cpmVision

End User License Agreement (EULA)

cpmVision B.V.

Version 1.3
28 September 2021

By subscribing to the cpmVision Software, parties are agreeing to be bound by the following terms and conditions:

1.   Term of the EULA

The duration of this EULA is equal to the duration of the Software Subscription Agreement between cpmVision and Customer (hereafter the "Term") beginning on the Effective Date as defined in the Software Subscription Agreement. It is automatically renewed for an equal Term, unless either party provides a written notice of termination minimum 30 days before the end of the Term to the other party.

2.   Definitions

cpmVision

cpmVision B.V. .
Meeuwenlaan 100
1021 JL Amsterdam
The Netherlands

Customer

The Customer as defined in the Software Subscription Agreement.

party or parties

Party: cpmVision or Customer

Parties: cpmVision and Customer

cpmVision Software

Data extractions, data models, data cubes, visuals and analyses based on Microsoft Power BI, Microsoft SQL Server Analysis Services and Azure Analysis Services.

cpmVision support

Support services by cpmVision related to the cpmVision Software.

User(s)

The named user(s) account(s) (including named user accounts used by external people (or systems)) with access to the cpmVision Software.

Bug

Any failure of the cpmVision Software that results in a complete stop, error traceback or security breach, and is not directly caused by a defective installation, configuration, modification or extension made by the Customer. Non–compliance with specifications or requirements will be considered as Bugs at the discretion of cpmVision.

Covered Versions

Unless specified otherwise, the cpmVision support provided under this EULA is applicable only to the Covered Versions of the cpmVision Software, which include the 3 (three) most recently released major versions. To be covered by the current EULA, the Customer has to run the most recent Covered Version at the time of conclusion of this EULA. When this is not the case, additional costs are applicable, as described in section 5 Charges and Fees.

3.   Access to the cpmVision Software

3.1   The Customer can use the cpmVision Software on own computer systems. These own computer systems are not under the control of cpmVision.

3.2   For the duration of this EULA, cpmVision gives the Customer a non–exclusive, non–transferable license to use (execute, modify, execute after modification) the cpmVision Software, under the terms set forth in section 12 Appendix A: cpmVision Software License.

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3.3 The Customer agrees to take all necessary measures to guarantee the unmodified execution of the part of the cpmVision Software that verifies the validity of the cpmVision usage and collects statistics for that purpose, including but not limited to the running of an instance, the number of Users.

3.4 cpmVision commits not to disclose number of Users to third parties without the consent of the Customer.

3.5 Upon expiration or termination of this EULA, the license to use the cpmVision Software is revoked immediately and the Customer agrees to stop using the cpmVision Software.

3.6 Should the Customer use the cpmVision Software after termination of this EULA, then Customer breaches the terms of this EULA, the Customer agrees to pay cpmVision a fee equal to 300% of the applicable list price for the last known number of Users or the actual number of Users (what even number is higher) for the time the cpmVision Software was still in use.

4.   cpmVision support

4.1 Bug Fixing Support

4.1.1 For the duration of this EULA, cpmVision commits to making all reasonable efforts to remedy any Bug of the cpmVision Software submitted by the Customer through the cpmVision support desk, and to start handling such Customer submissions within 2 business days.

4.1.2 The Customer understands that Bugs caused by a modification or extension that is not part of the official cpmVision Software will not be covered by this support.

4.1.3 As soon as the Bug is fixed an appropriate remedy will be communicated to the Customer.

4.1.4 If the bug has been addressed in a more recent revision of the Covered Versions of the cpmVision Software used by the Customer, the Customer agrees to upgrade the cpmVision Software to that revision in order to obtain the correction. In case of an upgrade of the cpmVision Software the Upgrade Support as described in this EULA is applicable.

4.1.5 When a Bug is fixed in any Covered Version, cpmVision commits to fixing the Bug in all more recent Covered Versions of the cpmVision Software.

4.1.6 Both parties acknowledge that as specified in the license of the cpmVision Software and in the section 9.3Limitation of Liability section of this EULA, cpmVision cannot be held liable for Bugs in the cpmVision Software.

4.2 Security Updates Support

4.2.1 For the duration of this EULA, cpmVision commits to sending a "Security Advisory" to the Customer for any security Bug that is discovered in the Covered Versions of the cpmVision Software, at least 2 weeks before making the Security Advisory public, unless the Bug has already been disclosed publicly by a third party. Security Advisories include a complete description of the Bug and its cause and the corresponding remedy for each Covered Version. cpmVision will not commit to send Security Advisories on tooling used by cpmVision (for example: the Microsoft platform including Power BI). These Security Advisories can be found on the different websites and portals from these suppliers.

4.2.2 The Customer understands that the Bug and the information in the Security Advisory must be treated as Confidential Information as described in 6.3 Confidentiality during the embargo period prior to the public disclosure.

4.3 Upgrade Support

4.3.1 Upgrade Support for the cpmVision Software

i.   For the duration of this EULA, the Customer can submit upgrade requests through the cpmVision's support desk, in order to update the cpmVision Software from one Covered Version of the cpmVision Software to a more recent Covered Version (the "Target Version"). The Upgrade Support is subject to additional fees based on hours spend and hourly rates (as described in section 5 Charges and Fees).

ii.   The Upgrade Support is limited to the technical conversion and adaptation of the Customer's database to make it compatible with the Target Version, and the correction of any Bug directly caused by the upgrade operation and not normally occurring in the Target Version.

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iii. It is the sole responsibility of the Customer to verify and validate the upgraded database in order to detect Bugs, to analyse the impact of changes and new features implemented in the Target Version, and to convert and adapt for the Target Version any third-party extensions of the cpmVision Software that were installed in the database before the upgrade.

4.3.2 Upgrade Support for third-party extensions

i. For the duration of this EULA, the Customer may request optional upgrade services for third-party extensions of the cpmVision Software, in addition to the regular Upgrade Support. This support is subject to additional fees based on hours spend and hourly rates (as described in 5 Charges and Fees) and includes the technical adaptation of third-party extensions installed in the Customer's database and their corresponding data in order to be compatible with the Target Version. The Customer will receive an upgraded version of all installed third-party extensions along with the upgraded database.

ii. The Upgrade Support for third-party extensions is limited to the technical conversion and adaptation of the Customer's database to make it compatible with the Target Version, and the correction of any Bug directly caused by the upgrade operation and not normally occurring in the Target Version.

iii. It is the sole responsibility of the Customer to verify and validate the upgraded database in order to detect Bugs, to analyse the impact of changes and new features implemented in the Target Version, and to convert and adapt for the Target Version any third-party extensions of the cpmVision Software that were installed in the database before the upgrade.

4.4 Use of the cpmVision Support desk

4.4.1 Scope

i. For the duration of this EULA, the Customer may submit an unlimited number of support tickets regarding Bugs (Bug Fixing Support and Security Update Support) and/or guidance with respect to the use of the standard features of the cpmVision Software and/or change requests.

ii. Tickets other than in relation to Bugs handled by cpmVision are subject to additional fees (as described in section 5 Charges and Fees)

4.4.2 Availability

i. Tickets can be submitted online at cpmVision Support Desk. For more information see the cpmVision Support Desk manual.

5. Charges and Fees

5.1 cpmVision Software Subscription Fee

5.1.1 The fee for using the cpmVision Software is based on the Average number of Users per year. The number of Users are determined in the Software Subscription Agreement between cpmVision and Customer, in combination with the True-up process.

5.2 Hourly rates for support and services

5.2.1 The hourly rate charged for cpmVision support and services are part of the cpmVision Software Subscription Agreement between cpmVision and Customer and is subject to annual indexation as described in the Software Subscription Agreement.

5.3 Taxes

5.3.1 All fees and charges are exclusive of all applicable federal, provincial, state, local or other governmental taxes, fees or charges (collectively, "Taxes"). The Customer is responsible for paying all Taxes associated with purchases made by the Customer under this EULA, except when cpmVision is legally obliged to pay or collect Taxes for which the Customer is responsible. Then the Taxes are invoiced to the Customer by cpmVision.

6. Conditions of Services

6.1 Customer Obligations

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6.1.1 The Customer agrees to:

    i. Pay cpmVision the applicable invoices under this EULA, in accordance with the payment conditions specified on the corresponding invoice.

    ii. Grant cpmVision the necessary access to the cpmVision Software to verify the validity of the cpmVision Software usage upon request.

    iii. Take all measures necessary to guarantee the unmodified execution of the part of the cpmVision Software that verifies the validity of the cpmVision Software usage, as described in section 3 Access to the cpmVision Software.

    iv. Appoint 1 dedicated Customer contact person for the entire duration of the EULA.

    v. Take all reasonable measures to protect Customer's files and databases and to ensure Customer's data is safe and secure, acknowledging that cpmVision cannot be held liable for any data loss.

6.2 No Soliciting or Hiring

6.2.1 Except where the other party gives its consent in writing, each party, its affiliates and representatives agree not to solicit or offer employment to any employee of the other party who is involved in performing or using the Services under this EULA, for the duration of the EULA and for a period of 12 months from the date of termination or expiration of this EULA.

6.2.2 In case of any breach of the conditions of this section that leads to the termination of said employee toward that end, the breaching party agrees to pay to the other party an amount of EUR (€).30.000,–

6.2.3 (thirty thousand euros).

6.3 Confidentiality

6.3.1 Definition of "Confidential Information":

    i. All information disclosed by a party (the "Disclosing Party") to the other party (the "Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. In particular any information related to the business, affairs, products, developments, trade secrets, know–how, personnel, customers and suppliers of either party should be regarded as confidential.

    ii. For all Confidential Information received during the Term of this EULA, the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own similar Confidential Information, but not less than reasonable care.

    iii. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure, to the extent permitted by law.

6.4 Data Protection

6.4.1 Definitions

    i. "Personal Data", "Controller", "Processing" take the same meanings as in the Regulation (EU) 2016/679 and the Directive 2002/58/EC, and any regulation or legislation that amends or replaces them (hereafter referred to as "Data Protection Legislation")

6.4.2 Processing of Personal Data

    i. The parties acknowledge that the Customer's database may contain Personal Data, for which the Customer is the Controller. This data will be processed by cpmVision when the Customer instructs so, by using any of the Services that require a database (e.g. cpmVision Support) for any reason pertaining to this EULA.

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6.4.3 This processing will be performed in conformance with Data Protection Legislation. In particular, cpmVision commits to:

  i. Only process the Personal Data when and as instructed by the Customer, and for the purpose of performing one of the Services under this EULA, unless required by law to do so, in which case cpmVision will provide prior notice to the Customer, unless the law forbids it.

  ii. Ensure that all persons within cpmVision authorised to process the Personal Data have committed themselves to confidentiality.

  iii. Implement and maintain appropriate technical and organizational measures to protect the Personal Data against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure.

  iv. Forward promptly to the Customer any Data Protection request that was submitted to cpmVision with regard to the Customer's database.

  v. Notify the Customer promptly upon becoming aware of and confirming any accidental, unauthorized, or unlawful processing of, disclosure of, or access to the Personal Data.

  vi. Notify the Customer if the processing instructions infringe applicable Data Protection Legislation, in the opinion of cpmVision.

  vii. Make available to the Customer all information necessary to demonstrate compliance with the Data Protection Legislation, allow for and contribute reasonably to audits, including inspections, conducted or mandated by the Customer.

  viii. Permanently delete all copies of the Customer's database in possession of cpmVision, or return such data, at the Customer's choice, upon termination of this EULA.

6.4.4 The Customer agrees to provide cpmVision with accurate contact information at all times, as necessary to notify the Customer's Data Protection responsible.

6.5 Sub processors

  a. The Customer acknowledges and agrees that in order to provide the Services, cpmVision may use third-party service providers (Sub processors) to process Personal Data. cpmVision commits to only use Sub processors in compliance with Data Protection Legislation. This use will be covered by a contract between cpmVision and the Sub processor that provides guarantees to that effect.

7. True-up process

7.1 Consideration

7.1.1 cpmVision and Customer would like to have an Software Subscription Agreement (hereafter the "SSA") on the number of Users using the cpmVision Software.

7.1.2 To facilitate this cpmVision and Customer will agree on a number of Users for each Term

  i. A Minimum number of Users (at least the number of CCH Tagetik users)

  ii. A Maximum number of Users

  iii. An Average number of Users

7.1.3 The Average number of Users is used to calculate the Software Subscription Fee for that Term and invoiced accordingly.

7.2 Recalculation Software Subscription Fee during the Term

7.2.1 cpmVision will quarterly measure the Actual number of Users.

7.2.2 When the Actual number of Users exceeds the Maximum number of Users, cpmVision and Customer will evaluate the agreed Average number of Users. The Software Subscription Fee will be recalculated by at least using the Actual number of Users as the new Average number of Users for the remainder of the term.

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7.3 Recalculation Software Subscription Fee for the new Term

7.3.1 Within 30 days before the end of the Term, cpmVision and Customer will agree on a new Average number of Users for the new Term.

7.3.2 The new agreed Average number of Users will at least be the same as the maximum Actual number of Users measured by cpmVision in the previous Term and not lower than the CCH Tagetik users.

7.4 The cpmVision Software may only be used on one production and one test instance of CCH Tagetik. When more CCH Tagetik instances are connected to the cpmVision Software the Average number of Users will be recalculated. The new Average number of Users will be the Average number of Users plus the Average number of Users multiplied by the number of additional instances of CCH Tagetik.

8. Intellectual Property

8.1 cpmVision regularly updates software and adds features from inputs from Customers and Partners. It is necessary that inputs into development teams are free from any Intellectual Property right confusion. Consequently, any information transferred to cpmVision for such purposes, even if it is marked confidential, will be treated as free for cpmVision to use, modify, and distribute unless the creator specifically sites an exception, lists the restrictions in writing and makes in known to cpmVision in advance of any disclosure.

8.2 All Intellectual Property rights to the cpmVision Software, websites, data files, equipment and training, testing and examination materials, as well as other materials like analyses, designs, documentation, reports and offers, including preparatory materials in this regard, developed or made available to cpmVision under this agreement are held exclusively by cpmVision.

9. Warranties, Disclaimers, Liability

9.1 Warranties

9.1.1 For the duration of this EULA, cpmVision commits to using commercially reasonable efforts to execute the Services in accordance with the generally accepted industry standards provided that:

i. The Customer's computing systems are in good operational order and that the cpmVision Software is installed in a suitable operating environment.

ii. The Customer provides adequate troubleshooting information and any access that cpmVision may need to identify, reproduce and address problems.

9.2 Disclaimers

9.2.1 Except as expressly provided herein, neither party makes any warranty of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose to the maximum extent permitted by applicable law.

9.3 Limitation of Liability

9.3.1 To the maximum extent permitted by law, the aggregate liability of each party together with its affiliates arising out of or related to this EULA will not exceed 50% of the total amount paid by the Customer under this EULA during the 12 months immediately preceding the date of the event giving rise to such claim. Multiple claims shall not enlarge this limitation.

9.3.2 In no event will either party or its affiliates be liable for any indirect, special, exemplary, incidental or consequential damages of any kind, including but not limited to loss of revenue, profits, savings, loss of business or other financial loss, costs of standstill or delay, lost or corrupted data, arising out of or in connection with this EULA regardless of the form of action, whether in contract, tort (including strict negligence) or any other legal or equitable theory, even if a party or its affiliates have been advised of the possibility of such damages, or if a party or its affiliates' remedy otherwise fails of its essential purpose.

Initials

9.4 Force Majeure

9.4.1 Neither party shall be liable to the other party for the delay in any performance or failure to render any performance under this EULA when such failure or delay is caused by governmental regulations, fire, strike, war, flood, accident, epidemic, embargo, appropriation of plant or product in whole or in part by any government or public authority, or any other cause or causes, whether of like or different nature, beyond the reasonable control of such party as long as such cause or causes exist.

10. Termination

10.1 In the event that either Party fails to fulfil any of its obligations arising herein, and if such breach has not been remedied within 30 calendar days from the written notice of such breach, this EULA may be terminated immediately by the non–breaching Party.

10.2 Further, cpmVision may terminate the EULA immediately in the event the Customer fails to pay the applicable invoices under this EULA within the due date specified on the corresponding invoice.

10.3 Surviving Provisions: The sections "6.3 Confidentiality6.3 Confidentiality", "9.2 Disclaimers9.2 Disclaimers", "9.3 Limitation of Liability9.3 Limitation of Liability", and "11 General Provisions11 General Provisions" will survive any termination or expiration of this EULA.

11. General Provisions

11.1 Governing Law

11.1.1 This EULA shall be governed by and construed in accordance with the laws of the Netherlands. All disputes arising out of or in connection with this EULA shall be submitted to the exclusive jurisdiction of the competent court of law in Amsterdam, The Netherlands.

11.2 Severability

11.2.1 In case any one or more of the provisions of this EULA or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this EULA and any application thereof shall be in no way thereby affected or impaired. Both parties undertake to replace any invalid, illegal or unenforceable provision of this EULA by a valid provision having the same effects and objectives.

12. Appendix A: cpmVision Software License

cpmVision Software License is licensed under the following conditions:

◗ The cpmVision Software and associated files can only be used (executed, modified, executed after modifications) with a valid cpmVision Software Subscription Agreement.

◗ It is forbidden to publish, distribute, sublicense, or sell copies of the cpmVision Software and associated files or modified copies of the cpmVision Software or associated files.

◗ The above copyright notice and this permission notice must be included in all copies or substantial portions of the cpmVision Software and associated files.

◗ THE cpmVision SOFTWARE AND ASSOCIATED FILES ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE cpmVision SOFTWARE AND ASSOCIATED FILES OR THE USE OR OTHER DEALINGS IN THE cpmVision SOFTWARE AND ASSOCIATED FILES.

Initials