



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

Version 1.9 - Jan, 2022

The *Service Terms and Conditions* 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 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" 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 Midlands Office Park West, Mount Quray Road, Centurion, 1683;
- "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.

1. 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.

1.1 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 party; 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.

1.2 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 in its discretion. Mindset Management shall however 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 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.

1.3 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 (<https://www.mindsetmanage.com/analytics-overview>) 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.

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 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.

1.5 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.

2. Fees and Costs

2.1 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.

2.2 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"). 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.

Failure to make payment in relation to any invoice issued to the Enterprise User on or before the due date thereof shall entitle Mindset Management to suspend and/or terminate the User's access to or use of Engage as contemplated in clause 2.5 below.

2.3 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's continued use of the service after the subscription fee change comes into effect constitutes the Enterprise User's consensus and agreement to pay the modified subscription fee amount.

2.4 Refunds

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

2.5 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, fails to make payment in relation to any invoice issued to the User by Mindset Management, 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" (clause 8), "Indemnity and limitation of liability" (clause 4), and "Copyright and intellectual property" (clause 10).

3. Data Privacy and Processing

By accepting these Terms and/or continuing to use the Engage software-as-a-service product, you are simultaneously also expressly and informedly consenting to our processing of your personal information in accordance with our Privacy Policy, which can be accessed [here](#).

4. Indemnity and Limitation of Liability

Engage 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 may include inaccuracies or typographical errors.

None of the content, including any information published pertaining to Engage or to 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, including any information published thereon, do so at their own risk, of their own volition, and through the exercise of their discretion.

Mindset Management makes no warranty or representation as to the availability, accuracy or completeness of the Engage content, or any third-party content accessible via an internet link through Engage.

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.

In the event where the User, 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 User or Enterprise User to Mindset Management in terms of this agreement during the 12 (twelve) calendar month period preceding the event giving rise to such liability;
- The User, 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 does not govern the relationship between the Enterprise User and any third party.

5. 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. Enterprise User may terminate the Agreement by notifying Mindset by sending an email to support@mindsetmanage.com within 30 days of receiving notice of the amendment if Enterprise User do not agree to the amendment or if Enterprise User is of the opinion that the amendment has a material adverse impact on Enterprise User.

6. Complaints and Disputes

Enterprise Users can file complaints by means of the “Feedback & Support” option under the Tools function of Engage.

6.1 Negotiation

Should any dispute, disagreement or claim arise between the parties (called hereafter “the dispute”) concerning this Agreement, the parties shall endeavour to resolve the dispute by negotiation.

Should any dispute or difference arise between the parties in relation to the provisions of this Agreement, the parties shall meet within 10 (ten) business days of such notice and negotiate in good faith to resolve such dispute or such dispute shall be resolved by mediation, or (failing mediation) arbitration.

6.2 Mediation

Should the parties fail to resolve such dispute in the aforesaid manner or within such further period as the parties may agree to in their negotiation, the parties will approach an independent industry expert who shall negotiate the discussion on their behalf. The expert's decision shall be binding on the parties. Should the mediation fail, the dispute shall be referred to arbitration.

6.3 Arbitration

Any dispute between the parties arising out of or in respect of this Agreement and referred to arbitration as per clause 6.2, shall be held 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 by the parties in writing the arbitration shall be held in Pretoria, South Africa, and the arbitrator's decision will be final and binding.

The parties both agree that in no circumstance will either party publicize the dispute on any public platform, including social media. The parties understand that any publicity of this nature can cause serious damage to the other party, which damage may result in a financial claim.

The provisions of this clause shall not preclude Mindset Management from approaching any court of competent authority for an interdict or other injunctive relief of an urgent nature.

7. 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 for 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, its holding company, shareholders, office bearers, affiliates, agents, employees, and subsidiaries shall not be 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 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 –

- labour disputes, strikes, lockouts or riots;
- acts of God, fire, storm, earthquakes, war or terrorist activity;
- epidemics 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 User's or Enterprise User's own negligence;
- any failure or delay that affects services upon which access to Engage depends and that are 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

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.

9. 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.

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 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 at all material times retain ownership 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 shall grant the Enterprise User a non-exclusive, non-transferable, non-sublicensable right and license to use Engage which may include updates and/or upgrades, only for purposes outlined in this Agreement and for no other purposes, and subject to these Terms ("the License"). 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 thereafter 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 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
- 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.

Intellectual property that either party owned prior to execution of these Terms or develops 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.

11. 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.

12. 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 High Court of South Africa, Gauteng Provincial Division 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.

13. 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.

Mindset Management may assign the Agreement 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.

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.

14. 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.

15. 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.

16. 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.