



Mindset Management

Service Terms and Conditions for Enterprise Users of the Engage EX Software-as-a-Service

Version 2.4 - Nov, 2024

The *Service Terms and Conditions* for Enterprise Users ("Terms") govern accessing and using the Engage EX range of web-based applications. By accessing and using the Engage EX range of web-based applications, the Enterprise User agrees to be bound by the Terms set out in this document.

IMPORTANT NOTE:

- The Terms are intended to have a generic application to accord with the provisions set out in the section dealing with the Choice of Law (section 12) and the provisions set out in the section dealing with Complaints and Disputes (section 6).
- The Terms are set and made available in the English language, and the English version of the Terms will always take precedence over any translation of the Terms.

IMPORTANT EXCEPTIONS:

If you have -

- placed an order with Mindset Management that contains terms that differ from the Terms and such order is accepted by Mindset Management; or
- entered into a separate written addendum with Mindset Management that amends the Terms; or
- entered into a separate written contract with Mindset Management that supersedes the Terms,

in connection with access to, and/or use of Engage EX prior to obtaining access to, and/or use of Engage EX, the terms set out in such order or addendum read together with the unamended Terms, or the terms set out in the separate written contract shall constitute the "Terms", in which case the terms of such order, addendum or contract shall take precedence over the Terms, or part of the Terms as the case may be.

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

- “Engage EX” means the software-as-a-service (“SaaS”) versions of the Engage EX product range, including but not limited to Engage Survey, 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” means the contracting party under the Terms vis-à-vis the Enterprise User, being (as the case may be) either:
 - **Mindset Management Inc, duly incorporated under the laws of the State of Delaware, United States of America , State of Delaware File # 7045775**, with its international principal place of business located at 90 State Street, Suite 700, Albany, New York, United States of America, 12207, **if the** principal place of business of the Enterprise User is located within the official borders of the United States of America; **or**
 - **Mindset Management Programs (Pty) Ltd, duly incorporated in the Republic of South Africa with company registration number 2016/038861/07** with its principal research and development office located at Midlands Office Park West, Mount Quray Road, Centurion, Gauteng, Republic of South Africa, 1683, **if the** principal place of business of the Enterprise User is located within the official borders of the Republic of South Africa, or is located in any other country outside of the official borders of South Africa other than in the United States of America.
 - Mindset Management nominates its email address support@mindsetmanage.com for all official communication between Mindset Management and the Enterprise User, particularly in relation to section 14 dealing with the sending and receiving of official notifications.
- “Enterprise User” and “Subscriber” mean any organization or legal entity whose employees or otherwise designated or co-opted persons access, interact with or use Engage EX, whether as part of the free trial period at no cost to the Enterprise User or as part of a Subscription to access and utilize Engage EX upon payment of the prescribed Subscription fee.
- “System Data” means usage, transactional and device-related data that is collected automatically by Engage EX.
- “User” means any person who accesses or uses Engage EX in terms of a valid Enterprise User Subscription.
- “User Data” means any data or content entered or captured by a User utilizing Engage EX, including survey responses entered or captured by Users.

1. Engage EX Web-based Service

Mindset Management provides software as a service (“SaaS”) known as Engage EX, a web-based survey, analytics, expert recommendation and action planning system designed to help organizations measure, monitor and manage employee engagement and other organizational efficiency and effectiveness aspects at work.

The Terms regulate the relationship between Mindset Management and the Enterprise User as a subscriber to Engage EX, enabling the Enterprise User to access and utilize the web-based SaaS Engage EX developed and owned by Mindset Management.

1.1 Enterprise User Responsibilities

The 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 EX or any software, documentation or data related to Engage EX; modify, translate, or create derivative works based on Engage EX (except to the extent expressly authorized in writing by Mindset Management); use Engage EX or any derivative product for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

The Enterprise User shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use Engage EX, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). The Enterprise User and Mindset Management shall respectively be responsible for maintaining the security of their own Equipment, and adopting and implementing reasonable security measures for the protection of any user account, passwords (including but not limited to administrative and user passwords), files and data that are under a party’s control and/or as required by applicable legislation from time to time.

In the event that the parties enter into a Data Processing Agreement (“DPA”), the terms of the DPA will apply.

1.2 Availability of the Service

Mindset Management shall use reasonable efforts consistent with prevailing industry standards to maintain Engage EX in a manner which minimizes errors and interruptions in the use of Engage EX. Engage EX may be temporarily unavailable for scheduled maintenance or 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 shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption or discontinuation.

NOTWITHSTANDING THE AFOREGOING, MINDSET MANAGEMENT DOES NOT WARRANT THAT ENGAGE EX 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 EX. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, ENGAGE EX 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.

In the event that the maintenance of Engage EX, or any change to the Services causes the functionality of Engage EX to be materially affected to the extent that it no longer serves the purpose for which it was designed, the Enterprise User will be entitled, upon written notice to that effect to Mindset Management, to summary termination of the use of Engage EX. Mindset Management will in such an event refund the Enterprise User on a pro-rata basis in respect of any fees paid in advance.

If the Enterprise User is situated in an area where there is weak or limited connectivity and/or the Enterprise User attempts to access Engage EX whilst being offline, Engage EX may not function correctly. Mindset Management will not be liable for any damages suffered by an Enterprise User arising from using the Engage EX application in an area of weak or limited connectivity or for offline access.

Standard data costs will be charged when an Enterprise User utilizes Engage EX 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 not 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 its mobile network operator or internet service provider.

1.3 Software Support

Mindset Management shall make commercially reasonable efforts to correct bugs or other errors in Engage EX. Enterprise User acknowledges that Mindset Management is not required to correct every bug, error, or problem with Engage EX 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 email within 1 (one) business day of the logging of a support call during weekdays. The Enterprise User may initiate a support request by emailing support@mindsetmanage.com or by means of the Need Help function in the side panel of the Engage Resources site that can be accessed by means of this link <https://www.mindsetmanage.com/concepts-guidelines> or by clicking on the Help button in Engage EX. Mindset Management will use commercially reasonable efforts to respond to all support requests within one (1) business day from logging of the support call.

1.4 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 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 herein.

In the event that the parties enter into a Data Processing Agreement ("DPA"), the terms of the DPA will apply.

1.5 Links to other Websites

Due to the software architecture of the Engage EX platform and to assist in providing the Services, Mindset Management's Services may contain links to third-party websites or services that are not owned or controlled by Mindset Management, but which the Enterprise User will be able to access through the Services. These third-party web services are not part of the Services.

Any third-party websites or services that the Enterprise User may access through the Engage EX platform are subject to the terms and conditions of those websites and/or services.

Mindset Management has no control over and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites or services.

2. Fees and Costs

2.1 Free Trial

Mindset Management may, at its sole discretion, offer a part, version or derivative of Engage EX on a free trial basis for a limited period of time ("Free Trial"). The 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.

2.2 Subscriptions

Access to and use of Engage EX is billed to the Enterprise User on an annual subscription basis ("Subscription"). The Enterprise User will be billed in advance ("Billing Cycle"). All Subscription fees exclude sales tax, GST, VAT, or other similar taxes which will be charged in addition to the stated Subscription fees.

Unless otherwise agreed, payment in respect of invoices is due 30 (thirty) days after the invoice date.

Failure to make payment in relation to any invoice within 5 days of being called upon to do so after the due date thereof has passed, shall entitle Mindset Management to suspend and/or terminate the Enterprise User's access to or use of Engage EX as contemplated in clause 2.5 below.

2.3 Fee Changes

Mindset Management, in its sole discretion and at any time, may change the Subscription fee. Any change in the Subscription fee published prior to the expiry of a current Subscription period will apply to a renewal of the Subscription if the Enterprise User elects to renew the Subscription and Mindset Management agrees to such renewal. Mindset Management will provide the Enterprise User with reasonable prior notice of any change in Subscription fees that will apply to a renewal of the Subscription.

2.4 Refunds

Except when required by law, paid Subscription fees are non-refundable, save as otherwise provided for in this Agreement.

2.5 Termination of the Service

Mindset Management may modify, suspend, or terminate the Enterprise User's access to or use of Engage EX if the Enterprise User or any User violates any law, is in breach of any of the Terms, fails to make payment in relation to any invoice issued to the Enterprise User by Mindset Management, or creates harm, risk, or possible legal exposure for Mindset Management, its other subscribers and users, or any other third party and fails to rectify same within 5 days of being called upon to do so.

The following provisions will survive any termination of your relationship with Mindset Management: "Confidentiality and non-solicitation" (clause 8), "Indemnity and limitation of liability" (clause 4), and "Copyright and intellectual property" (clause 10).

3. Data Privacy and Data Processing

If the parties enter into a Data Processing Agreement (“DPA”), the terms of the DPA will apply in respect of data privacy and data processing and any conflicting Terms will be superseded by the relevant term(s) stipulated in the DPA.

If the parties do not enter into a negotiated DPA, then, by subscribing to Engage EX and accessing and using, or continuing to use Engage EX, the Enterprise User acknowledges and agrees that Mindset Management’s processing of the Enterprise User and Users’ personal information and data will be done in accordance with Mindset Management’s standard DPA and Privacy Policy, which can be accessed [here](#), subject to the provisions set out in section 12.

4. Indemnity and Limitation of Liability

Engage EX and all content on the web-based application are provided on an “as is” basis, and notwithstanding Mindset Management having exercised every reasonable care, Engage EX may include inaccuracies or typographical errors.

None of the content, including any information published about Engage EX or any specific aspects of the business of Mindset Management, should be construed as advice in respect of such aspect. Enterprise Users who choose to act in accordance with the contents of Engage EX, including any information published thereon, do so at their own risk, of their own volition, and through the exercise of their own discretion.

Mindset Management gives no warranty and does not make any representation as to the availability, accuracy or completeness of the Engage EX content, or any third-party content accessible via an internet link through Engage EX.

To the maximum extent permitted by applicable law, any limitations and exclusions in relation to liability set out in these Terms apply to any claims related to the Terms and Engage EX.

In the event that the Enterprise User or Mindset Management (as the case may be) (the “Claimant”) has any basis to recover damages, including in relation to any breach of the Terms –

- the Claimant’s exclusive remedy is to recover direct damages whether in contract, delict, breach of statutory duty or otherwise, limited to the total amount(s) paid by the Enterprise User to Mindset Management in terms of the Terms during the 12 (twelve) calendar month period preceding the event giving rise to such liability;

- The Enterprise User or Mindset Management (as the case may be) is under no circumstances responsible or liable for any –
 - indirect, special, incidental, consequential or punitive losses or damages;
 - loss of actual or anticipated profits;
 - loss of actual or anticipated income;
 - direct losses or damages in excess of the maximum obligation as set out above.

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

5. Amendments to the Terms

Mindset Management may change, modify, add to or remove from portions or the whole of these Terms. Mindset Management will notify the Enterprise User of such changes via email or by posting a prominent notice on Engage EX. Any amendments to the Terms published by Mindset Management during a current Subscription period will not apply to such Subscription, but will automatically apply to any renewal of the Subscription if the Enterprise User elects to renew its Subscription and Mindset Management agrees to such renewal, unless the parties agree otherwise prior to the renewal of the Enterprise User's Subscription.

6. Complaints and Disputes

Enterprise Users can file complaints using the "Feedback & Support" option under the "Tools" function of Engage EX.

6.1 Negotiation

Should any dispute, disagreement or claim arise between the parties concerning the Terms (the "dispute"), the parties will endeavor to meet and negotiate in good faith to resolve such dispute within 10 (ten) business days after receipt by a party of a notice setting out the detail of the alleged dispute.

6.2 Mediation

Should the parties fail to resolve a dispute by negotiation or within such further period as the parties may agree upon, the parties will appoint a mutually agreed upon independent industry expert who shall endeavor to negotiate a resolution of the dispute on the parties behalf.

6.3 In relation to any dispute that cannot be resolved by negotiation or mediation, and where the Choice of Law is New York State Law, the following will apply:

6.3.1 The parties irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of the Terms.

6.3.2 Each party agrees to commence any such action, suit or proceeding in the United States District Court for the Southern District of New York or, if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York, New York County.

6.3.3 Each party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of the Terms in the United States District Court for the Southern District of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

6.4 In relation to any dispute that cannot be resolved by negotiation or mediation, and where the Choice of Law is South African Law, the following will apply:

6.4.1 Arbitration

Failing resolution of a dispute by negotiation and mediation, the dispute must be referred to arbitration to be conducted in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of South Africa ("AFSA") or its successor body, by an arbitrator agreed upon between the parties, or, failing agreement within 7 (seven) business days, appointed by AFSA.

The arbitrator shall be, if the matter in dispute is principally:

- a legal matter, a practicing attorney or advocate with a reasonable level of experience based on the complexity of the dispute;

- an accounting matter, a practicing chartered accountant with a reasonable level of experience, based on the complexity of the dispute; or
- any other matter, an independent third party, agreed upon between the parties to the dispute.

Unless otherwise agreed between the parties in writing, the seat of arbitration will be determined by AFSA.

6.5 Unless otherwise agreed between the parties or between their advisers, service of any process, summons, notice or document in relation to any dispute will be sent and delivered by an internationally recognized overnight courier (receipt requested) to the receiving party's chosen *domicile* or main place of business, which will be regarded as effective service of process for any action, suit or proceeding with respect to any matters to which it has submitted to jurisdiction in this section 6.

6.6 Neither party will disclose, other than as lawfully required, or to their respective advisers on a need-to-know basis, or publish in any manner, any information in relation to a dispute, particularly not on any public platform, including social media. The parties agree and acknowledge that any unauthorized publication will, among other things, cause material harm to a party's reputation and business.

6.7 The provisions of this clause shall not preclude any party from approaching any court of competent authority for injunctive relief of an urgent nature.

7. Disclaimers

The Enterprise User's use of Engage EX 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 for any indirect or consequential loss or damages the Enterprise User may suffer if a factor beyond Mindset Management's control arises and the Enterprise User or any User cannot access Engage EX.

Mindset Management, its holding company, shareholders, office bearers, affiliates, agents, employees, and subsidiaries shall not be responsible for any indirect or consequential loss or damages related to the Enterprise User's use of Engage EX or any Intellectual Property flowing from their use.

Mindset Management is not responsible or liable for any failure to perform or for any delay in performing its obligations under these Terms to the extent that the failure or delay is caused by circumstances beyond Mindset Management's reasonable control that include but are not limited to –

- labor disputes, strikes, lockouts or riots;
- acts of God, fire, storm, earthquakes, war or terrorist activity;

- epidemics, pandemics or quarantines;
- compliance with any applicable law or government order;
- delay, shortage, lack of, or interruptions to electricity supply;
- any User Data or other data is directly or indirectly lost or damaged because of power failures, unlawful acts, any third party program or virus, the Enterprise User and User's negligence;
- any failure or delay that affects services upon which access to Engage EX depends and that is provided by any third-party supplier including but not limited to the uninterrupted availability of internet connectivity services and electricity supply.

8. Confidentiality and Non-solicitation

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 authorized 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 whether any information is confidential or a trade secret, the party will request a written ruling from the other party.

The Enterprise User will immediately inform Mindset Management should it at any stage 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 set out in section 8 will survive the termination of a Subscription.

Each party undertakes to inform the other in writing without delay should any demand or request for information relating to or in connection with the Subscription and Terms is received, irrespective of whether such request or demand is formulated in terms of any relevant legislation, or on any other grounds.

9. Breach

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

If the Subscription 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.

10. 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 other 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 EX. Content displayed on Engage EX is provided by Mindset Management, its affiliates or subsidiaries, 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 subsidiaries, 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 EX, the content or services offered through Engage EX 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 at all material times retain ownership of all Intellectual Property and Intellectual Property Rights in and to Engage EX (including, but not limited to, all proprietary information, trademarks and copyright in any logos and other devices or storage media).

On the basis of a valid and paid-up Subscription, Mindset Management grants the Enterprise User a non-exclusive and non-transferable right to access and use Engage EX, for purposes set out in the Terms ("the Subscription"). The Subscription is personal to the Enterprise User and the Enterprise User is not entitled to grant or allow access and use of Engage EX to any person or entity other than to its *bona fide* Users.

The Subscription will commence when the Enterprise User accesses the web-based application to open Engage EX and sign up to access and use Engage EX and will continue until the Subscription terminates. Termination of a Subscription will result in the inability of the Enterprise User to access Engage EX without renewing its Subscription. On termination of the Subscription for any reason, the Enterprise User shall immediately cease using Engage EX.

Certain content available on Engage EX 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 content belonging to third parties, including, but not limited to any merchants, featured on Engage EX;
- Any content featured on the third-party websites that are accessed through the links found on Engage EX.

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 EX, its contents, including any Intellectual Property therein, its design, any updates to Engage EX and/or any proprietary features in relation to it, or any parts of it. This prohibition extends to all content belonging to third parties that is found on Engage EX and/or any content featured on third-party websites that are accessed through links that are found on Engage EX.

The Enterprise User agrees that:

- It will not make any representations that it has 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 EX;
- It will not use Mindset Management's and/or any third party that is featured on Engage EX, present and/or future Intellectual Property in any manner whatsoever;

- It will not do, or omit to do, or cause or allow 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 or in any manner whatsoever undermine or prejudice Mindset Management's Intellectual Property; and
- It 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 identical to, contained in whole or in part, or is otherwise similar to Mindset Management's present 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 unauthorized use of Engage EX, the content thereon and/or any other Intellectual Property and Intellectual Property Rights flowing from the foregoing.

Any breach of the provisions of this section entitles Mindset Management, in addition to its common law remedies, to take legal action with prior notice to the Enterprise User.

Intellectual property that either party owned prior to entering into a contractual relationship based upon the Terms, or has developed or is developed independently and not in breach of any provisions of these Terms, is and remains that party's separate property. It is not affected by these Terms and neither party has any claims to or rights in such intellectual property of the other party.

The Enterprise User owns all rights in and related to its Intellectual Property, including without limitation its copyrighted works, data and any derivative works, and no rights are granted to Mindset Management concerning such Intellectual Property which is and remains reserved to the Enterprise User.

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

Any breach of the terms under this sub-clause entitles the Enterprise User, in addition to its common law remedies, to take legal action with prior notice to Mindset Management.

11. Enterprise User feedback

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

12. Choice of Law

Where the contracting parties' respective chosen *domicile*, or principal place of business is located within the official borders of the United States of America, the Terms will be governed by and construed under the laws of New York, without giving effect to the conflicts of laws and any dispute between the parties must be resolved in terms of the provisions of section 6.3 of the Terms.

If Mindset Management's chosen *domicile* or principal place of business is located within the official borders of the United States of America but the Enterprise User's chosen *domicile* or principal place of business is located outside of the official borders of the United States of America, the Terms will be governed by and construed under the laws of New York, without giving effect to the conflicts of laws and any dispute between the parties must be resolved in terms of the provisions of section 6.3 of the Terms.

If the contracting parties' respective chosen *domicile* or principal place of business is located within the official borders of the Republic of South Africa, the Terms will be governed by and construed under the laws of the Republic of South Africa and any dispute arising between the parties must be resolved in terms of the provisions of section 6.4 of the Terms.

If Mindset Management's chosen *domicile* or principal place of business is located within the official borders of the Republic of South Africa but the Enterprise User's chosen *domicile* or principal place of business is located outside of the official borders of the Republic of South Africa but not within the official borders of the United States of America, the Terms will be governed by and construed under the laws of the Republic of South Africa without giving effect to the conflicts of laws and any dispute arising between the parties must be resolved in terms of the provisions of section 6.4 of the Terms.

If any of the Terms are found by a court of competent jurisdiction or any other statutory body of competent jurisdiction, to be invalid or unenforceable, such provision(s) 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. In particular, should any Term of section 3 be found to be in conflict with any non-variable provision of applicable data privacy and data processing laws under the applicable choice of law in terms of this section 12 (i.e. the California Consumer Privacy Act of 2018 "CCPA" in the USA and the POPI Act in South Africa and

the GDPR in Europe), any such conflicting non-variable provision(s) will be deemed to be amended in terms of the governing law to the extent necessary to ensure compliance with the applicable choice of law.

13. General

The Terms constitute the whole agreement between the parties with regard to the Subscription, access to and use of Engage EX and the Engage EX content, and the parties waive the right to rely on any alleged term not expressly set out in the Terms. No contract varying, adding to, deleting from or cancelling the Terms, and no waiver of any right under the Terms by the Enterprise User shall be effective unless reduced to writing and signed by or on behalf of the parties.

Mindset Management may assign its rights under the Terms to a new owner if the ownership of all or substantially all of the business should change, in which case the Terms will continue to apply until the Terms are updated or amended by the acquiring party upon notice to the Enterprise User.

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

If an Enterprise User account is blocked or access terminated for any reason, Mindset Management may suspend the Enterprise User's access to the Engage EX, until the Enterprise User has registered a new account on Engage EX and Subscribed for access to and use of Engage EX.

14. Notices

Other than any document or notice required to be sent or exchanged between the parties concerning the resolution of any dispute as provided for under section 6.5, communication between the parties will be conducted by email and addressed to the parties' respective nominated email addresses.

The nominated email address for Mindset Management is set out under the Mindset Management definition.

The Enterprise User nominates the email address registered on the Enterprise User's profile or through the Engage EX message system as the email address to which all communication will be sent.

Any communication sent by email to the respective nominated email addresses will be regarded as having been received by the addressee 1 (one) business day after it was sent.

15. Support Contact Information

Enquiries about Engage EX can be submitted to Mindset Management by sending an email to Mindset Management at support@mindsetmanage.com, or by contacting the Mindset Management support team via the Mindset Management website at www.mindsetmanage.com.

16. Distribution and Communication by Email

Any email communication received from Mindset Management is privileged and confidential and intended for the use of the addressee Enterprise User only. If an Enterprise User receives an email in error, please notify Mindset Management urgently and delete the email and any attachments. Unauthorized 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 that Mindset Management acknowledges receipt of the Enterprise User's instruction.