically covered in this Agreement, Customer is solely responsible for (i) determining whether the Software will meet its business requirements, (ii) data integration; (iii) providing standard extracted, transformed, cleansed data for loading into the Software, (iv) having reasonable security processes, tools and controls for systems and networks interacting with the Software; (v) making its own elections regarding backup storage and alternative computing capabilities and business processes in the event that the Software is unavailable; (vi) determining the security, data protection, data backup facilities necessary for its business needs and its obligation or requirements to protect its data; and (vii) reporting incidents.
- 7.3 Customer agrees that:
 - a) usage of the Software requires a standard browser according to Mapp's Supported Platform Matrixes (provided upon request);
 - b) it is solely responsible for any damage to Customer's data and/or any Products caused by the negligent or willful misconduct of Customer's employees, consultants or agents to whom Customer has provided access to the Software;
 - c) it is solely responsible for any damage caused by Customer's failure to comply with all laws applicable to Customer's business;
 - d) it is solely responsible for providing all internal technical support and training to its users and validating the accuracy of Customer's data;
 - e) it is solely responsible for the management of network, computers, software, telecommunications and devices external to the Software; and
 - f) it is solely responsible for database or application server performance issues that may arise from customizations and/or modifications introduced into the Software by Customer.
- 7.4 Customer is entitled to use the Software by its own employees or by a third party on behalf of Customer (such as an agency). Customer will be responsible for the activities of and effects caused by anyone who Customer allows to use the Software. Customer is also responsible for ensuring that its users comply with the Agreement with respect to use of the Software.

8. CUSTOMER INDEMNIFICATION

Customer shall indemnify, defend and hold Mapp harmless against any loss, liability, damage, demand, claim, cost or suit (including reasonable attorneys' fees) incurred in connection with any third party actions or claims:

- a) made or brought against Mapp to the extent that they arise out of or are related to Customer's use (including any third person's use through Customer) of the Products and Services or Customer's (including any third person using the Products and Services through Customer) violation of or failure to fulfill its obligations under the Agreement; and/or
- b) that allege that any Customer data or combination of any Customer data (including, but not limited to, Personal Data) with any other code, content or process infringes or violates any rights of third parties, including without limitation, rights of publicity, rights of privacy, intellectual property, trade secrets or licenses; and/or
- c) involving Mapp's response to a subpoena or compulsory legal order or process related to a claim by another person.

Mapp shall promptly notify Customer of the claim and give Customer reasonably requested information and cooperation and sole authority to defend and settle the claim. Mapp shall have the right to join and participate (through its own counsel and at its own expense) actively in Mapp's defense of the claim. Mapp shall be entitled to prior written notice of any settlement of any claim to be entered into by Customer and to reasonable approval of a settlement to the extent Mapp's rights may be impacted.

9. PROFESSIONAL SERVICES

- 9.1 If, in the course of rendering Professional Services, Mapp creates and delivers to Customer any Deliverables, Mapp and its suppliers retain ownership of and all rights to the Deliverables, including methodologies, processes and templates used by Mapp and/or its suppliers to create or modify them or which are incorporated into or embodied in them. Mapp grants Customer the non-exclusive, non-transferable right to use the Deliverables for Customer's Internal Use on the same terms and conditions under which Mapp grants Customer the right to use the Software hereunder. Mapp may provide similar services or Deliverables to other persons as long as Mapp does not infringe Customer's intellectual property rights.
- 9.2 If Customer causes any delays, such delays may affect the cost, schedule, Services and/or Deliverables for the project. Mapp will inform Customer when such delays result in a material increase in Mapp's project costs. Mapp may elect to invoice Customer for Professional Services Mapp has had to re-perform or for resources Mapp has been unable to reasonably and productively re-deploy due to the delay. Customer will pay up to the rates quoted in the Agreement (or, if such rates are not quoted in the Agreement, then at Mapp's then-current standard rates for similar Professional Services and Deliverables).
- 9.3 Customer will provide Mapp personnel and subcontractors with safe and reasonable access to working space, facilities (including heat, light, ventilation, electric current and outlets), convenient fax, network and internet access and local telephone extensions, computer resources and other necessary physical facilities as required. Customer will provide at its expenses high-speed connectivity and appropriate security access to any Mapp personnel working on the project from remote locations. Customer will maintain and operate the hardware, software, and data environment required to support the solution to which the Professional Services and Deliverables relate. Customer will provide use of this environment to Mapp personnel and subcontractors as required. Unless the Agreement specifies otherwise, Customer is responsible for testing, certifying, and loading any required software and/or data, as well as for the completeness, accuracy, quality, consistency, format, and integrity of the data.
- 9.4 Customer is responsible for the selection and implementation of controls on access, use, and security of stored data (including, but not limited to, Personal Data). Customer will make all the necessary backup copies of the completed and in-progress work product associated with the project which has been provided to or created by Customer.
- 9.5 Except as expressly indicated to the contrary in the Agreement, all fees for Professional Services shall be provided on a time and materials basis at Mapp's then current service rates for the various classes of Professional Services and professionals provided and shall be invoiced at the end of the calendar month of their performance. Time/hours shall be accounted for according to Mapp's timesheets. Customer acknowledges that the hours set forth in the Agreement are merely estimates and the actual amount of effort may differ from the estimates except as expressly indicated to the contrary in the Agreement.
- 9.6 Except as expressly indicated to the contrary in the Agreement, travel time will be charged as 50 % working time. Fees/rates do not include travel costs and expenses for Mapp personnel and subcontractors. Customer shall pay travel costs and expenses as incurred. Except as expressly provided in the Agreement, travel costs and expenses shall be invoiced each month in arrears.
- 9.7 Except as expressly provided in the Agreement: (a) any quoted rates for Professional Services which are not utilized by Customer within twelve (12) months of the date thereof shall be subject to adjustment to Mapp's then current rates when actually utilized; and (b) any prepaid Professional Services must be utilized within twelve (12) months of the date of the Agreement or they will lapse and will not be reimbursed. Should Customer choose to cancel or delay the delivery of Professional Services, Customer must provide Mapp with at least thirty (30) days written notice prior to (i) the date of termination of the Professional Services, or (ii) the date the Professional Services will be delayed. Customer shall pay for all Professional Services delivered through the date of termination or delay.
- 9.8 Mapp shall maintain complete and accurate books and records of the fees and expenses related to the Professional Services and shall retain such records for a minimum period of two (2) years from the date of the corresponding invoice. Upon reasonable prior written notice, Customer, its auditors and any relevant federal and state regulatory authorities ("Auditors") may have reasonable access during normal business hours to inspect such records once per year. Mapp shall reasonably cooperate with Auditors in the conduct of such examination and audit. The Auditors shall hold all information disclosed by Mapp and the results of any audit in confidence, and shall report to Customer only whether or not Mapp is in compliance with the Agreement and, if not, in what manner and to what extent. If any audit under this Section determines that Mapp has incorrectly charged the Customer, Mapp will reissue a correction invoice and the parties shall refund amounts due within forty five (45) days of such invoice. If any such overcharge exceeds five (5) % of the total amount charged to Customer under the Agreement, then Mapp will reimburse Customer for reasonable out of pocket costs of such audit.
- 9.9 While on Customer's site, Mapp personnel will comply with any safety or security policies that Customer provides to Mapp. Customer will provide such policies in writing in advance of Mapp's arrival on site.
- 9.10 During the performance of Professional Services under the Agreement, and for a period of 1 year thereafter, each party agrees not to solicit the hiring, either as an employee or contractor, of any employee or subcontractor of the other party who is directly involved with the Professional Services performed under the Agreement, except with the prior written consent of such other party. Notwithstanding the foregoing, it shall not be a violation of this Section if either party employs the other party's employee or contractor as a result of that person's response to an employment campaign or effort by Mapp or Customer that was not specifically targeted at such employee.
- 9.11 Deliverables, especially customizations and modifications to the Software, are not covered by Mapp's standard Support and Maintenance and can be covered by a separate customization support agreement.

- 9.12 Deliverables, especially customizations and modifications, might only work with the then current version/release of the Software and any upgrades/updates might require migration and adjustment that may cause additional costs to be borne by Customer.

10. DELIVERY

- 10.1 Products shall be considered delivered when the Products are tendered to Customer. Cloud Software shall be considered delivered when the basic setup occurred and Customer was provided with login data. Downloadable Software shall be considered delivered when Customer was provided with internet address, access instructions and necessary passwords. Delivery for Services occurs when the Services are performed. Support and Maintenance shall be considered delivered on a monthly prorated basis. Risk of loss for Products passes upon their Delivery.
- 10.2 Unless expressly otherwise set forth in the Agreement, Products and Services shall not be subject to any acceptance testing, but will be considered accepted upon Delivery and subject to any warranties which apply to them. In case acceptance testing is set forth in the Agreement and the agreed acceptance testing schedule/time limit was not complied with by Customer, or in the absence of any such schedule/time limit, acceptance shall be deemed declared 10 Business Days following Delivery.
- 10.3 Mapp will use commercially reasonable efforts to deliver Products and Services by a firm Delivery date(s), if any, set forth in the Agreement explicitly as firm. If Mapp materially misses a firm Delivery date, then Customer may, upon written notice provided to Mapp before Delivery which affords Mapp at least 15 additional business days to cure, cancel the Agreement without further obligation or liability by either party. Unless expressly otherwise set forth in the Agreement, pre-Delivery cancellation as set forth in this paragraph is the sole remedy for a missed Delivery date.
- 10.4 Customer shall provide Mapp with all necessary cooperation to allow Mapp to carry out its contractual obligations and to deliver the Products and Services under the Agreement. Customer shall unsolicitedly provide all cooperation, information, data, files, material etc. required for the performance of Mapp's contractual obligations sufficiently in advance. If Customer does not cooperate adequately and/or causes delay, Mapp shall be under no obligation to provide its contractual obligations, as long and to the extent as Mapp is prevented from performing its contractual obligations due to Customer's inadequate and/or delayed cooperation. Mapp shall notify Customer of its failure to cooperate adequately and timely and set a reasonable deadline for subsequent performance upon expiry of which the Product and/or Service that could not be delivered/performed due to Customer's inadequate and/or delayed cooperation shall be deemed delivered.

11. PAYMENT TERMS

- 11.1 Except as otherwise agreed by the parties, Products and Services will be invoiced upon their Delivery. Customer will pay invoices within thirty (30) days after the date of invoice. Unless the Agreement expressly provides otherwise, a purchase order and/or purchase order number on the invoice is not required for payments under the Agreement. Mapp will be entitled to charge late fees on amounts properly due under the Agreement and which are set forth in a correct invoice if Customer fails to pay the amounts when due. Late charges will be the lower of 1.5 % per month of the unpaid amount, or any applicable limit imposed by law.
- 11.2 Prices do not include any applicable freight and installation charges, as well as any applicable VAT, sales, use, or like taxes. All amounts payable to Mapp under the Agreement shall be paid by Customer to Mapp in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).
- 11.3 If Customer defaults on Customer's payment obligations which are not disputed in good faith and in writing before the payment is first due, and if Customer fails to cure such default within 15 days after Customer receives written notice of default, then Mapp may repossess the Products for which Customer is in default, terminate licenses for which Customer is in default, suspend access to Cloud Software and suspend performing not-yet-fully-paid-for Services, and suspend delivery of not-yet-fully-paid-for items.

12. SUBCONTRACTING, ACCESS TO DATA

- 12.1 Mapp may use contractors, resellers and/or suppliers ("Contractors") to fulfill its obligations under the Agreement, but in such event Mapp will ensure that Contractors are bound to confidentiality and data protection obligations consistent with the Agreement. Mapp will be solely responsible for Contractors to the same extent as Mapp would be if it had provided the Products and Services at issue directly to Customer, and Contractors will have no greater rights against Customer or owe greater obligations to Customer than would Mapp if Mapp had provided the Products and Services at issue directly to Customer.
- 12.2 Mapp leverages its global pool of experts and resources to provide the Products and Services under the Agreement to Customer. Customer acknowledges and agrees that the Software and any data (including Personal Data) residing within and/or processed by the Software may be accessed by Mapp globally from outside the national territory where the Customer and/or Mapp are located in order to perform Mapp's Services under the Agreement.

13. CONFIDENTIALITY

- 13.1 Each party will use reasonable efforts to prevent the disclosure of the other's Confidential Information to third parties and its employees who do not have a need to know it, but may disclose it for confidentiality-protected financial, legal, compliance and/or tax reviews, advice, disclosures and audits, or to the extent compelled by process of law, provided that the original disclosing party is given advance written notice of such unless such notice is prohibited by law.

- 13.2 Except as expressly set forth in a writing mutually entered into by the parties, all Confidential Information remains the disclosing party's property. Upon the disclosing party's request, all Confidential Information (other than materials that have been licensed to the recipient and with respect to which the recipient is in full compliance with its obligations under the Agreement) will be destroyed or returned to the disclosing party.
- 13.3 Confidentiality obligations under the Agreement with respect to data values stored in or processed by computers, individually identifiable information, Personal Data, customer records/lists, financial/account records, employee records, medical/health records, business plans, software in human-readable form (e.g., source code), data models, and diagnostic tools will continue indefinitely. Otherwise, confidentiality obligations under the Agreement will end 3 years after the date of disclosure.
- 13.4 Either party may disclose Confidential Information to its Affiliates subject to the confidentiality terms of the Agreement and to its contractors which are not direct competitors to the other party, which have a need to know the Confidential Information related to performance under the Agreement, and which agree in writing to confidentiality obligations consistent with the Agreement. Customer may also disclose Mapp Confidential Information to Customer's consultants solely to support Customer's Internal Use of Products, provided that the consultants are not direct competitors to Mapp with respect to the Products at issue and they agree in writing to be bound by the terms of the Agreement, including their intellectual property and confidentiality provisions. Each party will be deemed an intended third party beneficiary of any such agreement and shall have the right to directly enforce it.

14. TERM AND TERMINATION

- 14.1 The term of the Agreement shall commence from the Effective Date for the period defined in the Order ("Initial Term"). The term of any other recurring services (e.g. additional modules, Extended Services), irrespective if ordered with the initial Order or by way of a subsequent Order, shall run and be renewed identical to the Initial Term. Such services shall not be cancellable during the term.
- 14.2 Upon expiration of the Initial Term, the term of the Agreement shall automatically renew for additional successive terms of the same duration as the Initial Term, unless either party gives the other party written notice of non-renewal at least 3 months prior to the beginning of a new term. Such renewal terms shall be under the terms and conditions of the Initial Term. The fees of such renewal terms will be adjusted to reflect the increase in HICP plus 2 %. Such HICP plus 2 % adjustment will occur at the beginning of each renewal term. "HICP" is the EU's Harmonised Index of Consumer Prices.
- 14.3 Except as limited by law, the Agreement may be terminated at any time:
- a) by either Party, effective on written notice to the other Party, if the other Party materially breaches the Agreement and such breach remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach;
 - b) by Mapp, effective immediately, if Customer (i) is dissolved or liquidated or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay its debts as they become due; (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency Law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.
- 14.4 Termination of the Agreement will not end or change either party's rights or duties which accrue during the term of the Agreement or relate to Products or Services provided during the term of the Agreement.
- 14.5 The provisions of the Agreement which, by their nature and content, are intended, expressly or impliedly, to continue to have effect notwithstanding the completion, rescission, termination or expiration of the Agreement shall survive and continue to bind the parties.

15. GOVERNING LAW; DISPUTES

Spanish law shall apply. In the event of a claim, controversy or dispute arising out of or related to the Agreement or a Product, each party agrees to give the other prompt notice of such, and both agree to meet and confer promptly to engage in good faith discussions to try to resolve the matter. For any such controversy, claim or dispute which is not resolved through the procedures set forth above, place of performance and exclusive place of venue is Madrid, Spain, for which the parties accept to waive any other jurisdiction they may have. Notwithstanding the foregoing, either party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights. Neither party may bring a claim more than 2 years after the underlying cause of action first accrues.

16. MISCELLANEOUS

- 16.1 The parties are independent contractors to one another. Employees of one will not be deemed to be or act as employees or other representatives of the other. A party will not, with respect to the other's employees or contractors, be responsible for compensating them, providing insurance or benefits for them, making unemployment, social security other contributions for them; or, withholding income taxes or other taxes or withholdings against earnings regarding them. Nothing in the Agreement shall be deemed to constitute a partnership or joint venture or agency or contract of employment between the parties.

- 16.2 Customer acknowledges that the Products delivered/provided by Mapp pursuant to the Agreement may be subject to export controls, laws and regulations of the United States and other jurisdictions. Customer represents that it is not named on any governmental denied party list. Customer agrees to:
- a) comply strictly with all legal requirements established under these export controls, laws and regulations;
 - b) cooperate fully with Mapp in any official or unofficial audit or inspection that relates to these export controls, laws and regulations;
 - c) not export, re-export, divert, transfer, or disclose directly or indirectly, any Products to any country, or to the nationals of any such country, when such export, re-export, diversion, transfer, or disclosure is restricted under applicable export controls, laws or regulations, without obtaining the prior written authorisation of Mapp and/or the applicable government agency; and
 - d) not permit users to access or use any Products in a country embargoed under these export controls, laws and regulations or in violation of these export controls, laws and regulations.
- Any breach of this provision shall be considered a material breach of the Agreement.
- 16.3 Customer shall not assign the Agreement or any license granted hereunder for any reason (including an assignment by operation of law in connection with a merger or similar transaction), without the express written consent of Mapp. In addition, if the use of Software pursuant to the Agreement is limited to one or more divisions or lines of business of Customer, then the use of the Software shall not extend beyond such use without the express written consent of Mapp. Mapp shall have the right to require Customer or its purported assignee to pay an application extension fee based upon Mapp's estimate of Customer's extension of the licenses hereunder and any other amounts due Mapp by Customer hereunder as a condition to the assignment or extension of use and Mapp reserves the right to reject any transfer of the Agreement and the licenses granted hereunder to any competitor of Mapp. Mapp may assign the Agreement to another entity provided that such entity assumes Mapp's obligations under the Agreement. Any other attempt to sublicense, assign or transfer the Agreement or the licenses hereunder shall be void.
- 16.4 The Customer shall be sent the Mapp email newsletter, featuring case studies and best practice guidelines at the email address stated in the context of conclusion of the contract. The Customer can unsubscribe from the Mapp email newsletter by sending an email to Mapp or by using the unsubscribe functionality contained in every newsletter.
- 16.5 Without prejudice to the rights of either Party in respect of fraudulent misrepresentation, this Agreement and any appendices and any documents referred to in this Agreement supersede all prior agreements, arrangements and understandings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. No addition to or modification of any provision of this Agreement shall be binding upon the Parties unless made in writing and signed by a duly authorised representative of each of the Parties.
- 16.6 Mapp shall have the right to state that the Customer uses the Software and/or is a Mapp customer and to use Customer's name and logo for these purposes in Mapp's marketing material and publicly available customer lists, including, but not limited to, usage in the internet. Any other use of Customer's name and logo in Mapp's marketing material is subject to Customer's prior approval.
- 16.7 All notices made under the Agreement will be in writing and deemed provided on first receipt. Mapp will send notices to Customer at the address on the face of the Agreement and to any other address designated in writing by Customer, and Customer will send notices to Mapp at its local address through which it handles Customer's account (e.g., to Customer's local Mapp account executive) or any other address designated in writing by Mapp. Either party may change or supplement its notice address(es) and other contact information by delivering written notice of such to the other.
- 16.8 If any provision of the Agreement is held to be illegal, invalid or unenforceable, it will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remaining provisions will remain in full force and effect. Terms intended by the parties to survive termination of the Agreement will survive termination. Failure to enforce any provision of the Agreement shall not constitute a waiver of future enforcement of that or any other provision.