



## **Mail & Deploy User License Agreement**

Last revised: October 2019

**IMPORTANT: DO NOT DOWNLOAD OR USE Mail&Deploy UNTIL YOU (“Customer”) HAVE READ AND AGREED TO THE TERMS OF THIS AGREEMENT.**

Mail&Deploy HAS NO CONNECTION IN ANY WAY WHATSOEVER; IMPLIES OR OTHERWISE, WITH QLIK INC. The Mail&Deploy Software is a separate, stand-alone product and all rights of the Software are owned by Harrer Unternehmensberatung KG.

BY CHECKING THE ACCEPTANCE BOX, DOWNLOADING, INSTALLING OR OTHERWISE USING THE SOFTWARE OR SUBSCRIPTION SERVICES (“Mail&Deploy”), CUSTOMER ACKNOWLEDGES AND AGREES THAT USE OF Mail&Deploy IS SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. ANY SUCH USE WILL CONSTITUTE CUSTOMER'S ACCEPTANCE AND RESULT IN A BINDING AND LEGALLY ENFORCEABLE AGREEMENT BETWEEN THE CUSTOMER AND Harrer Unternehmensberatung KG, Kollergasse 6 Top 1, 1030 Vienna (“HPartner”), THAT ISSUED THE LICENSE KEY. IF YOU ACCEPT THESE TERMS ON BEHALF OF ANY CORPORATION, PARTNERSHIP OR OTHER ENTITY, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO LEGALLY BIND SUCH ENTITY TO THIS AGREEMENT AND SUCH ENTITY IS DEEMED THE CUSTOMER HEREUNDER

### **1. Use Rights**

#### **1.1. Activation.**

Customers must activate Mail&Deploy with a valid license key or other activation code delivered by HPartner or an Authorized Reseller in order to use and maintain the relevant full functionality of Mail&Deploy. HPartner may, upon notice to Customer, update the method of product activation. Details of the license process and the costs may be found on the Mail&Deploy website available under [www.mail-and-deploy.com](http://www.mail-and-deploy.com).

#### **1.2. Access.**

Subject to the terms of this Agreement, HPartner grants to Customer a world-wide, non-exclusive, non-transferable and non-sublicensable right for its Authorized Users to use Mail&Deploy for Customer's internal business operations. Customer may only use the Software by copying, transmitting or loading it into a single hard disk, CD-ROM or other storage device such that the Customer's computer may process the Software. Customer may make one copy of the Software for back-up purposes, maintaining always the same copyright information as the original. Customer have the right to install the software once.

HPartner further grants to Customer the right to allow Authorized Third Parties to use Mail&Deploy designated for external use in the Documentation, provided such use is solely in connection with Customer's business relationship with the Authorized Third Party. Any use of Mail&Deploy shall be (i) in accordance with the Documentation, and (ii) permitted solely for the term and in the quantities specified in an ordering document. Customer shall be directly responsible for any violations of this Agreement by any party that it allows to access Mail&Deploy.

#### **1.3. Use Restrictions.**

Except as expressly permitted by this Agreement, Customer will not, nor permit or authorize anyone to:

1.3.1. distribute, convey, lend, lease, share, sell, transfer, sublicense, rent, or time share Mail&Deploy, or any of its components or product keys, or permit third parties to download or install any Software;

1.3.2. copy, decompile, disassemble or reverse engineer or otherwise attempt to extract or derive the source code or any methods, algorithms or procedures from the Software, or modify, adapt, translate or create derivative works based upon the Mail&Deploy Products except as otherwise expressly permitted by applicable law;

1.3.3. transfer or reassign a user license in such a manner that enables multiple users to share such license in excess of the authorized quantity of user licenses;

1.3.4. use, offer, embed, or otherwise exploit Mail&Deploy, whether or not for a fee, in any managed service provider (MSP) offering; platform as a service (PaaS) offering; service bureau; or other similar product or offering, including offering standalone Mail&Deploy as a hosted service;

1.3.5. use Mail&Deploy if Customer is a competitor, or use Mail&Deploy in any manner that competes with HPartner, including but not limited to, benchmarking, collecting and publishing data or analysis relating to the performance of Mail&Deploy, or developing or marketing a product that is competitive with any HPartner Product or service;

1.3.6. remove any copyright, trademark or other proprietary notice from Mail&Deploy; or



1.3.7. alter or circumvent any product, key or license restrictions or limitations on Mail&Deploy to exceed purchased quantities or to defeat any restrictions on access or use.

#### 1.4. Mail&Deploy Marks.

For so long as Customer has the right to access and use Mail&Deploy, HPartner grants to Customer a non-exclusive, non-transferable and limited right to use the Mail&Deploy Marks for the sole purpose of promoting any permitted use of Mail&Deploy. Any use of Mail&Deploy Marks must be in compliance with the Mail&Deploy Branding Guidelines available at [info@mail-and-deploy.com](mailto:info@mail-and-deploy.com).

Customer must ensure that the copyright notice of HPartner is duplicated as it appears in or on the Mail&Deploy Software on all authorized copies. Customer shall not display the Software on a public bulletin board, ftp site, website, chat room or by any other unauthorized means.

## 2. Services & Support

2.1. Support and maintenance provided by HPartner for Mail&Deploy ("Support") will be made available to Customer for the term subscribed by Customer ("Support Term") subject to Customer's timely payment of the applicable Support fees or subscription fees.

2.2. Support is included with paid subscriptions of Mail&Deploy. For all paid Mail&Deploy Software other than Software subscriptions, Customer is required to purchase Support with its initial Software purchase for a minimum twelve-month period ("Initial Support Period"). If the maintenance contract is canceled and Mail&Deploy does not work anymore, HPartner will not be entitled to support the Customer for free.

2.3. HPartner will provide e-mail support only, limited to what is considered as reasonably necessary to answer any queries or concerns Customer has in relation to the Software. HPartner will endeavor to respond to the request as quickly as possible but cannot guarantee to provide a response within a specific period of time. In the event that e-mail support is not the appropriate way to solve an upcoming software error, HPartner will get in touch with the Customer via telephone or also via remote access. This will be announced separately to the Customer.

2.4. Where Customer receives Support from an Authorized Reseller, such Support will be provided pursuant to a separate written agreement between Customer and the Authorized Reseller. HPartner will only provide e-mail support in certain limited circumstances for so long as Customer are in possession of a valid License Key for the individual particular Software installation and where the Authorized Reseller cannot provide support.

The Authorized Reseller will be responsible for providing first line support and HPartner takes no responsibility for the reseller's obligations in this regard. Customer agrees and undertakes not to bring any claim against HPartner or otherwise hold HPartner responsible in relation to the support that the Authorized Reseller is obliged to provide.

2.5. HPartner may provide Consulting or Education Services to Customer in accordance with this Agreement, any applicable product descriptions and pursuant to an Order Form or a written Statement of Work.

## 3. Warranties and Disclaimers

### 3.1. Limited Warranty.

With regard to perpetual Software licenses issued under this Agreement the following limited warranty shall apply: HPartner warrants that the initial version of the Software delivered hereunder (but excluding any updates thereto provided as a result of Support) provides the functionalities set forth in the Documentation (the "agreed upon functionalities") for the limited warranty period following the Delivery Date when used on the recommended hardware configuration. As used in this Section, "limited warranty period" means one (1) year. Non-substantial variation from the agreed upon functionalities shall not be considered and does not establish any warranty rights. To make a warranty claim, Customer must notify HPartner in writing during the limited warranty period. If the functionalities of the Software vary substantially from the agreed upon functionalities, HPartner shall be entitled, by way of re-performance and at its own discretion, to repair or replace the Software. If this fails, Customer is entitled to cancel the purchase agreement (rescission).

### 3.2. Limited Subscription Warranty.

With regard to subscriptions issued under this Agreement, the following limited warranty shall apply:

3.2.1. The Parties agree and acknowledge that Mail&Deploy, is provided "without warranty of any kind, express or implied, including but not limited to, the implied warranties of merchantability, satisfactory quality, and fitness for a particular purpose, whereas HPartner shall remedy any defects in kind as part of its ongoing support obligations which are included and fully compensated by the Support Fee. Further, HPartner and its vendors disclaim any warranty that the Customer's use of Mail&Deploy will be uninterrupted or error free. HPartner does not warrant or guarantee that it will correct any errors or inaccuracies in the Software in due time. The Customer's use of Mail&Deploy is solely at its own risk. **THE CUSTOMER IS RESPONSIBLE FOR ENSURING THAT HIS COMPUTER SYSTEM MEETS ALL RELEVANT TECHNICAL SPECIFICATIONS NECESSARY TO**



USE THE SOFTWARE AND IS COMPATIBLE WITH THE SOFTWARE. HPartner IS SOLELY RESPONSIBLE FOR ALL COSTS AND EXPENSES ASSOCIATED WITH RECTIFICATION, REPAIR, LOSS OR DAMAGE CAUSED BY ANY SUCH DEFECTS OR ERRORS.

3.2.2. The Parties agree and acknowledge that the following modifications of Customer's statutory warranty rights shall apply: (a) HPartner shall have no liability for initial material defects of the Software (Sachmängel) regardless of whether they have been caused by HPartner's fault (verschuldensunabhängig); (b) The Customer's (i) right of reduction (Minderung), (ii) set-off and (iii) retention shall be excluded unless, as regards to (ii) and (iii), Customer asserts such rights on the basis of claims that have been asserted by a final court judgment; (c) Any warranty claims of the Customer against HPartner shall become time-barred 12 months after the start of the statutory warranty period; and (d) For the avoidance of doubt, the Parties agree and acknowledge no further warranty period shall apply in regard to updates or upgrades to the Software that HPartner provides during the initial or any renewal term of the subscription licenses. Any damage claim Customer has under an applicable warranty shall be limited by the limitation of liability provision set forth under Section 5 of this Agreement.

THE LIMITED WARRANTIES IN THIS SECTION DO NOT APPLY TO SOFTWARE OR SERVICES PROVIDED TO CUSTOMER FREE OF CHARGE, OR SOFTWARE THAT HAS BEEN ALTERED BY CUSTOMER, OR TO UPDATES PROVIDED UNDER SUPPORT, TO THE EXTENT SUCH ALTERATIONS CAUSED A DEFECT.

#### 4. Payment

##### 4.1. Payment methods.

Details of prices for Mail&Deploy and the procedures for payment are displayed on the Mail&Deploy website available under [www.mail-and-deploy.com](http://www.mail-and-deploy.com). The preferred method of payment is through bank transfer. If Customer wishes to pay by other means, please contact the Mail&Deploy team [info@mail-and-deploy.com](mailto:info@mail-and-deploy.com). A License Key will only be released when full payment has been cleared. Customer undertakes that all details provided to HPartner for the purpose of obtaining a License of Mail&Deploy will be correct. HPartner reserves the right to obtain validation of Customer's payment details before agreeing to license Mail&Deploy.

##### 4.2. Purchase/subscription through Authorized Reseller.

In case Customer purchases/subscribes the Mail&Deploy Software through one of HPartner's Authorized Resellers: (i) Customer will be required to

abide by the reseller's payment terms; a License Key to unlock Mail&Deploy will only be released once the reseller has provided HPartner with Customer's particulars and HPartner has approved them; and (ii) Customer shall indemnify HPartner and keep HPartner fully and effectively indemnified against any and all losses claims, damages costs, expenses liabilities and demands proceedings and actions which Customer may sustain or incur or which may be brought or established by Customer in relation to or by reason of any claim or allegation that the reseller is in breach of any obligation to the Customer under its agreement to sell Mail&Deploy and which are not due to HPartner's negligence recklessness or willful misconduct or any breach of HPartner's obligations under this License.

##### 4.3. Acceptance.

HPartner is entitled to refuse any order placed by Customer. If an order is accepted, HPartner will confirm acceptance by e-mailing the Customer directly or via HPartner's Authorized Resellers the License Key and a link to a portal from where Mail&Deploy can be downloaded. Making the License Key available in this way constitutes performance of HPartner's services.

##### 4.4. Fees.

Customer shall pay any fees due in accordance with the payment terms set forth in the Order Form or Statement of Work. Fees are not subject to any right of offset or suspension and all payments shall be non-cancelable, non-refundable and non-creditable, except as otherwise expressly provided in this Agreement.

Fees for Consulting or Education Services are exclusive of travel costs and other expenses. Fees for Support are payable in advance. If applicable, fees for Support and subscriptions may be prorated to the next billing period. Any proration will not excuse Customer's payment obligation for the remainder of the Initial Support Period.

##### 4.5. Taxes.

Fees do not include sales, use, withholding, value-added or other taxes or duties. Customer agrees to pay all applicable taxes, public fees, duties, deductions or withholdings for which HPartner is required to pay or account, exclusive of any tax on HPartner's income. Customer shall directly pay any such taxes or duties assessed against it, unless Customer provides HPartner in a timely manner with a valid certificate of exemption or other evidence that items are not taxable.

#### 5. Limitation of Liability

5.1. HPartner shall be liable only up to the amount of damages as typically foreseeable at the time of entering into the purchase agreement in respect of damages caused by a slightly negligent breach of a

material contractual obligation (i.e. a contractual obligation the fulfilment of which is essential for the proper execution of this Agreement, the breach of which endangers the purpose of this Agreement and on the fulfilment of which the Customer regularly relies).

5.2. HPartner shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation. The aforesaid limitation of liability shall not apply to any mandatory statutory liability, in particular to liability under the Austrian Product Liability Act, liability for assuming a specific guarantee, liability for damages caused by willful misconduct or gross negligence, or any kind of willfully or negligently caused personal injuries, death or damages to health.

5.3. Customer shall take all reasonable measures to avoid and reduce damages, in particular, to make back-up copies of data on a regular basis and to carry out security checks for the purpose of defending or detecting viruses and other disruptive programs within Customer's IT system.

5.4. Regardless of the grounds giving rise to liability, HPartner shall not be liable for indirect and/or consequential damages, including loss of profits or interest, unless such damage has been caused by HPartner's willful misconduct or gross negligence.

5.5. To the extent HPartner's liability is limited or excluded, the same shall apply in respect of any personal liability of HPartner's legal representatives, employees, suppliers, resellers and vicarious agents.

5.6. For customers with perpetual licenses, only the right to receive Support will end upon termination of the Agreement.

5.7. No Third-Party Beneficiaries - The warranties and other obligations of HPartner under this Agreement run only to, and for the sole benefit of Customer, notwithstanding any rights of Authorized Third Parties to access or use the Software. Except as otherwise mandated by applicable law, no person or entity will be considered a third-party beneficiary of this Agreement otherwise entitled to receive or enforce any rights or remedies in relation to this Agreement.

## **6. Intellectual Property Rights and Infringement Indemnification**

### **6.1. Ownership.**

Customer retains all right, title and interest in and to its proprietary data ("Customer Data") which may be used with Mail&Deploy, including all data that Customer elects to integrate into Mail&Deploy or to display within a dashboard created with the Software. HPartner retains all right, title and interest in and to Mail&Deploy and if applicable, all deliverables resulting from performance of Consulting Services, including all know how, methodologies, designs and improvements to

Mail&Deploy, but excluding any Customer Data incorporated into any such deliverable. HPartner hereby grants Customer a non-exclusive license to use any deliverables or work product that are the result of any Consulting Services in connection with Customer's authorized use of Mail&Deploy.

### **6.2. Retention of Rights.**

Mail&Deploy provided hereunder are licensed, not sold. Except as expressly licensed to Customer hereunder, HPartner, its affiliates, and their respective suppliers or licensors where applicable, reserve and retain all right, title and interest in and to Mail&Deploy and all intellectual property rights embodied therein, as well as all Mail&Deploy Marks. Customer is not obligated to provide HPartner with any suggestions or feedback about Mail&Deploy, but if Customer elects to do so, HPartner may use and modify this feedback for any purpose, including developing and improving Mail&Deploy, without any liability, restriction, or payment to Customer.

### **6.3. Indemnification.**

HPartner shall defend, indemnify and hold Customer harmless from any damages and costs awarded against Customer as a result of a third party claim that the Software, as delivered by HPartner, infringes upon any third party copyright, trademark or a patent ("IP Claim"). Customer shall defend, indemnify and hold HPartner harmless against any third party claim, demand, suit or proceeding made or brought against HPartner alleging that Customer's external use of Mail&Deploy pursuant to Section 1.2 infringes upon any third party copyright, trademark or patent to the extent any such infringement arose from the Customer's combination of Mail&Deploy with any data, services or software not provided by HPartner ("Customer Claim"). Each party's indemnification obligation is subject to: (i) prompt notification of a claim in writing to the indemnifying party; (ii) consent to allow the indemnifying party to have sole control of the defense and any related settlement negotiations; and (iii) provision of information, authority and assistance as necessary for the defense and settlement of the IP Claim or Customer Claim.

### **6.4. Exceptions.**

HPartner will not be liable for any IP Claim arising from or based upon: (i) any unauthorized use, reproduction or distribution of the Software; (ii) any modification or alteration of the Software without the prior written approval of HPartner; (iii) use of the Software in combination with any other software, hardware, third party data or other materials not provided by HPartner; (iv) use of a prior version of the Software, if use of a newer version of the Software would have avoided such claim and such newer version is made available without charge; or (v) any Third Party Materials provided with the Software.

#### 6.5. Remedies.

If the Software becomes, or, in HPartner's opinion, is likely to become, the subject of an IP Claim, HPartner may, at its option and expense, either: (i) obtain the right for Customer to continue using the Software in accordance with this Agreement; (ii) replace or modify the Software so that it becomes non-infringing while retaining substantially similar functionality; or (iii) if neither of the foregoing remedies can be reasonably effected by HPartner, terminate the license(s) for the subject Software (without need for a ruling by a court or arbitrator) and refund as applicable a pro rata portion of prepaid subscription fees, or license fees amortized over three (3) years on a straight-line basis, provided that such Software is returned to HPartner promptly after the effective date of any such termination.

#### 6.6. SOLE AND EXCLUSIVE REMEDY.

CUSTOMER'S STATUTORY CLAIMS FOR DAMAGES SHALL REMAIN UNAFFECTED, PROVIDED, HOWEVER; THAT ANY SUCH CLAIMS SHALL BE LIMITED BY THE LIMITATION OF LIABILITY AS SET FORTH HEREUNDER. THIS SECTION 6 STATES HPartner's SOLE AND ENTIRE OBLIGATION AND LIABILITY, AND CUSTOMER'S AND ITS AFFILIATES' SOLE AND EXCLUSIVE RIGHT AND REMEDY, FOR INFRINGEMENT OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS

#### 7. Confidentiality

Each Party will hold in confidence the other Party's Confidential Information and will not disclose or use such Confidential Information except as necessary to exercise its express rights or perform its express obligations hereunder. Any Party's disclosure of the other Party's Confidential Information may be made only to those of its employees or consultants who need to know such information in connection herewith and who have agreed to maintain the Confidential Information as confidential as set forth herein.

Notwithstanding the foregoing, a Party may disclose the other Party's Confidential Information to the extent that it is required to be disclosed in accordance with an order or requirement of a court, administrative agency or other governmental body, provided that such Party, to the extent permitted by law, provides the other Party with prompt notice of such order or requirement in order that it may seek a protective order. Each Party's confidentiality obligations hereunder will continue for a period of three (3) years following any termination of this Agreement, provided, however, that each Party's obligations will survive and continue in effect thereafter with respect to, and for so long as, any Confidential Information continues to be a trade secret under applicable law. The Parties acknowledge and agree that Mail&Deploy and all pricing information shall be treated as the Confidential Information of HPartner.

Customer will maintain reasonable access controls and system security to safeguard Mail&Deploy from access or use by any unauthorized person.

#### 8. Term and Termination

##### 8.1. Term.

This Agreement shall become effective as of the date the Parties execute an Order Form and shall remain in effect until terminated (i) as set forth in Section 8.3 below, or (ii) automatically upon expiration of all rights to use Mail&Deploy pursuant to one or more Order Forms. Unless otherwise specified in a Statement of Work, either Party may terminate any Consulting Services for convenience upon thirty (30) days' prior written notice to the other Party.

##### 8.2. Renewal.

###### 8.2.1. Support.

Support shall automatically renew for additional annual Support Terms unless Customer provides HPartner with written notice of non-renewal at least ninety (90) days prior to the end of the then-current Support period. Support fees for any renewal period are subject to increase, provided (i) HPartner notifies Customer of such fee increase at least sixty (60) days prior to the end of the then-current Support Term; and (ii) the increase does not exceed five percent (5%) of the Support fees for the then-current period.

###### 8.2.2. Subscriptions.

Unless otherwise indicated on an Order Form, subscriptions shall automatically renew for successive annual terms unless either Party provides prior written notice of non-renewal to the other Party at least ninety (90) days prior to the end of the then-current subscription period. Subscriptions may not be cancelled in whole or in part during any subscription period. Subscription fees are subject to increase based upon prevailing rates at the time of renewal.

##### 8.3. Termination for Breach or Insolvency.

Either Party may terminate this Agreement or any applicable Order Form, individual Software licenses, subscriptions or Statements of Work (without resort to court or other legal action) if the other Party fails to cure a material breach within thirty (30) days (ten (10) days in the case of non-payment by Customer) after written notice of such breach, provided that HPartner may terminate this Agreement immediately upon any breach of Section 1.4. HPartner may terminate this Agreement if Customer terminates or suspends its business without a successor or becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.



If Mail&Deploy is purchased through an Authorized Reseller, HPartner may terminate any right to use Mail&Deploy pursuant to this Section in the event HPartner fails to receive payment for such Products.

#### 8.4. Effect of Termination.

Unless earlier terminated, Customer's rights with respect to Mail&Deploy and associated Services, including any related Software license or subscription, will end upon termination of this Agreement or expiration of any applicable subscription or term. Unless earlier terminated, Customer's right to receive Support will end upon termination of this Agreement or expiration of the Support Term. Upon termination of this Agreement or the right to use Mail&Deploy or associated Services, Customer shall: (i) immediately cease using the applicable Mail&Deploy or associated Services, including any access by Authorized Third Parties or use of the Software API and Documentation; and (ii) certify to HPartner within thirty (30) days after expiration or termination that Customer has uninstalled, deleted and destroyed all copies of the applicable Software, any associated license keys, the Documentation and all other HPartner Confidential Information in its possession. Termination of this Agreement or any licenses shall not prevent either Party from pursuing all available legal remedies, nor shall such termination relieve Customer's obligation to pay all fees that are owed. All provisions of this Agreement relating to HPartner's ownership of Mail&Deploy, limitations of liability, disclaimers of warranties, confidentiality (for the time periods specified in this Agreement), waiver, audit and governing law and jurisdiction, will survive the termination of this Agreement.

### 9. General Provisions

#### 9.1. Definitions.

Unless defined elsewhere in this Agreement, the capitalized terms utilized in this Agreement are defined below.

9.1.1. "*Agreement*" means this Mail&Deploy User License Agreement, any applicable Product Addendum, and any Order Form(s) and Statement(s) of Work between HPartner and Customer for the provision of Mail&Deploy or associated Services.

9.1.2. "*Authorized Third Party*" means any third party authorized by Customer to access and use Mail&Deploy designated for external use in the Documentation.

9.1.3. "*Authorized Reseller*" means a reseller, distributor or other partner authorized by HPartner to sell Mail&Deploy or associated Services.

9.1.4. "*Authorized User*" means an employee or independent contractor of the Customer, who has been authorized by Customer to use Mail&Deploy in

accordance with the terms and conditions of this Agreement and has been allocated a license for which the applicable fees have been paid.

9.1.5. "*Confidential Information*" means non-public information that is disclosed by or on behalf of a Party under or in relation to this Agreement that is identified as confidential at the time of disclosure or should be reasonably understood to be confidential or proprietary due to the nature of the information and/or the circumstances surrounding its disclosure. Confidential Information does not include information which, and solely to the extent it: (i) is generally available to the public other than as a result of a disclosure by the receiving Party or any of its representatives; (ii) was known to the receiving Party prior to the date hereof on a non-confidential basis from a source other than disclosing Party or its representatives; (iii) is independently developed by the receiving Party without the benefit of any of the disclosing Party's Confidential Information; (iv) becomes lawfully known to the receiving Party on a non-confidential basis from a source (other than disclosing Party or its representatives) who is not prohibited from disclosing the information to the receiving Party by any contractual, legal, fiduciary or other obligation; or (v) was disclosed by the disclosing Party to a third party without an obligation of confidence. In any dispute concerning the applicability of these exclusions, the burden of proof will be on the receiving Party and such proof will be by clear and convincing evidence.

9.1.6. "*Consulting Services*" means any mutually agreed upon consulting services performed by HPartner under the terms of this Agreement and any applicable Order Form or Statement of Work.

9.1.7. "*Delivery Date*" means the date on which both Mail&Deploy specified in the relevant Order Form and the license key(s) for the software are initially made available (via download or otherwise) to the Customer or to the Authorized Reseller as applicable.

9.1.8. "*Documentation*" means the then-current user documentation for Mail&Deploy, available at [www.mail-and-deploy.com](http://www.mail-and-deploy.com).

9.1.9. "*Education Services*" means any training or education services performed by HPartner, under the terms of this Agreement and any applicable Order Form or Statement of Work.

9.1.10. "*Order Form*" means a written document, executed by the Parties, pursuant to which Customer orders Mail&Deploy, Education Services or Consulting Services.

9.1.11. "*Party*" or "*Parties*" means HPartner and Customer, individually and collectively, as the case may be.

9.1.12. “*Mail&Deploy Marks*” means HPartner’s trademarks, service marks, trade names, logos, and designs, relating to Mail&Deploy used by Customer, whether or not specifically recognized, registered or perfected, including without limitation, those listed on Mail&Deploy’s website.

9.1.13. “*Mail&Deploy Software*” means Software and Subscription Services provided by HPartner.

9.1.14. “*Services & Support*” means Support, Consulting Services or Education Services provided by HPartner pursuant to an Order Form or Statement of Work. Services does not include Subscription Services.

9.1.15. “*Software*” means the generally available release of the Mail&Deploy software, in object code form, initially provided or made available to Customer as well as updates thereto that HPartner elects to make available at no additional charge to all of its customers that subscribe to Support for the Software.

9.1.16. “*Statement of Work*” means a document agreed to by the Parties that describes Consulting Services to be performed by HPartner pursuant to this Agreement.

9.1.17. “*Subscription Services*” shall mean Mail&Deploy Software as a Service. Subscription Services excludes Consulting Services and Education Services.

9.2. *Third Party Materials.* Mail&Deploy may include certain open source or other third party software, data, or other materials (the “Third Party Materials”) that are separately licensed by their respective owners. Third Party Materials are identified in the Documentation. HPartner represents that if Mail&Deploy is used in accordance with this Agreement, such use shall not violate any license terms for the Third Party Materials. HPartner MAKES NO OTHER REPRESENTATION, WARRANTY, OR OTHER COMMITMENT REGARDING THE THIRD PARTY MATERIALS, AND HEREBY DISCLAIMS ANY AND ALL LIABILITY RELATING TO CUSTOMER’S USE THEREOF.

9.3. *Evaluation.* If Customer is provided with Mail&Deploy for evaluation purposes (“Evaluation Products”), use of the Evaluation Products is only permitted in a non-production environment and for the period limited by the corresponding license key. Notwithstanding any other provision in this Agreement, licenses for the Evaluation Products are provided “AS IS” without indemnification, Support, or warranty of any kind, expressed or implied. In no event will HPartner’s maximum cumulative liability for Evaluation Products exceed one thousand euros (EUR 1.000).

9.4. *Assignment.* Customer will not assign or transfer this Agreement or its rights and obligations hereunder to any third party without the prior written consent of HPartner. For purposes of this Section, any change of control of Customer, whether by merger, sale of equity

interests or otherwise, will constitute an assignment requiring the prior written consent of HPartner. Any attempt by Customer to assign this Agreement or its rights and obligations hereunder in violation of this Section will be null and void. HPartner is free to assign or transfer any or all of its rights or obligations under this Agreement at its discretion. All terms of this Agreement will be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and permitted assigns of HPartner and Customer.

9.5. *Compliance with Laws.* Customer agrees at all times to comply with all applicable laws and regulations in its performance of this Agreement, which may include, without limitation, U.S. and E.U. export control laws and regulations, and regulations declared by the U.S. Department of the Treasury Office of Foreign Assets Control, the Council of the E.U. and their counterparts under applicable law (“Export Control Laws”). Customer will indemnify, defend and hold harmless HPartner and its respective officers, agents and employees from and against any and all losses, costs, claims, penalties, fines, suits, judgments and other liabilities (including applicable attorney’s fees) arising out of, relating to or resulting from Customer’s failure to comply with any Export Control Laws.

9.6. *Governing Law and Jurisdiction.* The Governing Law shall be the laws of Austria; but excluding any conflict of law rules or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded. Any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by the Courts of Vienna, Austria and conducted in the English language.

The Parties hereby expressly and irrevocably submit to the exclusive jurisdiction of such courts or arbitral bodies for the purpose of any such suit, action or proceeding. Notwithstanding anything to the contrary in this Agreement, either Party may at any time seek injunctive or interlocutory relief in a court of competent jurisdiction in order to protect any urgent interest of such Party, including, but not limited to, the confidentiality and use restrictions of this Agreement.

TO THE EXTENT AVAILABLE UNDER APPLICABLE LAW, CUSTOMER EXPRESSLY WAIVES ANY RIGHT TO A JURY TRIAL REGARDING DISPUTES RELATED TO THIS AGREEMENT. If this Agreement is translated, the controlling version of this Agreement shall be the English language version in the event of any conflict.

9.7. *Force Majeure.* Neither Party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events, which occur after the effective date of this Agreement and



which are beyond the reasonable control of the Parties, such as strikes, blockade, war, terrorism, riots, natural disasters, refusal of license by the government or other governmental agencies, in so far as such an event prevents or delays the affected Party from fulfilling its obligations and such Party is not able to prevent or remove the force majeure at reasonable cost.

9.8. *Notices.* All notices concerning a default, breach or violation of this Agreement by HPartner must be in writing and delivered to HPartner: (a) by certified or registered mail; or (b) by an internationally recognized express courier, and shall be addressed to: Harrer Unternehmensberatung KG, Kollergasse 6, 1030 Vienna, Austria, Attention: Management.

All other notices to HPartner, including account related communications or complaints, will be electronically sent to HPartner at [info@mail-and-deploy.com](mailto:info@mail-and-deploy.com). Unless otherwise specified in writing by the Customer, all notices to Customer shall be sent to the address provided by Customer in the Order Form.

Notices will be deemed received when an e-mail is received in full (or else on the next business day if it is received on a weekend or a public holiday in the place of receipt) or in the case of a postal communication, 3 days after the date of posting.

9.9. *Relationship between the Parties.* The Parties are independent contractors. Nothing in this Agreement will be construed to create an agency, joint venture, partnership, fiduciary relationship, joint venture or similar relationship between the Parties.

9.10. *Waiver.* No term of this Agreement will be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the Party issuing the same. Neither this Agreement nor any Order Form shall be dependent on Customer issuing a purchase order. Customer acknowledges that any purchase order is for its administrative convenience only and that HPartner has the right to issue an invoice and collect payment without a corresponding purchase order. Any additional or conflicting terms or conditions in any purchase order or other ordering documentation shall have no legal force or effect.

9.11. *Equitable Relief.* Customer acknowledges that HPartner may be irreparably harmed by a breach of the terms of this Agreement and that damages, alone, may not be an adequate remedy. Customer agrees that, in addition to any other rights or remedies permitted under applicable law, HPartner will have the right to enforce this Agreement by injunctive or other equitable relief without the need to prove actual damages or post a bond.

9.12. *Limitation.* Subject to applicable law, no action, regardless of form, arising out of this Agreement may be brought by Customer more than two (2) years after the cause of action arose.

9.13. *Entire Agreement; Severability; Language.* This Agreement is the complete statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements and communications pertaining to the subject matter of this Agreement. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in force and effect. The English language version of this Agreement shall be the governing version used when interpreting or construing this Agreement.

9.14. *Publicity.* Customer hereby grants HPartner the right to list Customer as a customer of HPartner along with other customers in marketing materials such as the Mail&Deploy web site, customer-facing presentations and press releases.

9.15. *Amendment.* HPartner may amend this Mail&Deploy User License Agreement from time to time and post the new version on the Mail&Deploy website (available at [www.mail-and-deploy.com](http://www.mail-and-deploy.com)), following which all use of the Software will be governed by that version.