

TERMS AND CONDITIONS FOR MADCAP SOFTWARE, INC. ONLINE SERVICES

THESE TERMS AND CONDITIONS GOVERN THE USE OF MADCAP SOFTWARE ONLINE SOFTWARE AND SERVICES. BY USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT WISH TO BE BOUND BY THIS AGREEMENT, MADCAP SOFTWARE IS NOT WILLING TO GIVE YOU A LICENSE TO USE THE SERVICES AND YOU MAY NOT USE OR ACCESS THE SERVICES.

1. **Definitions.** For purposes of this Agreement:

“**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control by either party. For purposes of the preceding sentence, “control” means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

“**Agreement**” means these Terms and Conditions for Madcap Software, Inc. Online Services together with the Order.

“**Aggregated Data**” has the definition provided in Section 6.5.

“**Authorized Persons**” means an individual or entity that is authorized by You to use the Services, or to whom You (or Madcap Software at Your request) have supplied a license key, user identification and password. Authorized Persons may include, for example, Your employees, consultants, and contractors.

“**Confidential Information**” has the definition provided in Section 5.1.

“**Discloser**” has the definition provided in Section 5.1(a).

“**Documentation**” means the published user manuals, whether in print or electronic form, or on-line help functions for the Services, as updated from time to time.

“**Law**” means any local, state, national and/or foreign law, treaties, and/or regulations applicable to a respective party.

“**Madcap Software**” means Madcap Software Inc. and its Affiliates.

“**Madcap Software Technology**” means Madcap Software proprietary technology, including the Services, software, copyrights, trademarks, patents, trade secrets, software tools, algorithms, user interface designs, architectures, products, documentations, the designs and schema for any network or system connectivity and related intellectual property worldwide and whether in printed, written, electronically reproduced or any other form and whether owned by Madcap Software or any Supplier or licensed to Madcap Software or any Supplier and all enhancements, derivatives, improvements, modifications or extensions of such technology conceived, reduced to practice or developed during the term of this Agreement.

“**Order**” means any document or webpage order form which is utilized by You to purchase a Service subscription, including any such document or webpage used to subscribe for a Trial Version.

“**Recipient**” has the definition provided in Section 5.1(a).

“**Service**” or “**Services**” means the Services provided by Madcap Software to You under an Order.

“**Services Fee**” means the fee Madcap Software charges to You for the Services that is detailed in the Order.

“**Supplier**” means any person or entity contracted by Madcap Software that provides services, materials, products, or supplies in connection with the Services. Madcap Software may change Suppliers at its sole discretion. Madcap Software is responsible for its Suppliers’ compliance with this Agreement.

“**Term**” means the initial Subscription Term together with all renewal Subscription Terms.

“**Termination Notice**” means an electronic or written notice by one party to the other of the intent to terminate the Services in accordance with the terms of this Agreement.

“**Trial Version**” means a version of the Services, so identified, to be used only to review, demonstrate and evaluate the Services for a limited time period. The Trial Version may have limited features, scrambled output, may lack the ability for the end-user to save content or work product, and will cease operating after a predetermined amount of time due to an internal mechanism within the Trial Version.

“**You**” means the person or entity that is subscribing to the Services. If such subscriber is an entity, the person subscribing to the Services on behalf of the entity represents and warrants that he or she is authorized to subscribe to the Services and accept the terms of this Agreement on behalf of the entity.

“**Your Content**” means the electronic data, content or information submitted by You or Authorized Persons to the Services.

2. Your Use of the Services

2.1 Provision of the Services. Madcap Software will make available to You on a subscription basis for the Term the Services pursuant to this Agreement and the Order. Services are designed to be available 24/7 subject to maintenance, although there is no specific warranty regarding uptime or system availability. Madcap Software will announce scheduled maintenance. Madcap Software will, as part of providing the Services, apply any update, bug fix or upgrade to the Services that it makes generally available to its customers of the Services. Services are subject to usage limits, including for example, the quantities specified in the Order. Madcap Software will comply with all Laws applicable to it in connection with its provision of the Services to You.

2.2 Your Obligations. You may enable access to the Services for use only by Authorized Persons solely for the internal business purposes of You and your Affiliates in accordance with this Agreement and not for the benefit of any third parties. You are responsible for all Authorized Persons’ use of the Services and compliance with this Agreement. You shall: (a) have sole responsibility for the accuracy, quality, and legality of all Your Content that is transmitted or otherwise provided to Madcap Software and the means by which You acquired Your Content; (b) ensure that Your employees receive all required disclosures and appropriate training concerning the use of the Services; (c) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Madcap Software promptly of any such unauthorized access or use; and (d) use the Services(s) only in accordance with this Agreement, the Documentation and the applicable Law. You shall not: (i) use the Services in violation of applicable Laws and regulations; (ii) in connection with the Services, send or store

infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights. You shall be liable for the acts and omissions of all Authorized Persons and You Affiliates relating to this Agreement.

3. Your Content. System infrastructure and network equipment are operated by third parties for Madcap Software. During the Term of this Agreement, Madcap Software shall obtain such services only from providers that establish, implement and maintain commercially reasonable administrative, physical and technical measures that are designed to protect the security and integrity of Your Content, and that are reasonably appropriate to the risks represented by the processing and nature of the provided content and data to be protected, and designed to guard against the accidental or unauthorized access, use, loss or disclosure of content and data while it is on Madcap Software provided network and systems. You understand that You have an independent duty to comply with any and all Laws applicable to You in connection with its provision of Your Content to Madcap Software in connection with the Services.

4. Fees and Payment.

4.1 Services Fees. The Services Fees for Your subscription shall be stated in the Order. Madcap Software will also invoice You when You add any enhanced or additional Services or if You have increased usage by exceeding the users, content parameters (or other metric or stated usage assumption described in the Order), as applicable, beyond those stated in the Order. For the first 30 days of Your subscription, You may cancel your Subscription for a full refund by delivering a Termination Notice to Madcap Software during such period. Thereafter, You may cancel, change or downgrade Your subscription, however no refunds will be given for any amounts previously paid for Your subscription. Cancellation or downgrade shall not affect any amounts that are due and unpaid for any Subscription Term.

4.2 Payment Terms. The Services Fees will be due as stated in the Order or invoice and are payable in advance at the beginning of billing term or if applicable, following completion of a Trial Version. Madcap Software is entitled to charge interest on any sum that is not paid when due at a monthly rate of 1.5% or lesser maximum allowable. If You choose an autopay option, You hereby authorize Madcap Software to collect payments due from Your credit card or from your account debited through ACH debit as indicated by you in any Order, invoice, webpage or other payment authorization form submitted from You. Madcap Software may temporarily suspend Your access to the Services if a Services Fee cannot be charged and the period of suspension shall not extend the Subscription Term.

4.3 Taxes. Excluding taxes based on Madcap Software' income, You are liable for all taxes relating to the Services, except to the extent You have provided Madcap Software with a valid tax exemption or direct pay certificate.

5. Confidentiality

5.1 Confidential Information Defined.

(a) **“Confidential Information”** means all information disclosed by a party (“Discloser”) to the other party (“Recipient”), orally or in writing, designated as confidential or

that reasonably should be understood to be confidential given the nature of the information and circumstance of disclosure. Your Confidential Information includes Your Content; Madcap Software Confidential Information includes the Services and Documentation; and Confidential Information of each party includes the terms of this Agreement and the Order (including signed order forms and supplements entered under this Agreement), each party's proprietary technology and technical information, business processes and technical product information, product plans and designs, issues, and all communication between the parties regarding the Services.

(b) Exclusions. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the other party; (ii) was known to a party prior to its disclosure by the other party without breach of any obligation owed to the other party; (iii) was independently developed by a party without breach of any obligation owed to the other party; (iv) is received from a third party without breach of any obligation owed to the other party; or (v) is Aggregated Data as described further in Section 6.5.

5.2 Confidentiality Obligations. During the course of the parties' relationship, each party may have access to Confidential Information of the other party. Neither party shall disclose any Confidential Information of the other party, orally or in writing, to any third party without the prior written consent of the other party, except as provided in this Agreement. The parties shall protect each other's Confidential Information using commercially reasonable administrative, physical and technical safeguards. Neither party shall use the other party's Confidential Information for any purpose other than lawful performance of this Agreement.

5.3 Disclosure to Third Parties and as Required by Law. Recipient may provide access to and use of Discloser's Confidential Information only to those third parties that: (a) provide services to Recipient concerning Recipient's use of Discloser's Confidential Information; (b) have a need to use and access the Confidential Information; and (c) have agreed to substantially similar non-disclosure obligations as those contained in this Agreement. Recipient shall be responsible for the use by its third parties of the Discloser's Confidential Information. To the extent Recipient may be required by Law to disclose Confidential Information, Recipient may make such disclosure, provided that Recipient (i) to the extent permitted by Law, notifies Discloser of such requirement prior to disclosure and (ii) makes diligent efforts to avoid and limit disclosure. Notwithstanding Recipient's conformance with the procedures set forth in the prior sentence, the disclosure required by Law shall not itself cause the information to lose its confidential character unless the information ceases to be Confidential Information as a result of one of the reasons specifically set forth in Section 5.1(b) above.

5.4 Injunctive Relief and other Remedies. Each party understands that Confidential Information constitutes valuable business assets of Discloser and its disclosure may irreparably harm Discloser. In the event of breach or threatened breach of obligations pertaining to Confidential Information by Recipient, Discloser shall be entitled to seek injunctive relief. Any other potential remedies related to a breach of this section for Confidential Information that does not include Your Content are subject to all other provisions in this Agreement.

6. Proprietary Rights

6.1 Ownership and Reservation of Rights to Madcap Software Technology. Madcap Software and its licensors own all right, title and interest in and to the Services, Documentation, and other Madcap Software Technology, as well as any modifications that are derivative works thereof. Subject to the limited rights expressly granted hereunder, Madcap Software reserves all rights, title and interest in and to the Services, and Documentation, including all related common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honored or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto. No rights are granted to You hereunder other than as expressly set forth herein.

6.2 Ownership of Your Content. As between Madcap Software and You, You own Your Content.

6.3 License Grant. Madcap Software hereby grants You a non-exclusive, non-transferable right to use the Services and Documentation solely during the Term, subject to the terms and conditions of this Agreement within scope of use defined in the Order.

6.4 License Restrictions. You shall not (i) modify, copy or create any derivative works based on the Services or Documentation; (ii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer in a service bureau, or otherwise make the Services or Documentation available to any third party, other than to Authorized Persons as permitted herein; (iii) reverse engineer or decompile any portion of the Services or Documentation, including but not limited to, any software utilized by Madcap Software in the provision of the Services and Documentation, except to the extent required by Law; or (iv) copy any features, functions, integrations, interfaces or graphics of the Services or Documentation.

6.5 Aggregated Data Use. Without limiting the confidentiality rights and protections set forth in this Agreement, Madcap Software owns and has the perpetual right to use for its business and or operating purposes the aggregated and statistical data derived from the operation of the Services, including, without limitation, the number of records in the Services, the number and types of transactions, configurations, content and reports processed in the Services and the performance results for the Services (the “Aggregated Data”). Nothing herein shall be construed as prohibiting Madcap Software from utilizing the Aggregated Data for purposes of operating Madcap Software’s business, provided that Madcap Software’s use of Aggregated Data will not reveal the identity, whether directly or indirectly, of any individual or specific data entered by any individual into the Services. In no event does the Aggregated Data include any Your Confidential Information, Your Content or any information that personally identifies a specific individual.

7. Term, Termination, Suspension, and Dispute Resolution

7.1 Term. Your subscription for the Services and this Agreement shall commence as of the effective date of the Order and end upon expiration of the Subscription Term stated in the Order, unless You have opted for auto-renewal in the Order. If you have opted for auto-renewal,

your subscription shall automatically renew for consecutive periods equal in length to the initial Subscription Term unless either party provides the other party with a thirty (30) day Termination Notice prior to the expiration of the then current Subscription Term. Notwithstanding the foregoing, the term for a Trial Version shall expire thirty (30) days from inception unless otherwise stated in the Order, and shall not renew. Subscription following expiration of a Trial Version shall not continue unless You pay the required Fees.

7.2 Termination or Suspension for Default. Either party may terminate this Agreement if the other party breaches any material term of this Agreement and does not cure such material breach within thirty (30) of receiving a Termination Notice. In addition, Madcap Software may suspend Your access to the Services in the event of actual or suspected unauthorized use of the Services, or use of the Services in violation of the terms of this Agreement.

7.3 Effect of Expiration or Termination. When this Agreement is terminated, You shall pay all money due to Madcap Software for Services rendered up to the expiration or termination date and any payments that may become due pursuant to this Agreement subsequent to such expiration or termination. You also agree to immediately stop using the Services and accessing the Software upon expiration or termination of the Agreement and both parties agree to stop using the Confidential Information of the other party and to return or destroy (at the party's discretion) all the copies of the other party's Confidential Information. To the extent the Recipient is required to keep a copy of any of the Discloser's Confidential Information as required by Law, the Recipient shall continue to treat such Discloser's Confidential Information as Confidential Information in accordance with the terms of this Agreement.

8. No Warranties Except as Expressly Provided in an Order

8.1 OTHER THAN THE EXPRESS WARRANTIES OTHERWISE PROVIDED IN THIS AGREEMENT, IF ANY, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MADCAP SOFTWARE MAKES NO WARRANTIES OF ANY KIND UNDER THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF NONINFRINGEMENT, TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MADCAP SOFTWARE PROVIDES NO REMEDIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, FOR ANY TRIAL VERSION. ANY TRIAL VERSION IS PROVIDED "AS IS".

8.2 MADCAP SOFTWARE DOES NOT WARRANT THAT THE SERVICE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON YOU UNLESS EXPRESSLY GRANTED HEREIN. MADCAP SOFTWARE IS NOT RESPONSIBLE FOR ANY CONTENT CREATED USING THE SERVICE. FURTHERMORE, IF THE SERVICE ENABLES YOUR USERS OR OTHER THIRD PARTIES TO ADD COMMENTS, ATTACHMENTS OR OTHER CONTENT TO AN INSTANCE OF THE SERVICE OPERATED BY YOU, YOU WILL BE RESPONSIBLE FOR MODERATING AND CONTROLLING SUCH CONTENT AND YOU ASSUME THE RISK OF ALL CONTENT THAT IS ADDED BY SUCH PARTY. MADCAP SOFTWARE SHALL

HAVE NO RESPONSIBILITY OR LIABILITY WITH RESEPECT TO ANY SUCH CONTENT OR ITS EFFECTS.

9. Intellectual Property Infringement Indemnification.

9.1 Madcap Software will defend or settle, at its option and expense, any action brought against you alleging that the Services infringe a validly issued patent or copyright. Madcap Software will pay costs and damages finally awarded against you that are attributable to the infringement action. You understand that as conditions of Madcap Software's obligations under this section, you must (a) notify Madcap Software promptly in writing of the action; (b) provide Madcap Software all reasonable information and assistance to settle or defend the action; and (c) grant Madcap Software sole authority and control of the defense or settlement of the action.

9.2 If an infringement claim is made, Madcap Software may at its sole option and expense either: (a) replace or modify the Services so that it becomes non-infringing; or (b) procure for you the right to continue using the Services. If in Madcap Software's sole opinion neither of the foregoing alternatives is financially practicable or otherwise reasonably available, Madcap Software may terminate this Agreement and refund to You prepaid unearned Services Fees.

9.3 Madcap Software shall have no liability to the extent the alleged infringement is based upon: (a) the combination of the Services with any product not furnished by Madcap Software to you; (b) the modification of the Services other than by Madcap Software; (c) the use of the Services as part of an infringing process; or (d) any product published, designed or marketed by you or any end-user.

9.4 You shall indemnify and hold harmless Madcap Software and its licensors, against any and all damages, costs and fees, including reasonable attorney's fees, arising out of or relating to any claims or threatened claims: (a) that Your use of the Services in breach of this Agreement infringes or misappropriates any third party's intellectual property rights; (b) that the Services are used by You in connection with any illegal activity; or (c) based on misrepresentations made by You.

9.5 In no event shall Madcap Software's liability for indemnification under this section exceed an amount equal to Services Fees paid. This Section 9 states Madcap Software's and its licensors' entire liability and the sole, and your exclusive remedy, with respect to any alleged intellectual property infringement by the Services.

9.6 Entire Indemnification. This Section 9 sets forth each party's liability and the other party's sole and exclusive remedy for indemnification related to a Third Party Intellectual Property Claim Against You or a Third Party Intellectual Property Claim Against Madcap Software.

10. LIMITATION OF LIABILITY

10.1 NEITHER MADCAP SOFTWARE NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL,

PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICES AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF MADCAP SOFTWARE OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

10.2 MADCAP SOFTWARE'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT OF SERVICES FEES PAID BY YOU IN THE 12 MONTH PERIOD PRECEDING THE EVENTS CAUSING THE CLAIM FOR DAMAGES.

10.3 THE FOREGOING LIMITATIONS ON LIABILITY ARE INTENDED TO APPLY TO THE WARRANTIES AND DISCLAIMERS ABOVE AND ALL OTHER ASPECTS OF THIS LICENSE AGREEMENT, BUT DO NOT LIMIT YOUR SERVICE FEE PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

10.4 THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS OF DAMAGES APPLY REGARDLESS OF THE FORM IN WHICH AN ACTION (LEGAL, EQUITABLE OR OTHERWISE) IS BROUGHT, WHETHER IN CONTRACT, TORT, OR OTHERWISE. THE LIMITATIONS OF LIABILITIES, DISCLAIMERS OF WARRANTIES, EXCLUSIVITY OF REMEDIES, AND OTHER LIMITATIONS SET FORTH HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES (WITHOUT WHICH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT WOULD NOT OCCUR) AND WILL APPLY EVEN IF A REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

11. Miscellaneous

11.1 Notices. All notices required or permitted by this Agreement shall be in writing and shall be effective upon delivery to You at Your address stated in the Order or to Madcap Software at 7777 Fay Avenue, La Jolla, CA, 92037, Attention: Support.

11.2 Assignment. Subject to Madcap Software's right to utilize Suppliers to supply all or part of the Services, neither party shall assign or transfer any of its rights or delegate any of its duties under this Agreement, whether by operation of law, as a result of a change of control or otherwise, without the other party's prior written consent, which consent the other party shall not unreasonably withhold, delay or condition, and any purported assignment or transfer shall be null and void. Notwithstanding the above, either party may assign the Agreement as part of a general assignment to a successor-in-interest who is not a direct competitor of the non-assigning party without the other party's prior written consent.

11.3 Survivability. The terms of this Agreement, which by their nature one would reasonably intend to survive this Agreement shall survive it, including terms addressing fees (Section 4), confidentiality (Section 5), ownership (Section 6), termination (Section 7),

warranties (Section 8), indemnity (Section 9), limitation of liability (Section 10), and the applicable miscellaneous sections in Section 11.

11.4 Law and Jurisdiction. California law shall govern this Agreement, excluding its conflict of laws provisions. The provisions of any federal or state Uniform Computer Information Transactions Act shall not apply. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. The federal and state courts in the Southern District of California shall have exclusive jurisdiction with respect to any action arising out of, relating to or in any way connected with this Agreement, its negotiation or termination, or the Services.

11.5 Section Headings. The Section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.

11.6 Force Majeure. Except for Your obligation to pay Madcap Software or to assume obligations for taxes, neither party shall be liable for any failure to perform due to causes beyond its reasonable control, such as war, terrorism, civil commotion, Internet service interruptions or slowdowns, vandalism or “hacker” attacks, or governmental demands or requirements.

11.7 Severability. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.

11.8 Waivers. The failure by a party to exercise or enforce any right hereunder shall not operate as a waiver of such party’s right to exercise or enforce such right or any other right in the future.

11.9 Publicity. Madcap Software may add Your name and logo to Madcap Software’s published list of customers so as long as You continues to be a subscriber of the Services.

11.10 Modifications, Additional Terms, Entire Agreement, Amendment. No purchase order or other document that purports to modify or supplement this Agreement shall add to or vary the terms of this Agreement. All proposed variations or additions, whether submitted by Madcap Software or You, are objected to and deemed immaterial unless otherwise agreed to in a writing signed by both parties. This Agreement constitutes the entire agreement and understanding between the parties concerning Your access to the Services and may not be modified by custom or usage. This Agreement replaces and supersedes all prior oral or written understandings, communications and representations between the parties with respect to the Services. This Agreement may be amended only by a written document executed by a duly authorized representative of each of the parties.