

## TERMS OF USE

### Subscription Agreement

(A) Mindpool provides online systems via mindpool.com (the “**System**”) that is further described in the user documentation (such as user guides or help articles) made available through the System (the “**Documentation**”).

(B) The parties are entering into this agreement (which includes the data processing agreement in Annex A (“**Data Processing Agreement**”) and, where applicable, the professional services terms in Annex B) and one or more order forms (the “**Order Forms**”). The Order Forms will form part of this agreement and specify: (1) the product plan applying to Customer’s use of the System, which will determine (as described further in the Documentation): (a) the functionality that will be made available to Customer by the System, and (b) the System support services to be performed by Mindpool (the “**Support Services**”), (2) any professional services to be performed by Mindpool (the “**Professional Services**” and together with the System and the Support Services, the “**Services**”), and (3) the maximum number of users of Customer and any Customer Affiliates that may be designated by Customer to access the System (“**Authorised Users**”). “**Affiliate**” means any company that directly or indirectly controls, is controlled by, or is under common control of a party. An entity shall be regarded as in control of another company or entity if it owns or directly or indirectly controls more than 50% of the voting rights of that company or entity.

### 1. Provision Of System And Services

1.1 Subject to payment by Customer of the Charges (as defined below in section 4.1), Mindpool shall, during the subscription term specified in the Order Form (as may be extended in accordance with this agreement) (the “**Subscription Term**”), and in accordance with this agreement: (a) provide Customer with a non-exclusive, non-transferable, non-sublicensable, revocable, royalty-free licence to permit the Authorised Users to access and use the System during the Subscription Term in accordance with the terms of this agreement and solely for Customer’s internal business operations, (b) perform the Support Services for Customer during the support hours and to the service availability levels specified in the Order Form, and (c) perform the Professional Services in accordance with the Order Form and the Professional Services Annex B. Customer shall only use the Services and the Documentation for its internal business operations and in accordance with this agreement and shall use the System in accordance with the Documentation.

1.2 Customer shall designate the Authorised Users, who will only be employees and contractors of Customer and Customer Affiliates, up to the maximum number specified in the Order Form, and shall procure that only one individual uses each Authorised User account and accounts are not shared. If

Customer wishes to procure additional Authorised User accounts above such maximum it shall execute an additional Order Form. The additional Authorised Users shall be coterminous with the pre-existing Subscription Term and Customer shall pay additional subscription fees, as specified in the Order Form, for the new Authorised Users at the rate specified in the Order Form, pro-rated from the date of activation to the end of the then-current Subscription Term. Mindpool shall invoice the additional subscription fees at the end of the quarter in which activation occurred. Customer shall procure that Customer Affiliates and the Authorised Users comply with this agreement.

1.4 Mindpool shall, to the extent required for the provision of Services under this agreement: (a) perform the Services substantially in accordance with this agreement and with reasonable skill and care, (b) comply with applicable laws, and (c) maintain any licences and consents that are needed to provide the Services and the System.

1.5 Mindpool shall use reasonable efforts to correct promptly any material non-conformance of the System as detailed in the Documentation. However, Mindpool will not be liable for: (a) the System or Services to the extent damage is caused by these being used contrary to Mindpool's instructions or this agreement or modified other than by, or on behalf, of Mindpool, or (b) Customer's connection to the System over the internet or integration to the System. Customer is responsible for ensuring that the System and Services meet its requirements and are fit for purpose. If Customer does not perform its obligations in a timely manner, then Mindpool may reasonably adjust the delivery plan for the Services.

1.6 Mindpool may modify the Documentation and System if it does not materially reduce the functionality of the System (and may provide alternative features that have materially the same benefits as the previous feature).

1.7 Mindpool may use the name and logo of Customer for promotional and marketing purposes.

## **2. Customer Data**

2.1 Customer shall own any data or information uploaded by Customer and/or its Authorised Users into the System or provided by Customer to Mindpool in connection with the Services ("**Customer Data**"). Customer shall be responsible for the content of Customer Data.

2.2 Mindpool shall back-up Customer Data as set out in its then-current published security policy (the "**Security Overview**"). If there is any loss or damage to Customer Data due to a System error, then Mindpool shall use reasonable efforts to restore the lost or damaged Customer Data from the latest back-up as its sole liability. Mindpool shall not be responsible for any

loss, destruction, alteration or disclosure of Customer Data caused by any party other than Mindpool or its subcontractors.

### 3. Customer's Obligations

3.1 Customer shall: (a) co-operate with Mindpool and provide any necessary information, as required to provide the Services, (b) comply with laws applicable to this agreement and maintain any necessary licences and consents to allow the use of Customer Data in accordance with this agreement, (c) procure that the Authorised Users keep their System passwords confidential, and (d) use reasonable efforts to prevent unauthorised access or use of the System and the Documentation (and if Customer is aware of unauthorised access or use, promptly notify Mindpool).

3.2 Customer shall not (and Mindpool may suspend Customer's access to the System if any of the following occur, or Mindpool reasonably believes any of the following has occurred): (a) access, store, distribute or transmit any viruses or any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing, discriminatory or offensive, (b) except as expressly permitted under this agreement or allowed by any applicable law that is incapable of exclusion: (i) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute any portion of the System or Documentation, or (ii) de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any part of the System, (c) use the System, Services or Documentation to provide services to third parties or build a product or service which competes with the System or Services, (d) subvert any security restrictions imposed by Mindpool, including attempting to obtain, or assist others in obtaining, access to the System, other than as permitted under this agreement, (e) use the System in a way that adversely affects the System or other users use of the System, (f) make the Services, System or Documentation available to any third party or assist third parties in obtaining access, or (g) engage in any excessive or abusive use of the optional modules and/or features of the System as may be provided by the sub-processors referred to in section 3 of Annex A from time to time, which is usage significantly in excess of average usage patterns that adversely affects the availability, functionality, speed, responsiveness and/or stability of the Services for any other customer(s) and/or any Authorised User(s) ("**Excessive Usage**"). Should Mindpool determine that any Excessive Usage has occurred, Customer shall account to Mindpool for any charges incurred by Mindpool as a result of such usage.

### 4. Charges And Payment

4.1 Customer shall pay Mindpool the subscription fees and charges specified in the Order Form for Customer's use of the System and the Services (the "**Charges**"). The Charges are non-cancellable and non-refundable (except if this agreement is terminated by Customer for Mindpool's material breach, in

which case Mindpool will refund any prepaid fees covering the remainder of the then-current Subscription Term). Customer shall pay the Charges within 30 days of receiving Mindpool's invoice.

4.2 Subscription fees shall be invoiced on or around the "**Effective Date**" for the initial Subscription Term (each as specified in the Order Form) and on or around the beginning of each subsequent minimum renewal period of 12 months ("**Renewal Periods**") in advance thereafter (or in accordance with section 1.2). Professional Services fees shall be invoiced in accordance with the Order Form. Customer shall reimburse Mindpool for any transaction fees that may be incurred by Mindpool in connection with payments of the Charges if any are due from Customer's bank.

4.3 The Charges are exclusive of value added, sales, use or withholding, or equivalent taxes in any jurisdiction (together, the "**Taxes**"), which if payable, will be additionally payable by Customer at the appropriate rate. Customer shall be responsible for, and will not withhold or deduct, any applicable Taxes on the Charges.

4.4 If Mindpool has not received payment within 30 days of receipt of an invoice and has contacted (or attempted to contact) Customer both by email and by telephone referring to its rights of suspension, then: (a) Mindpool may disable Customer's access to the System and suspend the Services, and (b) interest shall accrue on a daily basis at an annual rate equal to 3% over the then-current base lending rate of Mindpool's bankers in the UK. If a Charge is 30 days or more overdue, then Customer shall reimburse Mindpool for Mindpool's reasonable costs incurred in the collection of the overdue amount from Customer.

4.5 Mindpool may increase the Charges at the start of each Renewal Period by giving not less than 60 days' prior written notice to Customer.

## **5. Proprietary Rights**

5.1 Mindpool shall have a non-exclusive, royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual licence to use or incorporate into the System and Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Authorised Users relating to the operation of the System and Services.

5.2 Nothing in this agreement will be deemed to transfer any intellectual property rights between the parties. Customer may use the System by viewing it in a browser or printing out copies for Customer's use, but Mindpool reserves all other rights.

5.3 Customer grants Mindpool a non-exclusive licence to use Customer Data for the purposes of providing the System and Services in accordance with the agreement.

## 6. Confidentiality

**The parties shall each: (a) keep confidential, (b) only use for the purposes of this agreement, and (c) only disclose in confidence to the recipient's employees, contractors and advisors who need to know, the confidential information of the other party received in connection with this agreement, unless the confidential information (i) has become public knowledge otherwise than through a breach of this section, (ii) can reasonably be shown to have been known by the recipient before being received from the discloser, (iii) was obtained by a third party that had not breached a duty of confidentiality, or (iv) is required to be disclosed by law or a party's regulatory body. Upon termination of this agreement each party shall on request promptly return or take reasonable steps to delete the confidential information of the other party.**

## 7. Indemnity

7.1 Mindpool shall defend and indemnify Customer and Customer Affiliates, from and against:

7.1.1 any claim brought by a third party that the Services, Documentation or System infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify Customer and Customer Affiliates for any amounts awarded against Customer or Customer Affiliates in judgment or settlement of any such infringement claims, and

7.1.2 any third party or regulatory claims, actions, proceedings, or fines, and for any related losses, damages, expenses and costs, to the extent arising out of or in connection with any material breach by Mindpool of the Data Processing Agreement.

7.2 Customer shall defend and indemnify Mindpool and the Mindpool Affiliates, from and against:

7.2.1 any claims, actions, proceedings, losses, damages, expenses and costs arising in connection with the misuse or otherwise improper use of the System and/or Documentation in breach of this agreement by Customer or by any person under the control of Customer or any Customer Affiliate; and

7.2.2 any third party or regulatory claims, actions, proceedings, or fines, and for any related losses, damages, expenses and costs, to the extent arising out of or in connection with any material breach by Customer of the Data Processing Agreement.

7.3 Section 7.1 and 7.2 are subject to:

7.3.1 the indemnifying party being given prompt notice of any matter for which indemnified party wishes to be indemnified;

7.3.2 the indemnified party providing reasonable co-operation in the defence and settlement of the relevant claim, at the indemnifying party's expense; and

7.3.3 the indemnifying party being given sole authority to defend or settle the relevant claim, provided that no settlement shall be made which prejudices the indemnified party's rights or imposes any obligations on it without its prior written approval (such approval not to be unreasonably withheld or delayed).

7.4 In the defence or settlement of any third party claim, Mindpool may procure the right for Customer to continue using the System, replace or modify the System so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this agreement on two business days' notice to Customer without any additional liability.

7.5 Mindpool will not be liable to Customer to the extent that an alleged infringement is based on:

7.5.1 a modification of the Services or Documentation by anyone other than Mindpool or its subcontractors;

7.5.2 Customer's use of the Services or Documentation in a manner contrary to the instructions given by Mindpool; or

7.5.3 Customer's use of the Services or Documentation after notice of the alleged infringement.

7.6 The foregoing states Customer's sole and exclusive rights and remedies, and Mindpool's entire obligations and liability, for infringement of any intellectual property right.

7.7 Each party shall make reasonable efforts to mitigate any loss, damage or liability it may suffer or incur as a result of a breach by the other party of this agreement or in respect of which it seeks indemnification from the other party under this agreement.



## 8. Limitation Of Liability

8.1 Except as expressly and specifically provided in this agreement and to the fullest extent permitted by applicable law:

8.1.1 Customer assumes sole responsibility for all information, notifications, results, data or disclosures (collectively "**Results**") obtained or delivered in the course of the use of the Services and the Documentation, and Mindpool expressly disclaims any and all responsibility and liability in respect of such Results;

8.1.2 Mindpool shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Mindpool by Customer in connection with the Services, or any actions taken by Mindpool at Customer's direction;

8.1.3 all terms implied by law are excluded from this agreement; and

8.1.4 the Services and the Documentation are provided to Customer on an "as is" basis.

8.2 Nothing in this agreement excludes or restricts liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation, or otherwise to the extent such exclusion or limitation is not otherwise permitted by law.

8.3 Subject to section 8.2:

8.3.1 neither party shall be liable to the other party, whether in contract, tort (including for negligence), breach of statutory duty or otherwise for (a) any loss of profits, loss of business, depletion of goodwill or similar losses or loss or corruption of data or information, or pure economic loss, or (b) for any indirect or consequential loss; however arising under or in connection with this agreement, provided that this section shall not apply to limit or exclude any obligation to pay the Charges or any charges that may be owed by Customer in respect of any Excessive Usage; and

8.3.2 the total and aggregate liability of (a) Mindpool and the Mindpool Affiliates and (b) Customer and Customer Affiliates, in each case whether in contract, tort (including for negligence), breach of statutory duty or otherwise, arising under or in connection with this agreement shall be limited to 125% of the total subscription fees paid or payable for the Authorised Users during the 12 months immediately preceding the date on which the claim arose.

## 9. Term And Termination

9.1 This agreement shall commence on the Effective Date and continue for the initial Subscription Term and for successive Renewal Periods thereafter, unless (a) either party notifies the other of its intention to terminate, giving at least 30 days' written notice, to take effect at the expiry of the initial Subscription Term or then-current Renewal Period, or (b) otherwise terminates in accordance with this section.

9.2 Either party may terminate this agreement with immediate effect by giving written notice to the other party if the other party:

9.2.1 fails to pay any amount due under this agreement and remains in default not less than 30 days after being notified in writing to make such payment;

9.2.2 commits a material breach of any other term of this agreement which breach is irremediable or (if remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or

9.2.3 the other party is subject to any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity: becomes insolvent, enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, or becomes unable to pay its debts or suspends or ceases, or threatens to suspend or cease, all or a substantial part of its business.

9.3 On termination of this agreement for any reason: (a) Customer shall cease using the System and the Documentation, (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party, (c) without prejudice to Mindpool's rights in respect of Anonymised Data as set out in the Data Processing Agreement, Mindpool shall delete Customer Data within 90 days of the termination of this agreement (unless otherwise requested by Customer to delete sooner), provided that Customer Data contained on backup copies of Mindpool's databases shall not be deleted for up to 180 days from the date of termination, upon expiry of the then-current backup, and Customer shall be entitled to export aggregated Customer Data via the data export functionality within the System, and (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination shall not be affected.



9.4 Any provision of this agreement that expressly or by implication is intended to operate after expiration or termination of this agreement shall remain in full force and effect.

## 10. General

10.1 Except in relation to Customer's obligation to pay the Charges, neither party shall have any liability for non or delayed performance by events beyond its reasonable control, provided that the other party is notified of such event and its expected duration and such affected party uses reasonable endeavours to mitigate its effect. If a party is prevented due to any such events from substantially performing its obligations under this agreement for a period in excess of 30 consecutive days, then the other party may terminate this agreement on 30 days' written notice.

10.2 The Services including other Mindpool technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Mindpool and Customer each represents that it is not named on any U.S. government denied-party list. Customer will not permit any Authorised User to access or use any Service or Documentation in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation.

10.3 If there is an inconsistency between: (a) the "**Special Terms**" section in the Order Form and this agreement, the Special Terms shall prevail; or (b) any other terms of the Order Form and this agreement, this agreement shall prevail.

10.4 No variation of this agreement shall be effective unless it is in writing and signed by the parties' authorised representatives.

10.5 No failure or delay by a party to exercise any right or remedy shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

10.6 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to any rights or remedies provided by law.

10.7 If any provision of this agreement is found to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

10.8 This agreement constitutes the entire agreement between the parties and supersedes all previous agreements (written or oral) relating to its subject matter.

10.9 Each party acknowledges that it does not rely on, and shall have no remedies in respect of, any statement not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

10.10 This agreement may not be assigned or transferred by either party without the prior written approval of the other, but may be assigned or transferred by either party without the other's consent to: (a) a parent or subsidiary, (b) an acquirer of all or substantially all of its assets, or (c) a successor by merger.

10.11 Nothing in this agreement shall create a partnership between the parties or authorise either party to act as agent on behalf of the other.

10.12 This agreement does not confer any rights on any third person or third party.

10.13 Any notice under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in this agreement. A notice delivered by hand shall be deemed received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed received at the time of transmission.

10.14 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and subject to the exclusive jurisdiction of the English courts.

## 1. GENERAL

### ANNEX A: DATA PROCESSING AGREEMENT

1.1 Each party shall comply with its respective obligations under the applicable laws and regulations concerning data protection and/or privacy in or relating to the European Union countries and the UK, including the EU General Data Protection Regulation (2016/679) (“**GDPR**”) and local implementing law or regulations (“**Data Protection Legislation**”). The terms “process”, “controller”, “processor”, “personal data” and “data subject” shall have the same meaning as in the applicable Data Protection Legislation.

1.2 Subject to section 1.4 of this Annex, Customer will be the controller of the personal data in Customer Data (“**Personal Data**”) and Mindpool will be the processor. Mindpool shall:

1.2.1 process the Personal Data only to the extent, and in such a manner, as is necessary for performing this agreement and in accordance with Customer’s written instructions from time to time and shall not process the Personal Data for any other purpose. Where Mindpool is required by law to process the Personal Data, Mindpool will promptly inform Customer of such legal requirement prior to carrying out the processing, unless it is prohibited from doing so by law;

1.2.2 limit access to Personal Data to those of its authorised personnel who need access to it in order to meet Mindpool’s obligations under this agreement, ensure that all such personnel are bound by appropriate obligations of confidentiality and ensure that all such Personal Data is kept separate from any personal data of Mindpool or of any other client of Mindpool;

1.2.3 implement and maintain appropriate technical and organisational measures, to ensure an appropriate level of security in respect of such Personal Data, against accidental, unauthorised or unlawful loss, destruction, alteration, disclosure of or access to such Personal Data; such measures shall be implemented with regard to: (a) encryption of Personal Data; (b) back-up and disaster recovery arrangements; (c) the ability to ensure ongoing confidentiality, integrity, availability and resilience of the IT infrastructure and environment; and (d) the regular testing and evaluation of the effectiveness of such measures. In particular, Mindpool shall, in providing the Services, follow and comply with the data privacy and security measures set out in its Security Overview in connection with the Personal Data;

1.2.4 only engage sub-processors in accordance with section 3 of this Annex;

1.2.5 promptly notify Customer if it receives any complaint, notice or communication which relates to the processing of the Personal Data, or any request from a data subject exercising any rights pursuant to the applicable Data Protection Legislation and reasonably cooperate with and assist Customer in relation to any such complaint, notice communication, or request and shall not disclose any of the Personal Data to any data subject or to a third party other than at the request of Customer, or as provided for in this Data Processing Agreement;

1.2.6 promptly notify Customer if it becomes aware of any unauthorised or unlawful processing, loss of, damage to, disclosure of, access to or destruction of the Personal Data ("**Data Breach**") and provide Customer with any co-operation, information and assistance reasonably requested by Customer in respect of any Data Breach;

1.2.7 upon termination of this agreement, Mindpool will delete the Personal Data in accordance with the terms of the Master Subscription Agreement. Customer shall be entitled to export aggregated Customer Data via the data export functionality within the System; and

1.2.8 upon reasonable notice, make available to Customer or grant to Customer and its auditors and agents, a right of access to and to take copies of any information or records kept by Mindpool pursuant to this Data Processing Agreement, solely to the extent necessary to demonstrate Mindpool's compliance with the Data Protection Legislation and provided always that this section shall not require Mindpool to disclose any confidential information relating to Authorised Users, individual responses to employee engagement surveys or any other personally identifiable data of Authorised Users save to the extent required by the Data Protection Legislation. In relation to any sub-processors that are engaged pursuant to this agreement, Customer acknowledges and agrees that it is sufficient, for the purposes of satisfying the requirements of this section, that Mindpool has a right to audit those sub-processors on behalf of Customer, subject to reasonable restrictions.

1.3 The subject matter and duration of the processing of the Personal Data by Mindpool, the nature and purpose of the processing and the type of Personal Data and categories of data subjects are all as set out in Mindpool's platform user data privacy policy accessible at <https://mindpool.com/privacy/platform>. Mindpool may change the policy after the date of this agreement by giving not less than 30 days' prior written notice to Customer, provided that Customer may terminate this agreement by giving notice within 14 days of having received such notification if Mindpool materially increases the manner or scope in which it processes the Personal Data.

1.4 Mindpool may anonymise Customer Data in which case: (a) the data (“**Anonymised Data**”) will not be treated as Personal Data provided that it is not personal data for the purposes of the GDPR, (b) Mindpool may use the Anonymised Data for statistical or benchmarking purposes to contribute towards the development of Mindpool’s products and services during or after the term of this agreement and will not be required to delete the Anonymised Data on termination.

1.5 For the purposes of section 1.2.1 of this Annex, Customer shall not direct Mindpool to process the Personal Data in a way that is inconsistent with Mindpool’s standard services, or, require Mindpool to provide Customer Data other than in aggregate form, unless otherwise agreed with Mindpool. Customer keeping its account active shall be deemed to be an instruction to Mindpool to continue to process the Personal Data to allow use of the System. Mindpool shall anonymise Personal Data after it has been held on the System for more than five years.

1.6 Customer shall not (and shall not permit its Authorised Users to) configure the System dashboard or other interface by reference to, or devise or undertake any surveys or analysis using the System by reference to, any special category of personal data (within the meaning of the GDPR), namely: racial or ethnic origin; political opinions; religious or philosophical beliefs; trade union membership; genetic or biometric data; health data; sex life or sexual orientation, without obtaining Mindpool’s prior written agreement. If Mindpool agrees, Customer shall ensure such processing complies with an appropriate legal basis in accordance with applicable Data Protection Legislation.

1.7 Mindpool shall be paid its reasonable costs by Customer to support any Customer-requested actions under section 1.2 of this Annex, including audits, subject access requests or Customer’s interactions with regulators (unless required as a result of Mindpool breaching this Data Processing Agreement).

1.8 Customer shall ensure, and shall procure that all Customer Affiliates shall ensure, that:

1.8.1 it is entitled to transfer any relevant Personal Data to Mindpool, such that Mindpool may lawfully use, process and transfer such Personal Data in accordance with this agreement on Customer’s behalf; and

1.8.2 all relevant data subjects have been informed of such use, processing, and transfer as required by all applicable Data Protection Legislation.

## **2. OVERSEAS DATA TRANSFERS**

2.1 Save as otherwise stated in the Special Terms section in the Order Form, Customer hereby acknowledges and agrees that Mindpool shall be entitled to transfer and/or process such Personal Data outside the European Economic Area in connection with the provision of certain optional modules and features of the System, as set out in the Security Overview, to the third parties and at the physical server locations as approved in accordance with section 3 of this Annex, in connection with the functioning and support of such modules and features in the course of the provision of the System; and Customer hereby consents to such transfer and processing where such modules and/or features are requested to be included within the System. Mindpool and Customer shall document any relevant contractual requirements of Customer, as required under applicable Data Protection Legislation, to ensure compliant transfer and processing of such Personal Data outside the European Economic Area. In this respect the parties hereby agree that, unless the relevant transfer is to a third party based in a country confirmed as having adequate data protection safeguards by the European Commission, they will adopt the standard contractual clauses for data export as stipulated from time to time by the European Commission, insofar as and for so long as such contractual clauses remain legally valid and enforceable.

## **3. USE OF SUB-PROCESSORS**

3.1 Customer hereby consents to Mindpool using the mandatory sub-processors listed on <https://mindpool.com/pdfs/sub-processors.pdf> and if Customer uses the features identified on such page as being provided by any of the optional sub-processors, Customer will be deemed to have consented to the use of such sub-processors.

3.2 Customer hereby grants to Mindpool a general authorisation to appoint additional or replacement sub-processors (not listed on <https://mindpool.com/pdfs/sub-processors.pdf> as at the Effective Date) under this agreement, provided that Mindpool shall: (a) notify Customer by email, providing all requisite information concerning such sub-processor and the processing to be undertaken by it, (b) update the page to reflect such new sub-processor, (c) provide Customer with a reasonable opportunity to object to the processing of Personal Data by such new sub-processor, and (d) ensure that such sub-processor is bound by equivalent contractual terms as those set out in this Data Processing Agreement.



## **ANNEX B: PROFESSIONAL SERVICES**

This Annex will also apply to any services to be provided under an Order Form that are described as “**Professional Services**” and will form part of the agreement entered into by the parties. Professional Services will be deemed to be Services.

### **1. PROFESSIONAL SERVICES**

1.1 Mindpool shall provide the Professional Services to Customer as set out in the Order Form and according to any specifications provided by Mindpool, subject to Customer’s payment of the applicable Charges. Any changes to the Professional Services will be subject to a change order being signed by the parties before the change is implemented. Mindpool shall use reasonable efforts to deliver the Professional Services by any specified delivery dates but such dates are estimates.

1.2 The use of the System shall be governed by the agreement and not this Annex and Customer’s right to use the System will be subject to an applicable Order Form. The purchase of Professional Services is not dependent on the delivery of any future functionality or features in the System.

1.3 Customer shall reasonably co-operate and assist Mindpool in relation to the Professional Services, including: (a) allocating sufficient resources and promptly performing any tasks reasonably necessary to enable Mindpool to perform the Professional Services, (b) promptly providing any necessary information, documentation, equipment or other materials, and (c) informing Mindpool in advance of any applicable security or health and safety rules that apply to any site visits. Mindpool shall not be liable for any delay or failure in performing the Professional Services as a result of Customer failing to provide such cooperation and assistance and may charge Customer for additional resulting costs that it incurs in performing the Professional Services.

1.4 Customer shall notify Mindpool of any failure of the Professional Services to comply with this agreement within 30 days of completion. Mindpool shall either reperform or otherwise remedy the Professional Services or refund the Charges for the deficient part of the Professional Services.

### **2. INTELLECTUAL PROPERTY RIGHTS**

2.1 Subject to payment of the Charges, Mindpool hereby grants Customer a non-exclusive, perpetual, sub-licensable right to use the deliverables (if applicable) for Customer’s internal business purposes.

### **3. CHARGES AND PAYMENT**

3.1 Customer shall pay the Charges specified in the Order Form, or if no rate is specified, Mindpool's standard rates in effect at the time the Order Form is executed. If the total Charges are stated to be an estimate then the actual Charges will only exceed the estimate with Customer's prior written approval or Mindpool will cease the Professional Services when the estimate is reached.

3.2 With Customer's prior written approval, Mindpool may charge for its travel and related out-of-pocket expenses reasonably incurred by the individuals performing the Professional Services.

3.3 The Charges for Professional Services shall be invoiced on or around the Effective Date as specified on the Order Form by Mindpool.

3.4 If this agreement terminates before completion of the Professional Services then Customer shall pay any unpaid Charges incurred before the termination date (pro-rated for fixed fees on a percent-completed basis). Pre-paid fees will be reimbursed to the extent they relate to after the termination date where Customer terminates for cause, but not otherwise. Unless otherwise specified in the Order Form, in the event that Customer has pre-purchased a block of Professional Services time, any unused time shall expire at the later of: (a) twelve months from the start date of purchase of such time; or (b) the end date of the applicable Subscription Term.

3.5 All sums payable to Mindpool shall become due immediately upon termination of this Annex.