

# General Terms and Conditions (GTC) for Mindbreeze InSpire SaaS

Valid from July 18, 2023



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For reasons of legibility gender specific differentiation is omitted. Relevant terms in the name of equal treatment apply in principle to both genders.

# Content

- 1. **Applicability** \_\_\_\_\_ 4
- 2. **Grant of License to Access and Use Service** \_\_\_\_\_ 4
- 3. **Subscription Fee** \_\_\_\_\_ 4
- 4. **Term and Termination** \_\_\_\_\_ 5
- 5. **Updates** \_\_\_\_\_ 5
- 7. **Confidential Information** \_\_\_\_\_ 7
- 8. **Limited Warranty and EXCLUSION OF IMPLIED WARRANTY** \_\_\_\_\_ 7
- 9. **LIMITATION OF LIABILITY** \_\_\_\_\_ 8

# 1. Applicability

- (a) These terms and conditions for software as a service (the “Terms”) are the only terms governing the provision of services by Mindbreeze Corporation (“Mindbreeze”) and customers’ (each, a “Customer”) use of the service package Mindbreeze InSpire SaaS (following the “Product”), as well as the mutual rights and obligations of the parties.
- (b) Any accompanying order confirmation (the “Order Confirmation”), the offer (“Offer”) and these Terms (collectively, the “SaaS Agreement” or the “Agreement”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms, the Offer, and the Order Confirmation, the Offer shall govern, then the Offer Confirmation.
- (c) These Terms prevail over any of Customer’s general terms and conditions regardless whether or when Customer has submitted its request for proposal, order, or such terms. Provision of services to Customer does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these or further Terms.

# 2. Grant of License to Access and Use Service

Mindbreeze grants to Customer, including to a Customer’s authorized users identified in the Order Confirmation (the “Authorized Users”), a non-exclusive, non-sublicensable, non-assignable, royalty-free, and worldwide license to access and use the Mindbreeze InSpire SaaS solely for each Customer’s internal business operations (the “License”), according to these Terms. Notwithstanding other restrictions set forth in the Agreement, the License is quantitatively limited according to the agreed upon licensing model chosen by Customer, thereby setting forth the permitted number of documents the Product indexes as further defined in the Order Confirmation. Use shall include any full or partial utilization of functions of the Product, undifferentiated, whether this process takes place or may take place in form of a visualized or not visualized interface, simultaneously or asynchronously. The use does not include the decompilation, reverse engineering of the Product, or any protected parts thereof, into its source code or any other alteration of the Product or any parts thereof. The Customer is not authorized to make modifications, translations, or other adaptations and transformations to the Product or parts thereof, without prior coordination with and after review by Mindbreeze. Mindbreeze is entitled to review a Customer’s use of the Product, in particular the compliance with the provisions of these Terms.

# 3. Subscription Fee

- (a) Fee and Payment. Customer shall pay Mindbreeze an annual subscription fee (the "Subscription Fee") as set forth in the Order Confirmation, for the services provided under this Agreement. Payment of the Subscription Fee shall be made in one (1) year increments, the first being due within thirty (30) days from the date of the Order Confirmation, and thereafter every twelve (12) months from the date of the first payment.
- (b) Adjustment. The Subscription Fee set forth in the Order Confirmation shall be annually adjusted in accordance with the increase in the United States of America Consumer Price Index (the “CPI-U Index”) in the period from the first anniversary of the Effective Date to the date on which the payment is made. For the purposes of this Agreement, the Index at a particular time shall be the Index most recently published by the United States Bureau of Economics and Statistics at that time.

- (c) Account Information. The Customer shall pay the Subscription Fee due every year in immediately available funds, and to the account Mindbreeze so designates via the Order Confirmation or through an amendment pursuant to Section 10.(a) of these Terms.
- (d) Taxes. Payment amounts under this Agreement do not include taxes, and Customer shall pay all taxes applicable to payments between the parties under this Agreement.
- (e) Interest on Late Payments. Any amount not paid when due will bear interest from the due date until paid at a rate equal to the maximum allowed by Law.
- (f) No Set-Off. The Customer is not permitted to set off its claims against claims of Mindbreeze, unless the Customer's claim is legally established in court or explicitly acknowledged in writing by Mindbreeze.

## 4. Term and Termination

- (a) Term and Termination. This Agreement begins on the effective date set forth on the Order Confirmation or the the software is delivered to the Customer, whichever is later, and remains in effect for an initial period of three (3) years ("Initial Term"). Unless terminated in writing by either party, providing six (6) months prior written notice to the other party, the Agreement shall automatically renew for an additional three (3) year term (the "Renewal Term"), unless terminated as specified herein at the end of the Initial Term or any Renewal Term. In the event of a termination by the Customer, an additional notice of termination must be given by sending an email to [cancel@mindbreeze.com](mailto:cancel@mindbreeze.com).
- (b) The parties may terminate this Agreement with immediate effect upon written notice to each other if the other party:
  - a. fails to pay any amount when due under this Agreement and such failure continues for fourteen (14) days after Customer's receipt of written notice of nonpayment;
  - b. has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or
  - c. becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.
- (c) Effect of Termination. After six (6) weeks from the effective date of the termination, Mindbreeze shall be free to delete any data stored by Customer in the Mindbreeze computer centers (the "User Data"). Mindbreeze may carry out the deletion irrespective of the quality, condition, intrinsic value and significance of the User Data for the Customer. At the request of the Customer, provided it was given in the appropriate form and no later than four (4) weeks after the effective date of the termination, Mindbreeze shall hand over to the Customer the User Data on machine-readable recording media for a reasonable fee to be determined at the time.

## 5. Updates

For each advancement to and further development of the Product ("Updated Product"), Mindbreeze provides an updated product information. This product information regulates the intended use, the application conditions, as well as features and properties of the Updated Product. The customer receives the available information through announced updates on the internet (see: <http://inspire.mindbreeze.com>). The customer receives updates (remedy shortcomings in the form of software updates or service packages) as they become available, provided the Customer agreed to

any update to the Terms. Delivery will be made by providing downloads on the internet or via comparable transfer technologies.

In this service package, the customer has the option for electronic support, by means of an electronic portal set up by Mindbreeze (see <https://support.mindbreeze.com>). An additional payment (depending on the performance requirements of the customer) becomes due.

## 6. Support Services and Customer Obligations

- (a) System Availability. For the use of the Mindbreeze InSpire SaaS, an internet connection is needed. Mindbreeze shall provide the Product to Customer with a system availability as described in the Annex Performance Characteristics Data Center Operation Mindbreeze InSpire SaaS ("System Availability"). Mindbreeze may take the Product offline for scheduled maintenances that it provides Customer the schedule for in writing, and change its schedule of maintenances on one (1) month written notice to Customer. System Availability means the percentage of minutes in a month that the key components of the Product are operational. It shall not include any minutes of downtime resulting from scheduled maintenance, events of force majeure, malicious attacks on the system, issues associated with Customer's computing devices, local area networks or internet service provider connections, or Mindbreeze's inability to deliver services because of Customer's acts or omissions.
- (b) During the term of this Agreement, the Customer will receive the following technical support:
- a. The Customer receives the available information through announced updates on the internet (see: <https://inspire.mindbreeze.com>).
  - b. The Customer has the option for electronic support, by means of an electronic portal set up by Mindbreeze (see <https://support.mindbreeze.com>). An additional payment (depending on the performance requirements of the customer) becomes due. If the Customer makes use of the option to receive electronic support by means of this electronic portal, the following applies:
    - i. The licensor provides support based on a separate order placed by the Customer. The Customer has the right to direct an agreed upon number of support inquiries to the licensor, which the licensor will process under these conditions. A support request is defined as follows: The support request is a problem that cannot be broken down into sub-areas (the smallest unit). If a problem (support request) consists of different parts/areas, each of these parts/areas is considered a single support request. The correction of deficiencies in the software products does not constitute a use of a support request.
    - ii. Prior to Mindbreeze providing support to a support request, the Customer's contact person and the responsible expert at Mindbreeze will agree upon the qualification of the problem, define the parameters for an acceptable solution, and define when this solution is to be provided. A support request may require multiple contacts and investigations until a solution is found. Mindbreeze ensures that the provided information is adequate with state-of-the-art technology.
- (c) The Customer has the duty to collaborate. The Customer shall provide information in regards to the precise system configuration and to convey additional information, as requested by Mindbreeze.
- (d) Customer shall be responsible for obtaining and maintaining all computer hardware, software, and communications equipment needed to internally access the Product, and paying all third party access charges incurred while using the Product. Customer shall be responsible for implementing, maintaining, and updating all necessary and proper procedures and software for safeguarding against computer infection, viruses, worms, Trojan horses, and other code that manifest contaminating or destructive properties (collectively "Viruses").

- (e) The Customer does not acquire any property rights in the Product. The Customer must handle the Product in accordance with the operating instructions made available by Mindbreeze (see product information), properly and with care.
- (f) If a support request relates to a technological issue, in accordance with the software product information of the relevant Mindbreeze software products that is a part of this Agreement, which is not supported (other technology), Mindbreeze will endeavor to provide support to such a support request. However, it is clear, by mutual agreement, that Mindbreeze cannot assume guarantees and/or warranties of any kind for such requests.
- (g) Notwithstanding the parties' obligations set forth in Section 7. Below, the Customer agrees to keep all information strictly confidential, especially all access addresses, access numbers and access codes, which were revealed through Mindbreeze's support services and support materials under this Agreement. Mindbreeze will maintain strict secrecy of information concerning source code parts of software products that the Customer provides.
- (h) In the case of use of the Mindbreeze website, the Customer fully accepts the terms and conditions of the site and services of Mindbreeze, in particular in terms of participation in discussion forums.

## 7. Confidential Information

- (a) All non-public, confidential or proprietary information of the parties, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed by either party to the other, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision and use of the Product and this Agreement is confidential, and shall not be disclosed or copied by the receiving party without the prior written consent of the disclosing party. Confidential Information does not include information that is:
  - a. in the public domain;
  - b. known to the receiving party at the time of disclosure; or
  - c. rightfully obtained by the receiving party on a non-confidential basis from a third party.
- (b) Both parties agree to use the Confidential Information only to facilitate and make use of the Product.
- (c) Both parties acknowledge that breach of this Section 7 would cause the other party irreparable harm for which monetary damages would not provide an adequate remedy and the non-breaching party will, in addition to any other available remedies, be entitled to temporary and permanent injunctive relief with respect to such breach without proof of actual damages or the posting of bond or other security.

## 8. Limited Warranty and EXCLUSION OF IMPLIED WARRANTY

- (a) Mindbreeze warrants that any software supplied pursuant to this Agreement will function in accordance with the associated product information provided to the Customer and these Terms.
- (b) Mindbreeze shall not be liable for a breach of the warranty set forth in Section 8(a) unless Customer gives written notice of any defects in the provision of the Product, reasonably described, to Mindbreeze within ten (10) days of the time when Customer discovers or ought to have discovered that the Product was major defective.

- (c) Subject to Section 8(b), Mindbreeze ensures the contractual use in accordance with the associated product information of the particular software for the licensed material in the version handed out to the customer and for the use of the provided SaaS-Service. In case of significant deviations, Mindbreeze is entitled to and also required to rectify, if not bound by unreasonable effort. If Mindbreeze does not succeed within a reasonable time to eliminate or avoid the significant deviation, so that the customer is granted the contractual use, or if Mindbreeze rejects the subsequent improvement due to unreasonable effort, the customer may demand a reduction of the annual fee or the cancellation of the agreement.
- (d) The Customer has to consider the product information, the application documentation and possible notes by Mindbreeze, when determining limitations and reports of errors or defects. The Customer shall, within reason, take necessary measurements to determine the localization, limitation and documentation of errors and other defects. This includes especially the creation of a defect report, system logs and dumps, the provision of the relevant input and output data, intermediate and test results, and other appropriate documentation to illustrate the error. In any event, Mindbreeze warrants only for such errors and/or other defects that can be reproduced at Mindbreeze or otherwise validated by Mindbreeze.
- (e) The warranty set forth in this Section 8. does not cover defects caused by deviation from the intended application conditions specified in the product information. In case the licensed material is used in a manner that contravenes that of the specifications and application conditions, the obligation for warranty is cancelled.
- (f) UNLESS OTHERWISE LISTED IN THIS AGREEMENT, MINDBREEZE DOES NOT MAKE ANY WARRANTY REGARDING THE PRODUCT, WHICH INCLUDES THAT MINDBREEZE DISCLAIMS TO THE FULLEST EXTENT AUTHORIZED BY LAW ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, INTEGRATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE REMEDY SET FORTH IN SECTION 8(C) SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND MINDBREEZE'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8(A).

## 9. LIMITATION OF LIABILITY

- (a) EXCEPT AS MAY OTHERWISE SPECIFICALLY PROVIDED FOR HEREIN, IN NO EVENT WILL MINDBREEZE BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (i) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (ii) LOSS OF GOODWILL OR REPUTATION, (iii) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY LICENSED SOFTWARE, OR (iv) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- (b) IN NO EVENT WILL THE AGGREGATE LIABILITY OF MINDBREEZE ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID FOR THE THEN-CURRENT AND PAID TERM TO MINDBREEZE UNDER THIS AGREEMENT PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR THE ANNUAL SUBSCRIPTION FEE, WHICHEVER IS



LESS. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

- (c) FURTHER, TO THE EXTENT ALLOWABLE UNDER APPLICABLE LAW, THE AGGREGATE LIABILITY OF MINDBREEZE SHALL BE REDUCED, DOLLAR FOR DOLLAR, BY ANY AMOUNT RECEIVED BY CUSTOMER FROM ITS INSURER THAT RELATES TO THE EVENT GIVING RISE TO THE CLAIM. NOTWITHSTANDING THE FOREGOING, IN THE EVENT OF CLAIMS OF IP INFRINGEMENT, MINDBREEZE MAY IN ITS SOLE DISCRETION AND AT NO COSTS TO CUSTOMER (i) MODIFY THE LICENSED PRODUCTS SO THAT THEY ARE NO LONGER CLAIMED TO INFRINGE OR MISAPPROPRIATE, OR (ii) OBTAIN A LICENSE FOR THE LICENSEE'S CONTINUED USE FOR THE LICENSED PRODUCTS IN ACCORDANCE WITH THIS AGREEMENT. IF MINDBREEZE IS UNABLE TO MODIFY THE LICENSE OR OBTAIN ANOTHER LICENSE IN (i) AND (ii), CUSTOMER MAY TERMINATE THE AGREEMENT WITH IMMEDIATE EFFECT AND CUSTOMER SHALL BE REFUNDED ANY PREPAID FEES COVERING THE TERM OF THE TERMINATED AGREEMENT.
- (d) THE FOREGOING LIMITATIONS APPLY EVEN IF THE MINDBREEZE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.
- (e) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE EXCLUSIONS AND LIMITATIONS IN THIS AGREEMENT DO NOT APPLY TO MINDBREEZE'S LIABILITY FOR BREACH OF CONFIDENTIALITY OR PRIVACY, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

## 10. Miscellaneous

- (a) Amendments. Mindbreeze expressly reserves the right to revise these General Terms and Conditions ("GTC") at any time in its sole discretion without prior notice to the Customer. Any changes to this Agreement will be effective fourteen days upon posting of the updated GTCs on Mindbreeze's website at <https://www.mindbreeze.com/contracts-and-information>. Customer's continued use of the Service following the effective date of an amendment will confirm Customer's consent thereto. The Customer is responsible for regularly reviewing these GTCs to remain informed of any changes. Reference is always made to the latest version of these General Terms and Conditions.
- (b) No Assignment. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Mindbreeze. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.
- (c) Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Illinois.
- (d) Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the negotiation or breach thereof, except for (a) actions seeking injunctive relief and (b) disputes related to intellectual property, shall be exclusively settled by arbitration in accordance with the International Arbitration Rules of the American Arbitration Association ("AAA"). The award shall be final and binding. Judgment upon the award rendered by the arbitrator or the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be held in Chicago, Illinois, shall be conducted in the English language, and shall be conducted (i) if the amount in dispute is less than two hundred fifty thousand U.S. Dollars (\$250,000), before a single arbitrator mutually agreeable

to Mindbreeze and Customer, or if no agreement can be reached, then selected by the AAA, or (ii) of the amount in dispute is two hundred fifty thousand U.S. Dollars (\$250,000) or more, before three (3) arbitrators. The arbitrator(s) shall make detailed findings of fact and law in writing in support of his, her or their decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party, in such manner as the arbitrator shall deem appropriate. In addition, the losing party shall reimburse the prevailing party for reasonable attorneys' fees and disbursements, the costs of the arbitration (including but not limited to the fees and expenses of the arbitrator and expert witnesses) and the costs incurred by the prevailing party in successfully seeking any preliminary equitable relief or judicially enforcing any arbitration award.

- (e) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Order Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or email or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
- (f) Salvatorian Clause. Should one or more provisions of the Agreement wholly or partially become invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected. The invalid or unenforceable provision shall be replaced by that provision which comes closest to the economic and technical purpose. The same applies in the event that the Agreement has a regulatory gap. In this case, an appropriate provision, as the parties would have wanted, applies, provided they had considered the corresponding article in this Agreement.
- (g) Further Contacts. For notifications and communications regarding security and data protection incidents, for any complaints or ambiguities and when requesting support with regard to the Customer's data protection-related obligations (as a controller), the Customer can reach Mindbreeze through the following channels:
- by e-mail: [privacy@mindbreeze.com](mailto:privacy@mindbreeze.com)
  - by papermail: Mindbreeze Corp., c/o data protection, 311 West Monroe Street, Chicago, Illinois, 60606.
- (h) Survival. Provisions of these Terms, which by their nature should apply beyond the effectiveness of termination, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidentiality, Governing Law, Arbitration, and Survival.