



Service Terms, Conditions and Privacy Policy for Enterprise Users of the Engage software-as-a-service

Version 1.3 - August 1, 2018

The *Service Terms, Conditions and Privacy Policy* for Enterprise Users (Terms) govern the use of the Engage range of web-based applications. By accessing and utilising the Engage range of web-based applications, the Enterprise User agrees to be bound by the Terms as set out in this legal notice.

In this Agreement unless otherwise required or indicated by the context:

- **“Engage”** shall mean the software-as-a-service versions of the Engage product range, including but not limited to Engage Surveys, Engage Analytics and Engage Insights, and all related and derivative web-based tools and applications that can be accessed via the domain name mindsetmanage.com or any of its sub-domains;
- **“Mindset Management”** shall mean Mindset Management Programs (Pty) Ltd, a South African based private company with limited liability and registration number 2016/038861/07 and with its main offices located at 8 O’Hare street, Highveld, Centurion, South Africa;
- **“Enterprise User”** shall mean any organisation or legal entity whose employees or otherwise designated or co-opted persons interact with or use Engage, whether as part of the free trial period at no costs to the Enterprise User or as part of a subscription to use Engage at the prescribed subscription fee;
- **“System Data”** shall mean usage, transactional and device-related data that is collected automatically by Engage;
- **“User”** shall mean any person who accesses or uses Engage;
- **“User Data”** shall mean any data or content entered or captured by a User by means of Engage, including survey responses entered or captured by Users.

Engage web-based service

Mindset Management provides a service known as Engage, a web-based survey, analytics, expert recommendation and action planning system designed to help organisations measure, monitor and manage employee engagement and other organisational efficiency and effectiveness aspects at work.

This Agreement regulates the use of the web-based application, Engage, which is developed and owned by Mindset Management.

Enterprise User responsibilities

Enterprise User will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to Engage or any software, documentation or data related to Engage; modify, translate, or create derivative works based on Engage (except to the extent expressly authorised in writing by Mindset Management); use Engage or any derivative product for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels.

Enterprise User shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use Engage, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Enterprise User shall also be responsible for maintaining the security of the Equipment, user account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of user account or the Equipment with or without Enterprise User's knowledge or consent.

Availability of the service

Mindset Management shall use reasonable efforts consistent with prevailing industry standards to maintain Engage in a manner which minimises errors and interruptions in the use of Engage. Engage may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Mindset Management or by third-party providers, or because of other causes beyond Mindset Management's reasonable control. Mindset Management may discontinue some or all of the services, including certain features and the support for certain devices and platforms, at any time. Mindset Management shall however use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption or discontinuation.

HOWEVER, MINDSET MANAGEMENT DOES NOT WARRANT THAT ENGAGE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF ENGAGE. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, ENGAGE IS PROVIDED "AS IS" AND MINDSET MANAGEMENT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

If the Enterprise User is in an area where there is weak or limited connectivity and/or the Enterprise User attempts to access Engage whilst being offline, Engage may not function correctly. Mindset Management will not be liable

for any damages suffered by a User arising from using the Engage application in an area of weak or limited connectivity or for offline access.

Standard data costs will be charged when an Enterprise User utilises Engage through the web-based application. These costs are charged by the Enterprise User's mobile network operator or internet service provider, and Mindset Management will in no way be held liable for any claim arising from these data costs including any claims of heightened data usage. Any questions related to an Enterprise User's data costs must be referred to their individual mobile network operator or internet service provider.

Software support

Mindset Management shall make commercially reasonable efforts to correct bugs or other errors in Engage. Enterprise User acknowledges that Mindset Management is not required to correct every bug, error, or problem with Engage that it reports to Mindset Management or of which Mindset Management is otherwise made aware.

Mindset Management will provide technical support to Enterprise User via electronic mail on weekdays. Enterprise User may initiate a support request by emailing support@mindsetmanage.com or by means of the Support and Assistance function (<http://www.mindsetmanage.com/analytics>) that can be accessed via the Help function in Engage. Mindset Management will use commercially reasonable efforts to respond to all support requests within one (1) business day.

Hosting and transfer of data

Data relating to the Enterprise User, including User Data and System Data, may be hosted and processed in a country or jurisdiction other than the one where the Enterprise User is based in, and may be transferred to suit Mindset Management's operational requirements between countries around the world that may not have the same data protection and privacy laws as in the Enterprise User's jurisdiction. Mindset Management will not host or transfer such data to a country or jurisdiction that does not support data protection and privacy laws to the same standard as those set out in herein.

Links to other websites

Mindset Management's service may contain links to third-party websites or services that are not owned or controlled by Mindset Management, including any third-party credit card payment service. Mindset Management has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites or services. The Enterprise User further acknowledges and agrees that Mindset Management shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such third party content, goods or services available on or through any such websites or services and Enterprise User accordingly indemnifies Mindset Management for any such damages and/or losses.

Fees and costs

Free trial

Mindset Management may, at its sole discretion, offer a part, version or derivative of Engage on a free trial basis for a limited period of time ("Free Trial"). Enterprise User will not be required to enter billing information in order to sign up for the Free Trial. At any time and without notice, Mindset Management reserves the right to (a) modify the terms and conditions of the Free Trial offer, or (b) cancel such Free Trial offer.

Subscriptions

Usage of the Engage is billed to the Enterprise User on a monthly or annual subscription basis ("Subscription"). The Enterprise User will be billed in advance on a recurring and periodic basis ("Billing Cycle"). At the end of each Billing Cycle, the Enterprise User's Subscription will automatically renew under the exact same conditions unless the Enterprise User or Mindset Management cancels it. All Subscription fees exclude sales tax, GST, VAT, or other similar taxes.

Unless otherwise agreed, payments for invoices are due 7 days after the invoice date. Overdue payments may incur interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on the amount overdue. You will be responsible for all reasonable expenses (including lawyers' fees) incurred by Mindset Management in collecting such overdue amounts.

Should automatic billing fail to occur for any reason, Mindset Management will issue an electronic invoice indicating that Enterprise User must proceed manually, within a certain deadline date, with the full payment corresponding to the billing period as indicated on the invoice.

Fee changes

Mindset Management, in its sole discretion and at any time, may modify the fees for the subscriptions. Any subscription fee change will become effective at the end of the then-current billing cycle. Mindset Management will provide the Enterprise User with reasonable prior notice of any change in subscription fees to afford the Enterprise User an opportunity to terminate their subscription before such fee change becomes effective. The Enterprise User continued use of the service after the subscription fee change comes into effect constitutes the Enterprise User's consensus to pay the modified subscription fee amount.

Refunds

Except when required by law, paid subscription fees are non-refundable.

Termination of the service

Mindset Management may modify, suspend, or terminate the User's access to or use of Engage anytime and for any reason, if the User violates any law, Term/s of this Agreement or creates harm, risk, or possible legal exposure for Mindset Management, its users, or any other third party.

The following provisions will survive any termination of your relationship with Mindset Management: "Confidentiality and non-solicitation", "Indemnity and limitation of liability" and "Copyright and intellectual property".

Privacy policy

Mindset Management is committed to protecting the Enterprise User's privacy. This privacy policy explains how Mindset Management shall collect and use customer information as well as what the Enterprise User's access rights to the information and/or data are.

Information that the Enterprise User provides

When an Enterprise User registers an account and through the ongoing use of Engage, Mindset Management may collect information from Users, including but not limited to opinion and pulse survey responses.

Collecting of service-related information

The following types of information are collected in the background through the User's use of the Engage web-application:

- **System data** relating to the User's device or internet connection, such as the User's device's operating system, browser or IP address;
- **Usage data** regarding the User's use of Engage;
- **Analytics data** in aggregate and anonymous format via third party tracking services such as Google Analytics.

Security and protection of information

The Enterprise User's User and System Data are private and confidential and are treated as such. Mindset Management takes all reasonable steps to secure and protect such data during hosting and transmission and to ensure that such information is handled in accordance with the Terms.

However, it is possible for Internet-based communications to be intercepted or servers to be hacked. Mindset Management will not be responsible for any damages the Enterprise User or any third party may suffer as a result of the hosting or transmission of confidential or disclosed information that the User makes to Mindset Management through the Internet, or that the Enterprise User expressly or implicitly authorises Mindset Management to make, or for any errors or any changes made to any transmitted information.

To ensure acquaintance with and awareness of the privacy measures and policies of Mindset Management, the Enterprise User is urged to take care to read and understand the underlying privacy clauses incorporated in these Terms.

Using and sharing of information

Mindset Management may use and share the User and System Data collected from the Enterprise User in accordance with the Agreement and for the reasons and uses as detailed below:

- To provide the Enterprise User with an optimal Engage service and experience;
- To provide the Enterprise User with the necessary customer support and assistance where required or requested;
- To contact the Enterprise User regarding their account or to update the Enterprise User with respect to changes in prices, policies or the Terms;
- To provide the Enterprise User with news and information about products and services.

Mindset Management undertakes not to share any of the Enterprise User's User or Systems Data that are deemed of a personal or private nature. User responses to surveys will be combined with the responses of others and made available as aggregate data.

Mindset Management retains the right to transfer the User's information to a new owner if the ownership of all or substantially all of the business should change, in which case the terms of this Agreement will still apply until the Terms are updated or amended by the acquiring party upon notice to the Enterprise User.

Mindset Management may release account information or User Data when deemed, in good faith, that such release is reasonably necessary to (a) comply with law, (b) enforce or apply the terms of any user agreement or (c) protect Mindset Management, the Enterprise User or any other relevant third parties' rights, property or safety.

Using data for research and benchmark purposes

The Enterprise User hereby provides consent for their de-identified User and System data to be used for research relating to employee engagement and leadership behaviour in organisations and to provide insight into leadership interactions with Users. The Enterprise User also consent to the use of aggregate User and System data for statistical and benchmark purposes.

Cookies policy

A cookie is a small text file stored by the Enterprise User's browser (for instance, Internet Explorer or Chrome) on the Enterprise User's computer or mobile device. Engage uses cookies to authenticate returning customers and to prevent fraudulent use of Enterprise User accounts. Cookies can be disabled in the browser settings, but if an Enterprise User disables them they will not be able to log into the Engage application.

Data protection and use of information

Enterprise User expressly consents to the collecting and processing of their Enterprise User Data and System Data by Mindset Management to provide any combination of services or analysis linked to Engage, monitor and analyse the conduct on the Enterprise User's profile and account for fraud, compliance and other risk-related purposes; carry out statistical and other analyses to identify potential markets and trends; and develop new products and services.

Whenever the Enterprise User is of the opinion that Mindset Management fails to comply with the Privacy Policy as set out herein, the Enterprise User will contact Mindset Management by sending an email to support@mindsetmanage.com. Mindset Management will review the Enterprise User's representations made by email and, if within their sole and absolute discretion advisable, take corrective action and in any event within 7 (seven) days respond to Enterprise User informing about corrective actions taken, if any.

Enterprise User's ownership of survey data

The Enterprise User retains the right to request at any time from Mindset Management a copy of a subset or all of the survey responses captured by Enterprise User's Users by means or through the use of Engage. Mindset Management undertakes to make a copy of such data available in Excel format to Enterprise User within 5 working days of the request being submitted via email.

Indemnity and limitation of liability

Subject to the Privacy Policy contained herein, Engage and all content on the web-based application are provided on an "as is" basis, and may include inaccuracies or typographical errors and Mindset Management, its suppliers, employees, directors, partners, affiliates and agents will not be liable for any damage, or loss or liability of any nature incurred by whoever as a result of any action or omission. Mindset Management makes no warranty or representation as to the availability, accuracy or completeness of the content, or any third-party content accessible via an internet link.

None of the content, including any information published pertaining to Engage or to specific aspects of the business of Mindset Management, must be construed as advice in respect of such aspect. Enterprise Users who choose to act in accordance with the contents of Engage, including any information published thereon, do so at their own risk. Neither Mindset Management, its suppliers, employees, directors, partners, affiliates, nor any of the aforementioned parties' agents can be held liable for any damages, of whatsoever nature, due to such action by any Enterprise User.

Notwithstanding anything to the contrary contained in this Agreement, the parties agree that the defaulting Party's liability shall be limited to direct losses and damages suffered by the other Party as a result of the defaulting Party's negligence, wilful misconduct, breach of intellectual property, confidential information or personal information, and/or fraud on the part of the defaulting Party. The aggregate liability of either party arising out of or in connection with this agreement shall not exceed the total amount(s) paid by the Enterprise User to Mindset Management under this agreement during the 12 months prior to the event giving rise to such liability.

The Enterprise User acknowledges and agrees that the Terms are entered into between the Enterprise User and Mindset Management and does not govern the relationship between the Enterprise User and any third party.

Amendments to the agreement

Mindset Management may change, modify, add to or remove from portions or the whole of these Terms. Changes to this Agreement will become effective when the changes are posted on Engage. Mindset Management will notify the Enterprise User of the changes via email or by posting a prominent notice on Engage. The Enterprise User's continued use of Engage following the posting of changes or updates will be considered notice of the Enterprise User's acceptance of the updated terms in the Agreement, including any changes or updates.

Complaints and disputes

Enterprise Users can file complaints by means of the "Feedback & Support" option under the Tools function of Engage. Currently, Mindset Management does not subscribe to any alternative dispute resolution code or mechanism and an Enterprise User may approach the courts should the dispute or complaint not be resolved.

Disclaimers

The Enterprise User's use of Engage is dependent on factors beyond Mindset Management's control, such as the Enterprise User's network coverage or network availability. Mindset Management is not liable of any loss or damages the Enterprise User may suffer if a factor beyond Mindset Management's control arises and you cannot access Engage.

Mindset Management nor any holding company, affiliate, agent, or subsidiary thereof are responsible for any loss or damages related to Enterprise User's use of Engage or any Intellectual Property flowing from their use. This includes, without limitation, any damage, or loss or liability of any nature incurred by whoever as a result of any action or omission.

Mindset Management are not responsible for any loss or damage where:

- An unauthorised third party discovers and or utilises the Enterprise User 's access codes;
- Any technical interruption, malfunction, downtime or other failure that affects Engage, a third-party system or any part of any database for any reason;
- Any User Data or other data is directly or indirectly lost or damaged because of technical problems, power failures, unlawful acts (such as data theft), any program or virus, the Enterprise User's own negligence; or any other reason flowing from the use of Engage;
- Any failure or problem that affects services provided by any other party for example any ISP, electricity supplier, local or other authority; or
- Any event that Mindset Management has no control over.

Confidentiality and non-solicitation

During the period of this Agreement and subsequent thereto, the parties will keep confidential and will not make use of, directly or indirectly, and will not disclose any of the parties trade secrets or confidential information including, but not limited to, technical know-how and data, plans, drawings, systems, URLs, methods, software, processes, client lists, employee lists, business affairs, suppliers' lists, marketing information or financial information, or those of its subsidiary or associate companies or those of persons who have made disclosures to a party under conditions of confidentiality, other than to persons authorised by a party or those employed by a party who are required to know such secrets or to have such information for the purpose of their employment with a party.

Should a party be uncertain as to whether any information is confidential or is a trade secret, the party will in writing request a ruling from the other party.

The Enterprise User will immediately inform Mindset Management should it at any stage during the period of this Agreement become aware of any unlawful disclosure or use of any such confidential information by any other person. The Enterprise User will deal with the issue on a confidential basis.

The obligations contained in this clause will survive the termination of this Agreement and will endure indefinitely after the termination.

Each party undertakes forthwith to inform the other in writing should any demand or request for information relating to or in connection with the subject matter of this Agreement be received, irrespective of whether such request or demand is formulated in terms of any relevant legislation, or on any other grounds.

Breach

Either party may suspend performance or terminate this Agreement, and Mindset Management may suspend or disconnect the Enterprise User from using Engage, if the other party is in material breach of this Agreement and fails to remedy that breach within 5 (five) days after receipt of written notice, or if either party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days.

If this Agreement is terminated by the Enterprise User with cause a pro rata refund for any fees paid in advance will be made by Mindset Management, minus any accrued but unbilled fees and outstanding invoices.

Copyright and intellectual property

"Intellectual Property" shall mean with limitation, all inventions, specifications, patents, designs, trademarks, service marks, trade names and all goodwill associated with the foregoing; copyright and copyrightable works, including, but not limited to, all copyright in any logos, devices, designs, multimedia works and computer software programs (in both source and object code form, and including any programmers' or developers' notes, flow charts, memoranda and design documents); rights protecting goodwill and reputation; proprietary material, know-how, ideas, concepts, trade secrets, methods, techniques, graphics; schematics; marketing; sales and Enterprise User

data; domain names and URLs; databases and rights in databases, confidential information and all other intellectual property rights and rights of a similar character whether registered or capable of registration, rights in the nature of any of the above items whether registered or unregistered in any country or jurisdiction and all applications and rights to apply for protection of any of the same.

Mindset Management provides certain information on Engage. Content displayed on Engage is provided by Mindset Management, its affiliates or subsidiary, or any other third-party owners of the content. All the proprietary works, and the compilation of the proprietary works, belong to Mindset Management, its affiliates or subsidiary, or any third-party owners of the rights and the content is protected by South African and international copyright laws.

Mindset Management may make any changes to Engage, the content or services offered through Engage at any time with reasonable advance notice in writing or by e-mail to the Enterprise User. All rights in and to the content are reserved and retained by Mindset Management. Except as specified in the terms, the Enterprise User is not granted a license or any other right including Copyright, Trademark, Patent or other Intellectual Property Rights in or to the content.

Subject to any Intellectual Property Rights held by any merchants or any other third parties, Mindset Management will keep all Intellectual Property and Intellectual Property Rights in and to Engage (including, but not limited to, all proprietary information, trademarks and copyright in any logos and other devices or storage media).

Mindset Management will allow the Enterprise User a right to use Engage which may include updates and/or upgrades, only for purposes outlined in this Agreement and for no other purposes. The Enterprise User will be asked to accept any additional terms through Engage when they apply to the Enterprise User. The Product is licensed to Enterprise User and they will not grant any rights of use or any other rights in respect of Engage or any Intellectual Property Rights in it to any other person.

The license granted to the Enterprise User will commence when they access the web-based application to open Engage and sign up to use Engage and shall therefore continue until the Agreement or use of Engage is terminated in line with this Agreement which will result in the inability of the Enterprise User to access to the Engage without signing in again. On termination of this Agreement, for any reason, the Enterprise User must immediately stop all use of Engage.

Certain content available on Engage may include content that belongs to third parties. Mindset Management may provide links to third-party websites, as a convenience to the Enterprise User.

The Enterprise User agrees that Mindset Management is not liable for any of the following:

- The content or the accuracy of any such content belonging to third parties, including, but not limited to any merchants, featured on Engage;
- Any content featured on the third-party websites that are accessed through the links found on Engage;
- The Enterprise User may not copy, republish, distribute, adapt, modify, alter, de-compile, reverse engineer, or attempt to derive the source code of or create a derivative of works or, otherwise attempt to reproduce Engage, its contents, including any Intellectual Property there in, its design, any updates to Engage and/or any proprietary features in relation to it, or any parts of it. This prohibition extends to any and all content belonging

to third parties that is found on Engage and/or any content featured on the third-party websites which are accessed through links that are found on Engage.

The Enterprise User acknowledges that:

- They will not make any representations that they have any rights of any nature in any present and/or future Intellectual Property belonging to Mindset Management and/or any third parties featured on Engage;
- They will not use Mindset Management's and/or any third party that is featured on Engage's present and/or future Intellectual Property in any manner whatsoever or any other Intellectual Property which is identical, similar and/or confusingly similar thereto in any other country;
- They will not do, or omit to do, or cause to be done any act or thing which would be expected to weaken, damage, be detrimental to or in any way impair or tend to impair Mindset Management's goodwill; and
- They will not use, register or attempt to register as trade names, corporate names, business names, logos, domain names, meta-tags, meta descriptors, electronic mail (email) addresses, server names, or search-engine markers or anything that is identical to, contained in whole or in part, or is otherwise similar to Mindset Management's present and/or future Intellectual Property in any country.

The Enterprise User indemnifies Mindset Management against all actions, claims, costs, demands, expenses and other liabilities suffered or incurred by us as a result of any third-party claims initiated and/or instituted against Mindset Management relating to the Enterprise User 's unauthorised use of Engage, the content thereon and/or any other Intellectual Property and Intellectual Property Rights flowing from the foregoing.

Any breach of the terms under this clause entitles Mindset Management, in addition to their normal common law remedies, to take legal action with prior notice to the Enterprise User and the Enterprise User agrees to reimburse the costs associated with such legal action to Mindset Management.

Enterprise User feedback

Feedback provided by the Enterprise User to Mindset Management about any aspect or feature of Engage may be used by Mindset Management without any obligation to the Enterprise User.

Choice of law

Engage is controlled, operated and administered by Mindset Management from its offices within the Republic of South Africa.

The Agreement will be governed by the laws of the Republic of South Africa, and the Enterprise User consents to the jurisdiction of the North Gauteng High Court in the event of any dispute.

If any of the provisions of the Agreement are found by a court of competent jurisdiction to be invalid or unenforceable, that provision will be enforced to the maximum extent permissible so as to give effect to the intent of the Terms, and the remainder of the Terms will continue in full force.

General

This Agreement contains all the provisions agreed on by the Parties with regard to the use of the content and Engage and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement. No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, by the Enterprise User shall be effective unless reduced to writing and signed by or on behalf of the Parties.

The invalidity, illegality, or unenforceability of any of the clauses in these Terms will not affect the validity, legality, and enforceability of the remaining clauses of this Agreement.

If an Enterprise User account is stopped or cancelled for any reason, Mindset Management may suspend the Enterprise User's access to the Engage, until the Enterprise User has a new account registered on Engage.

Notices

Mindset Management will send any legal documents or notices to you to the email address registered on the Enterprise User's profile or through the Engage message system. Mindset Management will regard a communication sent by email as having been received by the Enterprise User one day after it was sent. Any legal document of notice to be served in legal proceedings must be written on paper.

Enterprise User contact information

If you have any questions about Engage you can contact us by means of the Feedback & Support function in Engage or you can email us at support@mindsetmanage.com or contact us via our website www.mindsetmanage.com.

Distribution and communication by email

Any email communication received from Mindset Management is privileged and confidential and for the use of the intended Enterprise User only. If an Enterprise User receives an email in error, please notify Mindset Management directly and delete the email and any attachments. Unauthorised use, disclosure or copying of the contents of an email received in error, or any similar action, is prohibited. WARNING: From time to time, Mindset Management's spam scanners may eliminate legitimate email from an Enterprise User. There is a duty on the Enterprise User to ensure Mindset Management acknowledges receipt of the Enterprise User's instruction.