

# Master Subscription and Services Agreement

THIS MASTER SUBSCRIPTION AND SERVICES AGREEMENT GOVERNS YOUR (HEREAFTER REFERRED TO AS 'CUSTOMER/S') ACCESS TO AND USE OF THE SERVICES THAT CUSTOMER IS USING IN CONNECTION HERewith AND THAT ARE BROUGHT TO CUSTOMER BY MINDTICKLE, INC OR MINDTICKLE INTERACTIVE MEDIA PRIVATE LIMITED WHICH OWNS AND OPERATES THE SERVICE (HEREAFTER REFERRED TO AS 'MINDTICKLE').

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR BY ACCESSING OR USING ANY PART OF THE SERVICE, CUSTOMER AGREES TO ALL THE TERMS OF THIS AGREEMENT. IF CUSTOMER IS ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, CUSTOMER REPRESENTS TO HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO ALL OF THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF CUSTOMER DOES NOT HAVE SUCH AUTHORITY, OR IF CUSTOMER DOES NOT UNCONDITIONALLY AGREE WITH THESE TERMS AND CONDITIONS, CUSTOMER MUST NOT ACCEPT THIS AGREEMENT AND CUSTOMER WILL NOT HAVE ANY RIGHT TO USE THE SERVICES.

CUSTOMER MAY NOT ACCESS THE SERVICES IF CUSTOMER IS MINDTICKLE'S DIRECT COMPETITOR, EXCEPT WITH MINDTICKLE'S PRIOR WRITTEN CONSENT. IN ADDITION, CUSTOMER MAY NOT ACCESS THE SERVICES FOR PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES.

THIS AGREEMENT IS EFFECTIVE BETWEEN CUSTOMER AND MINDTICKLE AS OF THE DATE OF CUSTOMER ACCEPTING THIS AGREEMENT. MINDTICKLE'S ACCEPTANCE IS EXPRESSLY CONDITIONED UPON CUSTOMER'S ASSENT TO ALL THE TERMS OF THIS AGREEMENT, TO THE EXCLUSION OF ALL OTHER TERMS.

## 1. Agreement Scope; Services.

1.1 Scope This Master Subscription and Services Agreement applies to Customer's use of:  
(i) Mindtickle's online learning and enablement system software offered as a service hosted on the Mindtickle platform ("Mindtickle Platform" or "Platform")  
(ii) support or managed services related to the Platform (collectively, the "Subscription Services")

- (iii) professional and/or consulting services (“Professional Services”)
- (iv) content as a service (“CaaS”) and
- (v) Customer education services

as described in one or more Orders or Statements of work signed by the Parties, including any attachments thereto (each, an “Order” or “SOW” as the case may be).

Subscription Services, Professional Services, CaaS and Customer education services are collectively referred to as the “Services” and Orders and SOWs are collectively referred to as “Provisioning Documents.”

This Master Subscription and Services Agreement and all Provisioning Documents, including any addenda and exhibits, constitute the “Agreement.” All capitalized terms not defined herein will have the meanings attributed to them in the Provisioning Documents.

1.2 Procurement and Provisioning by Affiliates. Customer may procure the Services under this Agreement for its own self and on behalf of one or more Customer Affiliates (defined below). Customer is responsible for the acts and omissions of Customer Affiliates under any Provisioning Document pursuant to which the Customer Affiliate receives the benefit of the Services but is not a signatory. Customer Affiliates who sign a Provisioning Document will be deemed to be the Customer hereunder and solely responsible for its performance or non-performance thereunder. “Affiliate” means any legal entity directly or indirectly controlling, controlled by or under common control with a Party, where control means the ownership of a majority share of the stock, equity or voting interests of such entity.

1.3 Subscription Services Users. “User” shall mean an individual who has signed-up or has been added to the Platform (by the Customer or by Mindtickle at Customer request), whether or not the individual is using the Subscription Services at any given time. During the Subscription Term set forth in each Order, Mindtickle will make the Subscription Services available to Customer and its authorized end users (“End Users”) and administrative account users (“Admin(s)”) who may be Users of Customer’s Affiliates, employees, agents or contractors. The number of Users shall be set forth in the Order. Customer shall assign each User a Log-In (as set forth in Section 2.5).

where a User no longer requires access to the Subscription Services (e.g., User no longer is employed or engaged by Customer), Customer may deactivate the Log-In for such User and re-provision it to a new User provided that all data associated with the previous User may be removed or deleted from the Subscription Services by Mindtickle. Users may access and use the Subscription Services solely for Customer's internal business purposes in accordance with the terms of this Agreement. Customer is responsible for use of the Subscription Services by Users and any party who accesses the Subscription Services with a User's account credentials.

1.4 Upgrades; Modifications; Improvements and Enhancements. Mindtickle shall have sole discretion as to whether to make updates, improvements, modifications or enhancements or add new features ("Updates") to the Subscription Services and reserves the right to do so at any time, provided that such Updates do not materially and adversely impact the Services nor result in any increase of the price of the Services during the Subscription Term. Any such Updates are deemed part of the Subscription Services and shall be subject to this Agreement.

1.5 Service Level Agreement. The Application Availability service level agreement is in <https://www.mindtickle.com/service-level-agreement> ("SLA"). The Subscription Services may be temporarily unavailable for scheduled maintenance, unscheduled emergency maintenance or other causes beyond Mindtickle's reasonable control. Mindtickle will use reasonable efforts to provide advance notice of any scheduled unavailability of the Subscription Services. If Mindtickle does not meet the Service Commitment set forth in the SLA Mindtickle shall provide the Service Credits as set forth in the SLA.

1.6 Beta Releases and Free Trial. From time-to-time Mindtickle may at its sole discretion make available services to Customer to try which will be clearly designated as beta, pilot, limited release, non-production or by similar description in the Provisioning Document ("Beta Release"). Mindtickle makes no promises that future versions of Beta Release will be released or if such Beta Release will be made generally available, it will be substantially similar to the current Beta Release. Mindtickle may terminate Customer's right to use Beta

Release at any time for any reason or no reason in Mindtickle's sole discretion. If Mindtickle makes available Beta Release publicly, Customer may, execute a separate Order to procure publicly available version of the Beta Release at then-current applicable fees. If Customer opts for free trial, Mindtickle will grant Customer the temporary access to the applicable Services solely for Customer's internal purposes and solely for use in evaluating the capabilities of the Services and for the term mentioned in Order ("Free Trial"). If Customer intends to continue using Free Trial after the end of term set forth in Order, Customer shall execute a new Order at mutually agreed terms. Notwithstanding anything to the contrary in the Agreement, Customer acknowledges and agrees that Beta Release and Free Trial are provided on an "as is" and "as available" basis without any liability and indemnity obligations, warranty, support, maintenance, or service level obligations of any kind.

## 2. Subscription Services Terms of Use.

2.1 Restrictions. Customer will not, and will ensure that its Users do not, directly or indirectly (i) make the Subscription Services available to anyone other than Users or use the Subscription Services for the benefit of any unrelated third party; (ii) sell, resell, assign, pledge, transfer, license, sublicense, distribute, rent or lease the Subscription Services; (iii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Subscription Services or any software, documentation or data related to or provided with the Subscription Services; (iv) modify, translate or create derivative works based on the Subscription Services or remove any proprietary notices or labels from the Subscription Services; (v) use or access the Subscription Services to build or support, and/or assist a third party in building or supporting products or services competitive to the Subscription Services; (vi) include the Subscription Services in a service bureau or outsourcing offering; (vii) knowingly or willfully use the Services in any manner that could damage, disable, overburden, impair or otherwise interfere with Mindtickle's provision of the Subscription Services; (viii) disclose the Subscription Services to any competitor of Mindtickle or other third parties. Customer also agrees that it will, and will ensure that its Users, use the Subscription Services only in compliance with the

Mindtickle Acceptable Use Policies set forth at <https://www.mindtickle.com/acceptable-use-policy/>

2.2 Virus and Malicious Code. Neither Customer nor any User, will insert nor permit the insertion or introduction of any Malicious Code (defined below) into the Mindtickle Platform. "Malicious Code" means (i) any code, program, or sub-program the knowing or intended purpose or effect of which is to damage or maliciously interfere with the operation of the Platform or any other software or systems, or to halt, disable, or interfere with the operation of the Subscription Services, or (ii) any device, method, or token that permits any person to circumvent without authorization the normal security of the Subscription Services or the Platform.

2.3 Minimum Standards. Customer and its Users will provide and maintain all hardware, software and network connectivity ("Environment") needed to access the Internet and the Subscription Services that meet the standards provided on the Mindtickle's website at <https://www.mindtickle.com/browsers-and-device-support/> which may be revised by Mindtickle from time to time and communicated to Customer and/or updated on the Mindtickle's website.

2.4 Links to/from Third Party Sites. The Subscription Service may allow Customer or its Users to (i) leave the Subscription Services and/or access third party websites and content, (ii) access the Subscription Services through third party websites, or (iii) embed links to third party content as or into Customer Data (any of the foregoing, "Links" or Linked Sites"). Any such Links or Linked Sites are not under the control of Mindtickle, are used at Customer's sole risk, and Mindtickle is not responsible for the contents of any Linked Site, any Link contained in a Linked Site, any changes or updates to Linked Sites, or the performance or security of Linked Sites. Any content accessed by Customer through Links or Linked Sites shall be subject to such agreement as is entered between Customer and the relevant third party content provider.

2.5 Log-Ins; Security. Customer is responsible for administering usernames and passwords for all Users (the "Log-In Information") and for any User's access granted to the Subscription Services. Log-In Information (which includes logins by means of single sign on) may be used

only by the assigned User and may not be shared. Customer is responsible for maintaining the security of the equipment and Customer's Log-Ins. To the extent within Customer's control, Customer will take reasonable measures to prevent unauthorized third parties from accessing the Subscription Services. Customer shall be liable for all acts and omissions of its Users, and for any resulting loss that Customer or a User may incur due to the unauthorized use of a Users' Log-Ins or accounts.

## 2.6 Suspension.

2.6.1 Customer Violation. Mindtickle may immediately suspend Customer's access to the Subscription Services if (i) Customer fails to make payment for undisputed Fees due within 10 business days after Mindtickle has provided Customer with written notice of such failure; or (ii) Customer violates this Section 2, or Section 9 (Confidential Information). Mindtickle will provide Customer the basis for suspension ("Violation") together with reasonable assistance, where possible, to prevent or resolve the basis for such violation. Any such suspension will be to the minimum extent, and of the minimum duration, reasonably required to prevent or resolve the Violation.

2.6.2 Emergencies. Mindtickle may immediately suspend the Customer's access to the Subscription Services if: (i) Mindtickle becomes aware of what it, in its sole discretion, deems a credible claim that the Subscription Services infringe upon the intellectual property rights of a third party; (ii) if required to do so by law or (iii) if there is an event for which Mindtickle reasonably believes suspension of Subscription Services is necessary to protect the Mindtickle network or Mindtickle's other customers (e.g., DDoS, a security incident, etc.). In each case, Mindtickle will give you advance notice of pending suspension or termination of at least twelve (12) hours, unless Mindtickle determines, in its reasonable discretion, that no notice or shorter notice is necessary to protect Mindtickle, its customers, or others. Any such suspension will be to the minimum extent, and of the minimum duration, reasonably required to prevent or resolve the basis for such suspension. Any suspension by Mindtickle of the Subscription Services under this Section 2.6.2 will not relieve Customer of its payment obligations hereunder.



### 3. Ownership; Use of Customer Data and Statistical Information.

3.1 Subscription Services. Customer acknowledges that the Subscription Services are offered online on a subscription basis. As between the Parties, Mindtickle owns and reserves all rights, title and interest in and to the Subscription Services, including any software or documents related to or provided with the Subscription Services and all intellectual property rights and derivatives, modifications, refinements or improvements thereto ("Mindtickle IP"). From time to time, Customer or its Users may submit to Mindtickle comments, questions, enhancement requests, suggestions, ideas, process descriptions or other information related to the Subscription Services ("Feedback"). Customer agrees that Mindtickle has all rights to use and incorporate Feedback into the Subscription Services without restriction or payment to Customer. No rights are granted to Customer other than as expressly set forth herein.

3.2 Professional Services Results. Mindtickle retains all ownership rights to all materials including background and training materials, data, processes, tools, methodologies, results, reports, presentations or any other information or material generated or developed by Mindtickle through the use of or derived from Mindtickle's Confidential Information or the Mindtickle IP. Customer retains all ownership rights of any materials generated or developed by Mindtickle and exclusively derived from the Customer Data (e.g., edited, modified, reformatted versions of Customer Data, all of which shall be deemed part of "Customer Data" as defined below).

3.3 Customer Data. Customer owns or has secured the right to use any data, content, information or material submitted by Customer or its Users through the Platform ("Customer Data"). Customer will be solely responsible for (i) the accuracy, quality, content, legality and use of Customer Data, including the means by which Customer Data is acquired and transferred by Customer or its Users outside of the Subscription Services, (ii) obtaining any licenses, permissions or authorizations required for any use of the Customer Data, and (iii) complying with all applicable terms and conditions of any third party website related to Customer Data obtained from such third party website or its use in connection with the Subscription Services.

Customer hereby grants Mindtickle the right to use the Customer Data solely as necessary to provide or to assist Customer in the use of the Services hereunder.

3.4 Statistical Information. Mindtickle may monitor Customer's and its User's use and the operation of the Subscription Services and compile such data in an aggregate and anonymous manner to derive statistical and performance information related to the provision and operation of the Subscription Services ("Statistical Information"). Mindtickle may make such Statistical Information publicly available, provided that such information does not include any data that would enable the identification of Customer or disclose Customer Confidential Information. Mindtickle retains all rights, title and interest in and to such Statistical Information.

#### 4. Payments.

4.1 Fees. Customer will pay all fees set forth in the Provisioning Documents and any fees invoiced pursuant to this Agreement ("Fees"). All Fees are non-cancelable and non-refundable, except as expressly specified in this Agreement. Professional Services will be provided on a time and materials ("T&M") basis unless otherwise set forth in the Order. If an estimated total amount is stated in the Order, that amount is a good faith estimate and not a guarantee the Professional Services will be completed for that amount.

4.2 Overages. Customer will always ensure that its use of the Subscription Services does not exceed the usage terms (number of Users, product and/or number and type of specific modules in the Subscription Services Package to which User has access) specified in the Order ("Usage Limit"). If a Customer is exceeding the Usage Limit, the number of Users in excess of the Usage Limit shall be an "Overage". In the event of an Overage, Mindtickle reserves the right to raise an invoice for the Overage from the date the Overage first commenced through the end of the then current Subscription Term at the relevant User rates specified in the ongoing Order, which the Customer shall pay in accordance with the payment terms of the Agreement.

4.3 Taxes and Currency. All Fees are exclusive of, and Customer will be responsible for payment of taxes, levies, duties or similar local, state, provincial, federal or



foreign jurisdiction governmental assessments on the Services. Customer is not responsible for any taxes based on Mindtickle's net income or property. Except as otherwise specified in a Provisioning Document, all Fees due hereunder will be paid in U.S. Dollars.

4.4 Invoices. All amounts are due and payable as specified in the Provisioning Documents. If no payment terms are specified in the applicable Provisioning Documents, payment terms are net 30 days from receipt of invoice. Unpaid invoices not the subject of a written good faith dispute are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all reasonable expenses of collection.

4.5 Expenses. Customer will be responsible for all travel expenses, hotel accommodations, and any other out-of-pocket expenses incurred by Mindtickle in connection with the Professional Services, as set forth in the Order or subject to Customer's prior written approval (email shall suffice).

## 5. Term and Termination

5.1 Term. Subject to earlier termination as provided below, this Agreement shall remain in effect until all Orders have terminated or expired, or if this Agreement is otherwise terminated in accordance with the terms hereunder. Following the end of the initial Term mentioned in the Order, the Term will automatically renew for another one year term (and for each subsequent year, thereafter) with an annual increase of no more than 5% per year unless (i) renewal order has already been mutually agreed in writing on or before the expiry of the then current term, or (ii) either party gives written notice at least 30 days prior to the end of the initial or any subsequent renewal term of its intention to terminate the Order. Provided that, Subscriptions originally sold as promotional package will be renewed at Mindtickle's applicable list price in effect at the time of the renewal.

5.2 Termination for Cause. In the event of a material breach by either Party, the non-breaching Party will have the right to terminate the applicable Provisioning Document for cause if such breach has not been cured within 30 days after written notice from the non-breaching Party specifying the breach.

5.3 Effect of Termination. If Mindtickle terminates this Agreement and/or a Provisioning Document for Customer's uncured material breach (i) all Fees set forth in the terminated Provisioning Document will be immediately due and payable; (ii) all rights granted thereunder will immediately terminate; and (iii) all unpaid Overages shall be also immediately due and payable. If Customer terminates a Provisioning Document for Mindtickle's uncured material breach, Customer will be entitled to a pro-rata refund for applicable prepaid Fees under such terminated Provisioning Document for the Mindtickle Services not performed calculated from the date of termination. Upon completion of the Agreement Term, all rights to access and use the Subscription Services will terminate. Notwithstanding the foregoing, at Customer's request if received within 30 days of termination of the Order ("Grace Period"), Mindtickle shall make available to Customer any of the Customer Data in then Mindtickle's possession in such format as mutually agreed by the Parties. After such Grace period, Customer acknowledges and agrees that Mindtickle has no obligation to retain Customer Data and that Mindtickle will irretrievably delete and destroy Customer Data. If requested by the Customer in writing, Mindtickle will certify to such destruction in writing.

5.4 Survival. The following sections of this Agreement will survive the termination of the Agreement: Section 2.1 (Restrictions), Section 3 (Ownership, Use of Customer Data, Statistical Information), Section 4 (Payments), Section 5 (Term and Termination), Section 6.5 (Warranties Disclaimer), Section 7 (Indemnification), Section 8 (Limitation of Liability), Section 9 (Confidential Information) and Section 11 (General Terms).

## 6. Warranties; Warranty Remedies; Warranties Disclaimer

6.1 General warranty. Each Party represents and warrants to the other Party that it has the power and authority to enter into the Agreement.

6.2 Subscription Services warranty. Mindtickle warrants (i) the Platform, under normal use, will perform materially in accordance with the Documentation provided by Mindtickle; and (ii) the Subscription Services will be provided in a manner consistent with generally accepted industry standards. "Documentation" means any help pages or other end user documentation provided by Mindtickle to

describe the functionality of the Subscription Services or how to use the Subscription Services.

6.3 Professional Services Warranty. Mindtickle warrants the Professional Services will be performed in a professional and workmanlike manner, in accordance with generally accepted industry standards and the specifications set forth in the Order.

#### 6.4 Warranty Remedies.

6.4.1 Customer will notify Mindtickle of any material breach of the warranties ("warranty Deficiency") under Sections 6.2 and 6.3 within 30 days of the performance of the relevant Mindtickle Services and Customer's remedy will be the re-performance of the warranty Deficiency. If Mindtickle cannot re-perform such warranty Deficiency and provide the Mindtickle Services as warranted, Customer will be entitled to terminate the deficient Mindtickle Services, as applicable, and recover a pro-rata portion of the Fees paid to Mindtickle for such deficient Mindtickle Services.

6.4.2 The foregoing shall be Customer's exclusive remedies and Mindtickle's entire liability with respect to the warranty commitments set forth in Sections 6.2 and 6.3.

6.5 WARRANTIES DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, MINDTICKLE AND ITS THIRD-PARTY PROVIDERS DISCLAIM ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. MINDTICKLE DOES NOT WARRANT THE RELIABILITY, TIMELINESS, SUITABILITY, OR ACCURACY OF THE MINDTICKLE SERVICES OR THE RESULTS CUSTOMER MAY OBTAIN BY USING THE MINDTICKLE SERVICES. MINDTICKLE DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE SUBSCRIPTION SERVICES OR THAT MINDTICKLE WILL CORRECT ALL DEFECTS OR PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORIZED THIRD-PARTY ACCESS. MINDTICKLE DISCLAIMS ALL FAILURES, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, TELECOMMUNICATIONS FACILITIES OR EQUIPMENT, OR NETWORKS THAT ARE NOT CONTROLLED BY MINDTICKLE. IN THE EVENT ANY DISCLAIMER IN THIS SECTION CONFLICTS WITH THE SLA, THE TERMS OF THE SLA SHALL GOVERN WITH RESPECT TO THAT SPECIFIC DISCLAIMER.

## 7. Indemnification

7.1 Mindtickle. Mindtickle will defend Customer against any claim brought against Customer by a third party alleging the Mindtickle Services as provided by Mindtickle directly infringe the U.S. patent, copyright, or trademark rights of the claimant and will pay Customer for finally awarded damages and costs and Mindtickle-approved settlements of the claim. Mindtickle's obligations to defend or indemnify will not apply to the extent a claim is based on (i) Customer Data, or Customer's or a third-party vendor's technology, software, materials, data or business processes; (ii) a combination of the Mindtickle Services with non-Mindtickle products or services; or (iii) any use of the Mindtickle Services not in compliance with this Agreement. Mindtickle may, in its discretion and at no cost to Customer, (a) modify the Mindtickle Services to avoid infringement; or, if applicable, (b) terminate Customer's subscriptions for the affected Subscription Services and refund Customer any related prepaid Fees for the remainder of the Subscription Term.

7.2 Customer. Customer will defend Mindtickle against any claim brought against Mindtickle by a third party alleging (i) Customer Data infringes the intellectual property, privacy or other rights of the claimant; or (ii) Customer's use of the Mindtickle Services, other than as authorized in this Agreement, violates applicable law or regulations, or infringes the claimant's intellectual property rights, and will pay Mindtickle for finally-awarded damages and costs and Customer-approved settlements of the claim.

7.3 Procedure. As a condition to the indemnifying Party's obligations under this Section 7, the Party seeking indemnification must (i) promptly give written notice of the claim to the indemnifying Party; (ii) give the indemnifying Party sole control of the defense and settlement of the claim (provided that the indemnifying Party may not settle any claim unless it unconditionally releases the indemnified Party of all liability); and (iii) provide the indemnifying Party, at the indemnifying Party's cost, all reasonable assistance. THIS SECTION STATES THE INDEMNIFIED PARTY'S SOLE REMEDY, TO THE EXCLUSION OF ALL OTHER REMEDIES (IN CONTRACT, TORT OR OTHERWISE), AND THE INDEMNIFYING PARTY'S TOTAL LIABILITY REGARDING THE CLAIMS AND LIABILITIES ADDRESSED BY THIS SECTION 7.

8. Limitation of Liability. NO PARTY WILL BE LIABLE UNDER ANY CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER

THEORY (i) FOR ERROR OR INTERRUPTION OF USE, INACCURACY OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICE OR TECHNOLOGY, OR LOSS OF BUSINESS OR DATA; (ii) FOR ANY INDIRECT, EXEMPLARY, LOST PROFITS, LOST REVENUE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (iii) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (iv) EXCEPT FOR CUSTOMER PAYMENT OBLIGATIONS, FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE CUMULATIVE FEES INVOICED TO CUSTOMER UNDER THE AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE DATE THE CLAIM AROSE. THE FOREGOING LIMITATION WILL NOT APPLY TO A PARTY'S OBLIGATION OF INDEMNIFICATION AS SET FORTH IN SECTION 7 OR TO THE EXTENT PROHIBITED BY LAW.

9. Confidential Information. Each Party (the "Recipient") understands that the other Party (the "Discloser") may during the Agreement Term and in connection with the Services disclose non-public information relating to the Discloser's business that is designated as confidential or reasonably should be understood to be confidential and/or proprietary given the nature of the information and circumstances of disclosure ("Confidential Information"). The Recipient agrees (i) to take reasonable precautions to protect such Confidential Information; and (ii) not to use or divulge to any third person any such Confidential Information except as set forth herein and only to those of its employees and contractors who need access for purposes consistent with this Agreement and who are bound to confidentiality terms with Recipient containing protections no less stringent than those herein. The Discloser agrees that the foregoing will not apply with respect to Confidential Information that the Recipient can document (a) is or becomes generally available to the public; (b) was in its possession or known by it prior to receipt from the Discloser; (c) was rightfully disclosed to it by a third party; or (d) was independently developed without use of any Confidential Information of the Discloser. If the Recipient is required by law or court order to disclose Confidential Information, it will give prior written notice to the Discloser (to the extent legally permitted) and reasonable assistance at the Discloser's cost to contest the disclosure. Recipient acknowledges that the breach or threatened breach of this Agreement may result in irreparable injury to Discloser and that, in addition to its other remedies, the Discloser

shall be entitled to seek such temporary and permanent injunctive relief it deems necessary to restrain any threatened or continued breach of this Agreement.

## 10. Insurance and Security.

10.1 Insurance. Mindtickle will, at its expense, procure and maintain throughout the Agreement Term insurance policies and coverages required by law applicable to its business operations and sufficient to support and cover its obligations hereunder as set forth in <https://www.mindtickle.com/insurance/>. All such policies identified under this Section shall be issued by reputable and financially sound insurance companies authorized to do business in the geographic area where the Mindtickle Services are to be performed. Upon Customer's written request, Mindtickle shall furnish to Customer a certificate of insurance evidencing that such policies are in full force and effect.

10.2 Data Privacy and Security. Mindtickle shall maintain a privacy policy that complies with all applicable laws and which is available as set forth at <https://www.mindtickle.com/privacy-policy/> ("Privacy Policy"), as may be updated from time to time. Furthermore, Mindtickle will maintain appropriate administrative, physical, and technical safeguards designed to protect the security and integrity of the Subscription Services and Customer Data in accordance its security obligations available as set forth in <https://www.mindtickle.com/technical-and-organizational-security-measures/> ("Security Requirements"), as may be updated from time to time. Those safeguards may include, but will not be limited to, measures for endeavoring to prevent access, use, modification or disclosure of Customer Data by Mindtickle personnel except: (a) as necessary to provide the Services including but not limited to preventing or addressing Service or technical problems; (b) as compelled by law in accordance with Section 2.6; or (c) as may expressly permitted in a writing from an authorized Customer representative.

## 11. General Terms.

11.1 Notice. Mindtickle may give general notices for Subscription Services applicable to all Customers by means



of a notice on the Subscription Services web portal. Specific notices applicable to Users of the Subscription Services, technical support, system security and other account notices will be given by electronic mail to Customer's e-mail address on record in Mindtickle's account information. All legal or dispute-related notices will be sent by first class mail, electronic mail or express delivery, if to Mindtickle, attention CEO, and legal@mindtickle.com, at 535 Mission St, 14th Floor, San Francisco, CA 94105, and if to Customer, at the address set forth in the first paragraph of this Agreement.

11.2 Force Majeure. Neither Party will be responsible for failure or delay of performance if caused by an act of nature, war, hostility or sabotage; an electrical, internet, or telecommunication outage that is not caused by the obligated Party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated Party. Each Party will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 20 days, either Party may cancel unperformed Services upon written notice. A force majeure event shall not excuse Customer's obligations to make timely payment.

11.3 Governing Law. Unless specifically set forth in the applicable Provisioning Document (i) any action, claim, or dispute between the Parties will be governed by California law, excluding its conflicts of law provisions, and controlling U.S. federal law; and (ii) the Parties agree to the exclusive jurisdiction of and venue in the state and federal courts California. Except for actions for nonpayment or breach of either Party's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either Party more than 2 years after the cause of action has accrued.

11.4 Entire Agreement. This Agreement represents the Parties' entire understanding relating to the Services and supersedes any prior or contemporaneous agreements or understandings regarding the Services. In the event of a conflict between this Agreement and a contemporaneous or later-dated Provisioning Document, the terms of the contemporaneous or later-dated Provisioning Document will control. No terms, provisions or conditions of any purchase order, acknowledgement or other business form Customer may

use in connection with the acquisition of Services will affect the rights, duties or obligations of the Parties hereunder, or otherwise modify this Agreement, regardless of any failure of Mindtickle to object to such terms, provisions or conditions.

11.5 Amendment / No Waiver. This Agreement may be amended only by written agreement signed by the Parties. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) will be construed to reflect the intent of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. The failure of either Party to enforce any right or provision in the Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by such Party in writing.

11.6 Assignment; Subcontracting. No joint venture, partnership, employment, or agency relationship exists between Mindtickle and Customer as a result of the Agreement or use of the Services. This Agreement and any rights or obligations hereunder may not be assigned, sublicensed or otherwise transferred by the Parties without the prior written approval of the non-assigning Party, except that either Party may assign or transfer this Agreement in connection with a merger or acquisition of all or substantially all of the assets of the assigning company (other than to a direct competitor of the non-assigning Party and provided that the assignee agrees in writing to be bound by all terms and conditions of this Agreement) by providing the non-assigning Party with prompt written notice of assignment. Any purported assignment in violation of this section will be void. Mindtickle may use subcontractors to perform Professional Services; Mindtickle will remain responsible for the performance of such Professional Services by any such subcontractor and otherwise for any subcontractor's compliance with the terms of this Agreement.

11.7 Compliance with Laws. Each Party agrees to abide by all applicable federal, state, local, and foreign laws and regulations in the performance of this Agreement.

11.8 U.S. Government Matters. Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services

or any software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the User is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by Mindtickle are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11.9 Anti-Corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

11.10 Publicity. Customer hereby grants to Mindtickle the express right to use Customer's company logo and/ or name in marketing, sales, financial, public relations material,

display materials and other communications solely to identify Customer as a Mindtickle Customer. Mindtickle hereby grants to Customer the express right to use Mindtickle name and/or logo solely to identify Mindtickle as a provider of Services to Customer. Other than as expressly stated herein, neither party shall use the other party's name and/or logos without the prior written permission of the other party.

*The following sections replace those set forth in the Agreement above with respect to Customers who are executing the Order with Mindtickle Interactive Media Pvt. Ltd. for the purchase of Services in India.:*

4.3 Taxes and Currency. All fees are exclusive of, and Customer will be responsible for payment of, taxes, levies, duties or similar local, state, provincial, central or foreign jurisdiction governmental assessments on the Services. Customer is not responsible for any taxes based on Mindtickle's net income or property. Except as otherwise specified in a Provisioning Document, all fees due hereunder will be paid in INR.

7.1 Mindtickle. Mindtickle will defend Customer against any claim brought against Customer by a third party alleging the Mindtickle Services as provided by Mindtickle directly infringe a patent, copyright, or trademark right of the claimant registered in India and will pay Customer for finally-awarded damages and costs and Mindtickle-approved settlements of the claim. Mindtickle's obligations to defend or indemnify will not apply to the extent a claim is based on (i) Customer Data, or Customer's or a third-party vendor's technology, software, materials, data or business processes; (ii) a combination of the Mindtickle Services with non-Mindtickle products or services; or (iii) any use of the Mindtickle Services not in compliance with this Agreement. Mindtickle may, in its discretion and at no cost to Customer, (a) modify the Mindtickle Services to avoid infringement; or, if applicable, (b) terminate Customer's subscriptions for the affected Subscription Services and refund Customer any related prepaid fees for the remainder of the Subscription Term.

11.1 Notice. Mindtickle may give general notices for Subscription Services applicable to all Customers by means of a notice on the Subscription Services web portal. Specific notices applicable to Users of the Subscription

Services, technical support, system security and other account notices will be given by electronic mail to Customer's e-mail address on record in Mindtickle's account information. All legal or dispute-related notices will be sent by first class mail or express delivery, if to Mindtickle, attention CEO, at 115 Sansome Street, Suite 700, San Francisco, CA 94104, and if to Customer, at the address set forth in the first paragraph of this Agreement.

11.3 Governing Law. Unless specifically set forth in the applicable Provisioning Document (i) any action, claim, or dispute between the Parties will be governed by laws in India, excluding its conflicts of law provisions; and (ii) the Parties agree to the exclusive jurisdiction of the courts in Pune. Except for actions for nonpayment or breach of either Party's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either Party more than 2 years after the cause of action has accrued.

11.7 Compliance with Laws. Each Party agrees to abide by all applicable central, state, local, and foreign laws and regulations in the performance of this Agreement.

*Additional terms applicable to an Order when Services specified below are procured through the respective Order*

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*Name/ Description of Services Procured through on Order*

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Subscription Services/ Platform Subscription

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Professional Services

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Content as a Service

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Managed Services

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Customer Education