



## MAPP DIGITAL TERMS AND CONDITIONS

### 1. GENERAL

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These Terms and Conditions (the “**T&C**”) are incorporated into the Agreement between the Parties and shall govern the use of the Mapp Services.

### 2. DEFINITIONS

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- 2.1** **Affiliate:** Any entity which directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with the Party in question, as the case may be.
- 2.2** **Agreement:** the master agreement, which incorporates by reference these T&C, the DPA and all SOW’s executed between Mapp and Client.
- 2.3** **AUP:** Mapp’s Acceptable Use Policy which governs the use of Mapp Services and is made a part of these T&C by reference. Mapp may amend the AUP at any time as stated in the AUP which can be found on Mapp’s website at [www.mapp.com/acceptable-use-policy](http://www.mapp.com/acceptable-use-policy).
- 2.4** **Authorized User:** Any person, organization, or entity to which Client grants access to use the Subscription Services in accordance with the Agreement. Client shall be liable to Mapp for the acts or omissions of its Authorized Users.
- 2.5** **Client:** the customer who is a Party to the Agreement and is purchasing the Mapp Services.
- 2.6** **Confidential Information:** The inventions, trade secrets, computer software in both object and source code, algorithms, documentation, know how, technology, ideas, and all other business, customer, technical, and financial information owned by Mapp or Client, which are designated as confidential, or communicated in such a manner or under such circumstances as would reasonably enable a person or organization to ascertain its confidential nature.
- 2.7** **Content:** Any data, images, programming, code, photographs, illustrations, graphics, audio/video clips or text used on Client’s website(s) and/or provided to Mapp by Client for incorporation into and/or transmission or posting using the Mapp Services (or as otherwise provided in the Agreement), including, but not limited to, any and all marketing, advertising and promotional materials, technical information and product descriptions.
- 2.8** **DPA:** the Data Processing Agreement between the Parties which pertains to data privacy, security and protection.
- 2.9** **Deliverable:** a tangible or intangible product or service produced as a result of Professional Services.
- 2.10** **Mapp:** The Mapp Digital entity which is a counterparty to the Agreement.
- 2.11** **Mapp Materials:** Any materials (including without limitation documentation) provided by Mapp for use by Client in connection with the Mapp Services, all of which materials, including all rights therein, shall be exclusively owned by Mapp.
- 2.12** **Mapp Services:** The Subscription Services, Professional Services and any other services provided by, or on behalf of, Mapp as specified in the Agreement.
- 2.13** **Party(ies):** Mapp and/or Client.
- 2.14** **Personal Data:** Any information relating to an identified or identifiable natural person who can be identified, directly or indirectly, in particular by reference to such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- 2.15** **Professional Service(s):** Optional services for which Client employs Mapp which require additional resources at an increased cost.
- 2.16** **Recipient:** Any person to whom Client or Client’s Authorized Users send communications using the Subscription Services.
- 2.17** **SLA:** Mapp’s Service Level Agreement pertaining to uptime.
- 2.18** **SOW:** The Statement of Work which specifies the details of the Mapp Services being provided to Client.
- 2.19** **Subscription Service(s):** The software provided by Mapp as shared computer processing resources to Client on demand.
- 2.20** **T&C** shall have the meaning set forth in [Section 1](#).
- 2.21** **Term** shall have the meaning set forth in [Section 6.1](#).

- 2.22** **Trademarks:** Trademarks, service marks, trade dress, trade names, and logos used by Mapp and/or Client, as applicable, in connection with the provision of the Mapp Services under the Agreement.

### 3. MAPP RIGHTS AND OBLIGATIONS

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During the Term of the Agreement and subject to the terms described herein, Mapp grants to Client a non-exclusive, non-transferable, non-sublicensable, non-assignable, revocable, limited right to access and use the Mapp Services described with more particularity in the SOW. Client agrees and acknowledges that the grant of rights is a right of use of the Mapp Services only, and that right, title, and interest in and to the Mapp Services (including without limitation any enhancements, developments, and improvements or changes thereto whether suggested or requested by Client or otherwise, and any Mapp Materials provided to Client by Mapp) and any rights not granted herein shall remain with, and are expressly reserved to, Mapp or its licensors or subcontractors. No improvements, enhancements or developments to the Mapp Services shall be considered “works made for hire,” even if paid for by Client. The Mapp Services and the intellectual property operating it are protected by international copyright treaties. The Mapp Services are provided as an online service only, and Client shall have no right whatsoever to receive, review, or otherwise use or have access to the source or object code for the Mapp Services. This grant of rights by Mapp is made solely to Client for specific use as specified in the SOW, and not, by implication or otherwise, to any Affiliate of Client.

**3.1 Ownership of Lists.** Client shall retain ownership of Client’s list of Recipients (including any derivatives thereof) and Client grants Mapp the right to use such list in order for Mapp to perform the Mapp Services in accordance with the Agreement. Client will have access to a control panel that provides management services for uploads and downloads of new Recipients and Recipients who have unsubscribed.

**3.2 Subscription Services.** Mapp shall provide Subscription Services for Client’s usage in a secure system environment, accessed by Client remotely. Subscription Services is not hired out to Client. Usage of Subscription Services requires a standard browser according to Mapp’s browser policy. Mapp shall comply with all applicable laws and regulations applicable to Mapp in providing Subscription Services to Client. Mapp may, in its sole discretion, modify, replace, or add to the Subscription Services described herein (including without limitation improving or adding new or changed features or functionality (or both) to the Subscription Services) from time to time without notice, but shall not materially reduce the features and functionality available through the Subscription Services during the term of the SOW. Mapp will use commercially reasonable efforts to provide prior notice to Client of any material changes to the core Subscription Services.

### 4. CLIENT RIGHTS AND OBLIGATIONS

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**4.1 Restrictions on Use; Terms of Use.** Client shall not (nor shall Client allow any third party to): (1) resell, assign, or otherwise transfer any of its rights under the Agreement, except for such limited rights of assignment of the Agreement by Client as expressly permitted in [Section 12.5](#) below; (2) copy, translate, port, modify, make derivative works of, incorporate into or with other software, disassemble, decompile, or otherwise reverse engineer, or otherwise attempt to learn, derive or discover the source code, source files, structure, underlying user interface techniques, underlying ideas or underlying algorithms of, the Mapp Services by any means; (3) use a single account for multiple business entities (including without limitation Client’s Affiliates), unless specifically authorized by Mapp in writing; (4) provide third parties with access to its Mapp Services account; (5) attempt to circumvent any license, timing or use restrictions that are built into the Mapp Services; and/or (6) use the Mapp Services in violation of Mapp’s AUP as further described below. Client shall immediately notify Mapp of any violation of the foregoing, whether by Authorized Users or any other party, of which Client becomes aware.

Client’s use of the Subscription Services provided hereunder shall strictly comply with Mapp’s AUP at all times. Client shall have those notices, disclaimers, consents and waivers on Client’s website(s) sufficient to permit the transfer of information concerning a customer or Recipient to Mapp in compliance with all applicable data privacy or other laws or regulations in

order to permit Mapp to perform its obligations under the SOW. Client must not process sensitive Personal Data or financial information with Mapp Services provided by the Subscription Services.

Client agrees to use its best efforts to always provide true, accurate, current and complete information to Mapp and to maintain and update this information to keep it true, accurate, current and complete. If any information provided by Client is untrue, inaccurate, not current or incomplete, or if Client violates this section, the AUP or any applicable laws, Mapp may immediately suspend Client's use of the Mapp Services, without notice or opportunity to cure. Mapp shall not issue any credits for any loss of Subscription Services resulting from such suspensions, and Client shall not be entitled to any such credits.

**4.2 Username and Password.** Client agrees and acknowledges that it is solely responsible for all activities that occur under its Mapp Services password(s) or account(s). Without limiting the foregoing, it is Client's sole responsibility to keep its password(s) and/or account information strictly confidential except as necessary for use by Authorized Users. Client agrees that each Authorized User shall have a distinct username and password in order to track each Authorized User's use of the Subscription Services and avoid unauthorized use of the Subscription Services. Client shall be solely responsible for any authorized or unauthorized access to its account by any person. If any unauthorized use of Client's account(s) or password(s) occurs, Client must immediately notify Mapp of such unauthorized use via phone and/or email.

**4.3 Trademarks.** Client grants to Mapp the right to use the Trademarks supplied by Client to Mapp for the purpose of Mapp's performance of its obligations under the Agreement. In the event that Client supplies Mapp with Trademarks owned by third parties other than Client or Mapp, Client represents that it has secured the right to use such Trademarks in connection with the Mapp Services from such third-party owner(s). Mapp agrees to use such materials only in the form and with appropriate legends as reasonably prescribed by Client. Subject to separate written agreement by the Parties or as may set forth in a SOW, any Mapp Trademarks used by Client in connection with Mapp Services is granted on a limited, revocable basis during the Term and for use solely in connection by Client of the Mapp Services.

**4.4 Content.** Client will provide Mapp with any Content that Client desires to use in conjunction with the Mapp Services, in print-ready and/or electronic file formats (e.g., .txt, .gif, .jpg), as reasonably specified and accessible by Mapp. Client hereby grants to Mapp and its subcontractors a non-exclusive, non-transferable, royalty-free license to use Client's Content solely for the purpose of, and to the extent necessary for Mapp's provision of the Mapp Services and as is otherwise allowed under the Agreement.

**4.5 Compliance with Law.** Client must comply with all applicable laws, regulations and industry best practice standards with respect to its usage of the Subscription Services including its processing of Personal Data via the Subscription Services. Client is responsible for the identification and interpretation of any applicable laws, regulations, and industry best practice standards that affect Client's usage of the Subscription Services and Mapp's performance of Services for and/or on behalf of Client. It is Client's responsibility to assure compliance with any such requirements. Client shall reconcile the default settings of the Subscription Services with its specific requirements.

## 5. FEES AND PAYMENTS

**5.1 Subscription Service Fees.** The Subscription Service fees designated in the SOW shall be prepaid in annual installments. Any unused volume will not be carried forward into the next Term.

**5.2 Overage Fees.** Overage fees will be charged in accordance with the SOW and will be invoiced following the end of the quarter in which such fees were incurred.

**5.3 One-Time Fees.** One-time fees shall be invoiced upon execution of the applicable SOW for services specified therein, or on the date on which Mapp and Client mutually agree in writing.

**5.4 Professional Service Fees.** Professional Service Fees will be charged and invoiced in accordance with the applicable SOW.

**5.5 Payment.** Unless otherwise specified, all invoiced amounts shall be due and payable no later than thirty (30) days from the date of the subject invoice. Each payment of all fees and charges due hereunder shall be made in the manner specified in the SOW or by such other means as may be approved by Mapp in writing. If Client does not object in writing to an invoiced amount within thirty (30) days, Client shall be deemed to have acknowledged the correctness of the invoice and to have waived its right to dispute the amount. Client's dispute as to a portion of any invoice or amount owed shall not give Client the right to withhold or delay payment of the whole invoice or amount owed. Late payments will bear interest at the rate of 1.5% per month, or the maximum amount permitted by law, whichever is more. Client shall be liable for all collection expenses incurred by Mapp, including reasonable attorneys' fees. Mapp will have no obligation to perform any of its obligations under the SOW if Client fails to make any timely payment, following its receipt of notice of the nonpayment and a ten (10) business day opportunity to cure, and Mapp will have the right in its sole discretion, without liability to Client, to either (a) suspend performance of any of its obligations under the SOW for so long as the payment remains outstanding, or (b) terminate the Agreement.

**5.6 Taxes.** In the event any governmental entity imposes sales, use, or other transaction-based taxes upon users of the Mapp Services, Client acknowledges that the fees set forth herein do not include such taxes and that Client shall be separately charged for any such taxes required to be collected by Mapp in addition to the fees set forth herein. Mapp reserves the right, in its sole discretion, to retroactively invoice Client for taxes not previously billed in connection with the Mapp Services delivered to Client.

## 6. TERM & TERMINATION

**6.1 Term.** The Agreement shall remain valid so long as Client is utilizing the Mapp Services. The term shall be specified in the SOW and shall automatically renew for identical terms unless the SOW indicates otherwise (the "Term"). If there is no term specified in the SOW, then the length of each such term shall be one (1) year.

**6.2 Nonrenewal.** Either Party may elect not to renew the SOW by providing written notice of nonrenewal to the other Party at least thirty (30) days prior to the end of the current Term. If a notice of nonrenewal is received following the expiration of the timeframes set forth above, the Term will renew and the requested termination will become effective at the end of the last day of the following Term.

**6.3 Rights of Termination.** Either Party may terminate the Agreement upon written notice to the other Party in the event of the other Party's breach of a representation or warranty made hereunder or failure to substantially perform its obligations under the Agreement, provided that written notice of such breach or failure is provided by the non-breaching Party, and such breach or failure to perform is not cured to the non-breaching Party's reasonable satisfaction within thirty (30) days of the breaching Party's receipt of that notice. Further, a Party may immediately terminate the Agreement, without opportunity to cure, upon written notice to the other Party in the event: (a) the non-terminating Party substantially ceases to do business in the manner in which it was conducted at the time the Agreement was executed (for the avoidance of doubt, a sale of a Party's business, transfer of stock or assets, or other like transaction between that Party and a third party shall not trigger the other Party's right to terminate under this clause); or (b) either Party initiates or has initiated against it, voluntarily or involuntarily, any act, process or proceeding under the provisions of any bankruptcy statute or law, or under any other insolvency law or other statute or law providing for the modification or adjustment of the rights of creditors, which is not dismissed within thirty (30) days from the date of filing. If Mapp terminates this Agreement as outlined in this Section 6.3, Client will remain responsible for all payment obligations, including any unpaid fees due for the remainder of current Term. If Client terminates this Agreement due to an uncured breach by Mapp, Mapp will refund any prepaid fees for unused Mapp Services on a prorated basis.

**6.4 Events upon Termination.** Upon termination of the Agreement, each Party shall cease performance and immediately stop the use of, delete and remove from all computer hardware and storage media, and promptly return or destroy any of the other Party's Confidential Information or other materials in its possession or control (including all copies), and shall provide written certification of destruction executed by an officer upon request. Termination shall not affect each Party's payment obligations to the other

Party in connection with activities prior to termination of the Agreement. In addition, in the event Mapp terminates the Agreement for cause, as set forth above, all unpaid fees payable by Client through the effective date of termination shall accelerate and become immediately due and payable.

**6.5 Survival.** Sections 7, 8, 9, and 12 of the T&C, and any other provisions of the Agreement which, by their terms, require performance after the termination of the Agreement, or have application to events that may occur after such termination, shall survive the termination of the Agreement.

## **7. CONFIDENTIALITY**

**7.1 In General.** All Confidential Information provided by a Party shall be maintained in confidence by the other Party, and neither Party shall, directly or indirectly, either: (a) divulge to any person or organization (other than its employees, contractors, agents, and professional advisers who have a need to know such information and who are bound by a written nondisclosure agreement containing confidentiality obligations no less restrictive than those set forth herein), or (b) use in any manner whatsoever other than as necessary for the performance of its obligations under the Agreement, any of the Confidential Information of the other Party without the other Party's express prior written consent to do so. The terms of the Agreement (including pricing), and any information concerning the Mapp Services, shall be considered Confidential Information. The obligations of confidentiality set forth in this Section 7 shall survive for a period of three (3) years following the termination or expiration of the Agreement. Each receiving Party shall be liable for any misuse, misappropriation or improper disclosure of Confidential Information by any of its employees, contractors, agents, and professional advisers to whom Confidential Information is disclosed or made available by that receiving Party. Each Party shall be liable for any misuse, misappropriation or improper disclose of Confidential Information by any of its employees, contractors, agents, or professional advisers.

**7.2 Exclusions.** The provisions of this Section shall not have application to any information disclosed by a Party to the extent the receiving Party can reasonably demonstrate such information: (i) is or becomes lawfully available to the public through no act or omission of the receiving Party or its agents, employees, contractors or representatives; (ii) is received without restriction from another person or organization lawfully in possession of such information and entitled to provide such information to the receiving Party; (iii) was rightfully in the possession of the receiving Party on a non-confidential basis prior to its disclosure by the disclosing Party; (iv) is approved for release by the disclosing Party in writing; or (v) is independently developed by the receiving Party or its employees without access to or use of the disclosing Party's Confidential Information, as evidenced by written records demonstrating such independent development.

**7.3 Compelled Disclosure.** Mapp shall have the right to disclose Recipient information in response to judicial, governmental or administrative process, reporting requirement, request/order or other requirement, provided such disclosure is in accordance with applicable law. Further, in the event a third party seeks to compel disclosure of Confidential Information from a receiving Party by judicial, governmental or administrative process, requirement or order, the receiving Party shall promptly notify the disclosing Party of such occurrence and furnish to the disclosing Party a copy of the demand, summons, subpoena or other process served upon the receiving Party to compel such disclosure, and shall permit the disclosing Party to assume, at its expense, but with the receiving Party's cooperation, defense of such disclosure demand. In the event that the disclosing Party fails or refuses to contest such a third-party disclosure demand, or a final judicial order is issued compelling disclosure of Confidential Information by the receiving Party, the receiving Party shall be entitled to disclose such information in compliance with the terms of such administrative or judicial process or order, but such information shall otherwise remain Confidential Information subject to the confidentiality obligations set forth herein.

## **8. WARRANTIES**

**8.1 Client Warranties.** Client represents and warrants to Mapp that: (i) it has full right, power and authority to enter into and fully perform its obligations under the Agreement, including without limitation the right to bind any party it purports to bind to the Agreement; (ii) its execution, delivery and performance of the Agreement does not conflict with any other agreement to

which it is a Party or by which it is bound; and (iii) it and its Authorized Users shall comply with all laws, rules and regulations applicable to its activities in connection with the Agreement and its business.

**8.2 Mapp Warranties.** Mapp represents and warrants to Client that: (i) it has full right, power and authority to enter into and fully perform its obligations under the Agreement, including without limitation the right to bind any party it purports to bind to the Agreement; (ii) its execution, delivery and performance of the T&C does not conflict with any other agreement to which it is a Party or by which it is bound; and (iii) it shall comply with all laws, rules and regulations applicable to its activities in connection with the Agreement and its business.

THE MAPP SERVICES ARE PROVIDED TO CLIENT "AS IS," AND WITHOUT WARRANTY OF ANY KIND, AND MAPP AND ITS SUBCONTRACTORS DISCLAIM ANY AND ALL EXPRESS OR IMPLIED WARRANTIES WITH REGARDS TO THE MAPP SERVICES, INCLUDING WITHOUT LIMITATION MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. WITHOUT LIMITING THE FOREGOING, MAPP (AND ITS SUBCONTRACTORS) DO NOT WARRANT THAT THE MAPP SERVICES WILL MEET CLIENT'S NEEDS REQUIREMENTS OR THOSE OF ITS AUTHORIZED USERS, THAT THE OPERATION OF THE MAPP SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL DEFECTS IN THE MAPP SERVICES WILL BE CORRECTED. MAPP DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OF, OR THE RESULTS OF THE USE OF, THE MAPP SERVICES OR DOCUMENTATION (INCLUDING WITHOUT LIMITATION INFORMATION OBTAINED THROUGH THE MAPP SERVICES) IN TERMS OF THEIR CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, OR OTHERWISE. CLIENT WARRANTS THAT IT HAS NOT RELIED ON ANY INFORMATION OR REPRESENTATION PROVIDED BY OR ON BEHALF OF MAPP WHICH IS NOT EXPRESSLY INCLUDED IN THIS AGREEMENT.

## **9. INDEMNIFICATION/LIMITATIONS OF LIABILITY**

**9.1 Indemnification by Client.** Client and its successors and assigns shall indemnify, defend, and hold harmless Mapp, Mapp Affiliate companies, and their successors and assigns from and against and in respect of any and all demands, judgments, losses, costs, expenses, obligations, liabilities, damages, fines, recoveries and deficiencies, including without limitation interest, penalties, reasonable attorneys' fees and costs in connection with a third party claim, action, suit or proceeding (each, a "Claim") that any such indemnified party may incur or suffer, which arise, result from, or relate to: (a) Client's breach of any term or condition of the T&C; or (b) the use of the Mapp Services, (c) the violation of Mapp's AUP or any applicable laws, by Client or a Client Authorized User; or (d) any Content or other materials provided by Client through or in connection with the Mapp Services; or (e) Client's advertising practices. Client shall be responsible for any breach of any term of this T&C applicable to Authorized Users.

**9.2 Indemnification by Mapp.** Mapp and its successors and assigns shall indemnify, defend, and hold harmless Client and its successors and assigns from and against and in respect of any Claim alleging that the Mapp Services infringes the United States patent, trademark, or copyright of that third party, by paying all amounts that a court finally awards or that Mapp agrees to pay in settlement of any such Claim. In the event of any adjudication that the Mapp- Provided Services does infringe or if the licensing or use of the same or any part thereof is enjoined, Mapp shall, at its expense and option, do one of the following: (a) procure for Client the necessary right to continue using the affected functionality; (b) replace or modify the affected functionality with a functionally equivalent non-infringing item or portion thereof; (c) modify the affected functionality so that it is non-infringing; or (d) if none of the foregoing are commercially reasonable, terminate this T&C upon written notice to Client. Mapp shall not be liable to, and shall have no obligation hereunder to, defend, indemnify or hold harmless Client from or against any Claim based on or resulting from: (1) the use of the Mapp Services by Client other than as authorized in this T&C; (2) the combination of the Mapp Services or any portion thereof with any product, software, business method, machine, or device which is not provided by Mapp; (3) any modification of the Mapp Services or any portion thereof by any party other than Mapp or its subcontractors; (4) use of an allegedly infringing version of the Mapp Services or any portion thereof, if the alleged infringement could be avoided by the use of a different version made available to Client by Mapp; or (5) the use of the Mapp Services after notice from Mapp that Client should stop such use due to

a potential infringement claim. This paragraph states the entire liability of Mapp and its subcontractors, and Client's sole and exclusive remedy, with respect to infringement of intellectual property rights.

**9.3 Indemnification Procedure.** A party seeking indemnification (the "Protected Party") shall promptly notify the indemnifying Party in writing of any Claim and give the indemnifying Party all information, cooperation, assistance, and authority reasonably necessary for the indemnifying Party to evaluate and defend such Claim if the tender of defense and indemnity is accepted without a reservation of rights. In the event the indemnifying Party accepts the tender of defense with a reservation of rights, rejects the tender of defense or fails to respond to a tender of defense, the Protected Party shall thereafter have the right to control of the defense of such Claim, including the right to select which firm defends the Claim, until such time as the indemnifying Party accepts its obligation to defend without a reservation of rights. An indemnifying Party shall obtain each Protected Party's express prior written approval (such approval not to be unreasonably withheld or delayed) to settle any Claim if such settlement: (i) arises from or is part of any criminal action, suit or proceeding, or (ii) contains a stipulation to or admission or acknowledgment of any liability or wrongdoing on the part of the Protected Party, or (iii) requires any specific performance or other equitable remedy by the Protected Party, or (iv) requires the payments of any amounts by the Protected Party.

**9.4 Limitation of Liability.** The total liability of a Party under the Agreement for any cause shall not exceed the annual contract value. Nothing in this section shall have the effect of limiting or excluding any liability for that which cannot be excluded or limited by law.

**9.5 No Consequential Damages.** NEITHER MAPP NOR CLIENT WILL HAVE ANY LIABILITY TO EACH OTHER OR TO ANY OTHER PERSON OR ORGANIZATION FOR LOST PROFITS OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OF ANY DESCRIPTION (INCLUDING WITHOUT LIMITATION LOST REVENUE, LOST DATA, OR LOSS OR INTERRUPTION OF BUSINESS), WHETHER BASED ON CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER LEGAL THEORY, REGARDLESS OF WHETHER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND IRRESPECTIVE OF THE NUMBER OR NATURE OF CLAIMS.

**9.6 RISK ALLOCATION.** THE TERMS WITHIN THIS SECTION 9 REFLECT AN AGREED-UPON ALLOCATION OF RISK BETWEEN THE PARTIES SUPPORTED BY (AMONG OTHER THINGS) THE PRICING AGREED TO BETWEEN THE PARTIES, AND THIS ALLOCATION IS A FUNDAMENTAL PART OF THE BASIS OF THE BARGAIN BETWEEN THEM. THE LIMITATIONS UPON DAMAGES AND CLAIMS SET FORTH IN THIS SECTION 9 ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE BEEN HELD TO BE INVALID OR INEFFECTIVE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

## **10. PROFESSIONAL SERVICES**

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**10.1 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 Client the non-exclusive, non-transferable right to use the Deliverables for Client's internal use on the same terms and conditions under which Mapp grants Client the right to use the Mapp Services hereunder. Mapp may provide similar services or Deliverables to other persons so long as Mapp does not infringe Client's intellectual property rights. Deliverables are not covered by Mapp's standard support and maintenance unless otherwise agreed to by the Parties in an SOW. Any costs associated with modifying a Deliverable due to an upgrade or update to software shall be the Client's responsibility.

**10.2 Client Delays.** If Client causes any delays, such delays may affect the cost, schedule, services and/or Deliverables for the project. Mapp will inform Client when such delays result in a material increase in Mapp's project costs. Mapp may elect to invoice Client for Professional Services Mapp has had to re-perform or for resources Mapp has been unable to reasonably and productively deploy due to the delay.

**10.3 Service Requirements.** If applicable, Client will provide Mapp personnel and subcontractors with safe and reasonable access to working space, network and internet access and local telephone extensions, computer resources and other necessary physical facilities as required. Client will provide at its expense high-speed connectivity and appropriate security access to any Mapp personnel working on the project from remote locations. Client will maintain and operate the hardware, software, and data environment required to support the solution to which the Professional Services and Deliverables relate and provide use of this environment to Mapp personnel and subcontractors as required. Unless the SOW specifies otherwise, Client 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.

**10.4 Client Responsibilities.** Client is responsible for the selection and implementation of controls on access, use, and security of stored data (including, but not limited to, Personal Data). Client 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 Client.

**10.5 Professional Service Fees.** All fees for Professional Services shall be agreed to in the applicable SOW. Except as expressly provided in the SOW: (a) any rates for Professional Services which are not utilized by Client 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 SOW or they will lapse and will not be reimbursed. Any monthly allotment of hours for services, as stated in the applicable SOW, may be used only during the month in which such hours were intended, and may not be carried forward to subsequent months. Client will not be entitled to a credit for any unused hours for a given calendar month. All travel and out-of-pocket expenses pre-approved by Client and incurred by Mapp personnel in connection with the performance of the Agreement shall be reimbursed by Client; all expenses not billed directly to Client shall be submitted for reimbursement together with original vendor receipts.

**10.6 Cancellation or Planned Delay.** Should Client choose to cancel or delay the delivery of Professional Services, Client 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.

## **11. DELIVERY**

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**11.1 Delivery Requirements.** Mapp Services shall not be subject to any acceptance testing but will be considered accepted upon delivery. Subscription Services shall be considered delivered when the basic setup has been completed and Client is provided with login data. Support and Maintenance shall be considered delivered on a monthly prorated basis.

**11.2 Client Requirements.** Client shall provide Mapp with all necessary cooperation, information, data, files, material etc. in advance to allow Mapp to carry out its contractual obligations and to deliver the Mapp Services under the SOW. In the event of a delay caused by Client, Mapp shall be excused of its performance but solely to the extent caused by the delay and only until such delay is resolved. Mapp shall notify Client of such delays.

## **12. MISCELLANEOUS**

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**12.1 Dispute Resolution.** The Parties agree that all disputes arising out of the terms of the Agreement shall be subject to binding arbitration to take place in the city where the contracting Mapp entity is located and governed by the laws of such city's state and/or country without regard to any conflicts of laws provisions therein. The Parties agree the prevailing Party in any arbitration shall be entitled to injunctive relief in any court of competent jurisdiction to enforce the arbitration award. The prevailing Party shall be entitled to recover attorneys' fees and other fees incurred in connection with the arbitration. The Parties specifically disclaim application of the United Nations Convention on the International Sale of Goods, 1980.

**12.2 Notices.** Any legal notice required or permitted under the Agreement shall be sufficiently given by Client to Mapp if delivered by express courier or by certified mail, return receipt requested, to the attention of the Legal Department at the address set forth in the Agreement and sent to the following email address: [Legal@Mapp.com](mailto:Legal@Mapp.com). Any legal notice required or

permitted under the Agreement shall be sufficiently given by Mapp to Client by use of the address specified in the Agreement which may include electronic mail, postal mail or express courier.

**12.3 Irreparable Harm.** Each Party acknowledges that its breach of the Agreement would cause irreparable injury to the other for which monetary damages are not an adequate remedy. Accordingly, a Party shall be entitled to seek injunctive relief and other equitable remedies in the event of a breach of the terms of the Agreement, without the necessity of posting a bond in connection therewith. The availability of injunctive relief shall be a cumulative, and not an exclusive, remedy available to the Parties.

**12.4 Non-Waiver/Severance.** No waiver of any provision of these T&C shall: (a) be effective unless made in writing, or (b) be construed to be a continuing waiver of such provision. Nor shall any failure to enforce any term of these T&C constitute a waiver of future enforcement of that or any other term. In the event any portion of these T&C is held to be invalid or unenforceable, such portion shall be construed as nearly as possible to reflect the original intent of the Parties, or if such construction cannot be made such provision or portion thereof shall be severable from the T&C and shall not affect in any respect whatsoever the remainder of the T&C.

**12.5 Subcontracting/Assignment.** Client will not assign the Agreement, or its rights or obligations hereunder, without Mapp's prior express written consent. Mapp may, at its discretion, engage the services of subcontractors or agents to assist Mapp in the performance of its obligations, and will be responsible for the acts and omissions of such subcontractors and agents. For the avoidance of doubt, any subcontractor which is also considered a sub-processor will be engaged in accordance with the applicable DPA. Employees of Mapp Affiliates shall not be considered subcontractors for the purposes of the Agreement and shall be engaged as necessary to fulfill the obligations of the Agreement. Notwithstanding the foregoing, either Party may assign the Agreement in its entirety, without consent of the other Party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

**12.6 Non-solicitation.** To the extent permitted by applicable law, during the Term of the Agreement and for a period of one (1) year after the termination of the Agreement, Client agrees it shall not knowingly solicit or attempt to solicit, either as an employee or contractor, any of Mapp's employees who are key to Mapp's performance of its obligations under the Agreement. Both Parties acknowledge that a breach of this [Section 12.6](#) is a material breach not subject to cure, therefore giving Mapp the immediate right to terminate the Agreement.

**12.7 Publicity.** Neither Party may issue any press release regarding the subject matter of the Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Client gives its approval and consent for Mapp to include Client's name and/or logo in their client lists and refer to Client on its website, in marketing materials and business conversations as a client.

**12.8 No Third-Party Beneficiaries.** The Agreement is made solely for the benefit of the Parties to the Agreement and their respective permitted successors and assigns. The terms, representations, warranties, and covenants of the Parties set forth in the Agreement are not intended for, nor shall they be for the benefit of or enforceable by, any other person or entity, including without limitation Authorized Users.

**12.9 Entire Agreement; Modifications.** The Agreement includes these T&C, the DPA, all applicable SOW's and any exhibits, appendices and other documents referred to herein including, but not limited to, the AUP, the SLA and any other Mapp applicable policy. The Agreement contains the entire agreement of the Parties relating to the subject matter hereof, and supersedes any prior or contemporaneous agreement, discussion or undertaking, whether written or oral, related hereto. The terms of the AUP may be modified by Mapp from time to time, in its sole discretion, in the event of: (a) a change required by addition or modification to applicable law, rule or regulation, or (b) adherence to changes in industry standards or to corporate best practices. Any such changes will be emailed to Client and/or posted on the Mapp website by Mapp no less than fourteen (14) calendar days prior to implementation of changes to the AUP. Any use of the Mapp Services after receipt of such notice shall be deemed to be continued acceptance of the revised terms of the AUP.

If Client uses Mapp Services prior to signing a DPA, Mapp's standard DPA terms, which can be found on [www.mapp.com/contracts](http://www.mapp.com/contracts), shall apply. Except as otherwise set forth above, no other amendments, additions or modifications to the Agreement shall be valid or binding unless expressly agreed to in writing and physically signed by the Parties.

**12.10 Export Compliance.** Client represents and covenants that it shall, and shall cause any Authorized Users to, comply with all relevant export control laws and regulations of the countries in which Mapp and Client conduct business ("**Export Control Laws**") that may apply to Client's business, products or services. Mapp's policy is to not provide information, documentation or to participate in any way with a foreign boycott-related request that would violate anti-boycott laws, rules and/or regulations. Client agrees and acknowledges that Mapp shall have the right to immediately terminate the Agreement without penalty if it determines that Mapp is unable to engage in business with Client under applicable Export Control Laws or Mapp's territorial restrictions for permitted commerce, including without limitation restricted parties which can be found on the applicable government website ("**Restricted Parties**"). Client further represents and covenants that it shall cause its Authorized Users to not utilize the services provided by Mapp or any Mapp software or systems, directly or indirectly, either (a) for the sale, resale or distribution of products or materials which are intended for a prohibited end-use, (b) to engage in any transaction with an individual or entity located in an embargoed or sanctioned country in violation of applicable Export Control Laws, (c) to engage in any transaction with an individual or entity who has been designated on one or more Restricted Parties, or (d) in any other manner which would constitute a violation of applicable Export Control Laws. Client's obligations under this paragraph shall be considered material obligations.

**12.11 Other.** Except for payment obligations hereunder, neither Party shall be in breach of the Agreement in the event it is unable to perform its obligations as a result of natural disaster, war, emergency conditions, labor strike, acts of terrorism, the substantial inoperability of the Internet, the inability to obtain supplies, or any other reason or condition beyond its reasonable control. Each Party is an independent contractor of, and is not an employee, agent or authorized representative of, the other Party. The Agreement shall not in any respect whatsoever be deemed to create a partnership, joint venture, or other business combination between Mapp and Client. Except as may be expressly provided in the Agreement, neither Party shall have the right, power or authority to act or create any obligation, express or implied, on behalf of each other. Notwithstanding any applicable statute of limitations, the Parties agree that any claims for breach of the Agreement shall be brought by a Party within two (2) years of the date that Party first has notice of the existence of such breach. No provisions in either Party's purchase orders or other business forms shall modify, supersede or otherwise alter the terms of the T&C. The Parties acknowledge and agree that the Agreement has been negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party based on draftsmanship of the Agreement or otherwise. Headings are for reference purposes only and shall not affect the meaning or interpretation of the T&C. Any reference to a section shall refer to all subsections of that section unless otherwise stated.

**12.12 Electronic Signatures.** CLIENT HEREBY AGREES TO: (1) THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS AND OTHER DOCUMENTS; AND (2) TO ELECTRONIC DELIVERY OF NOTICES, POLICIES AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED THROUGH THE MAPP SERVICES.