

## MINDPOINT GROUP SUBSCRIPTION TERMS & CONDITIONS

MindPoint Group, LLC, a Virginia limited liability company located at 8200 Greensboro Drive, Suite #900, McLean, Virginia 22102 (“**MindPoint Group**” or “**Company**”), offers clients a variety of cybersecurity services and solutions as further described herein.

These Subscription Terms & Conditions (“**Terms**” or “**Terms and Conditions**”) form part of the Applicable Agreements referenced in the Order Form and set forth certain of the terms and conditions on which MindPoint Group makes Subscription Services available to Customers. Accordingly, each Customer that enters into an Order Form or receives any Subscription Services shall be and hereby is subject to all terms and conditions including all Applicable Terms (this “**Agreement**”). These Terms apply to all Customers of MindPoint Group’s Subscription Services.

### 1. SCOPE

- 1.1 **General.** These Terms apply to all Customers of MindPoint Group’s Subscription Services. In addition, certain additional terms and provisions set forth in the Applicable Terms shall also apply to, and be binding on, the Customer as applicable to the specific Subscription Services that they are receiving from MindPoint Group.
- 1.2 **Applicable Terms.** In addition to these Terms, the following Applicable Terms shall apply to Customer, as and to the extent set forth in the Order Form:
  - a. **Appendix 1 – Lockdown Subscription Terms.** Appendix 1 contains additional terms and conditions applicable to MindPoint Group’s Lockdown Subscription Services.
  - b. **Appendix 2 – FedRAMP Readiness Accelerator Subscription Terms.** Appendix 2 contains additional terms and conditions applicable to MindPoint Group’s FedRAMP Readiness Accelerator Subscription Services.
  - c. **Appendix 3—Ansible Counselor Subscription Terms.** Appendix 3 contains additional terms and conditions applicable to MindPoint Group’s Ansible Counselor Subscription Services.
- 1.3 **Order Form.** Customer may purchase Subscription Services by entering into a written MindPoint Group Order Form that references and incorporates these Terms that describe the Subscription Services being ordered (including applicable Fees for such Subscription Services). Orders Forms shall include or attach a Statement of Work, and in such case the Statement of Work is and shall be incorporated into and made a part of the Order and all references herein to “Orders” shall include any incorporated Statements of Work. Each Order (including any incorporated Statements of Work) shall be subject to the terms of the Agreement.
- 1.4 **Channel Partners.** If Subscription Services are being purchased through a channel partner on behalf of a third party, MindPoint Group is solely responsible for providing the Subscription Services pursuant to the terms of the Agreement. MindPoint Group is not

responsible for any additional obligations, conditions or warranties agreed to by the channel partner.

- 1.5 **Order of Precedence.** To the extent that any terms of an Order conflict with any terms of these Terms and Conditions or any Applicable Terms, the provisions of these Terms and Conditions to include the Applicable Terms shall govern and control. To the extent that any terms of the Applicable Terms conflict with any terms of these Terms and Conditions, the provisions of these Terms and Conditions shall govern and control, provided that to the extent that any conflicting terms in the Applicable Terms are additive to or can be read in a reasonably consistent manner with, these Terms and Conditions, the terms of the Applicable Terms shall also apply and govern.
- 1.6 **Users; Third Party Use of Subscription Services.** The Agreement is enforceable against any person or entity that uses or avails itself of any of the Subscription Services or any person or entity that uses the or avails itself of Subscription Services on another person's or entity's behalf. Notwithstanding the foregoing, Customer shall not provide access to, or otherwise provide, the Subscription Services to any Affiliates or any third party (including their respective employees and agents) without MindPoint Group's prior written consent in an Order Form (an "**Authorized Third Party User**"). Customer shall provide all employees and all Authorized Third Party Users (collectively, "**Authorized Users**") who access and use any of the Subscription Services on Customer's behalf with appropriate notice of the terms and conditions under which the particular Subscription Services are provided under the Agreement including, in particular, any limitations on access or use of the Service as set forth in the Agreement, and shall ensure that each such Authorized User has agreed in writing to comply with all applicable terms of the Agreement. Customer shall be fully responsible to MindPoint Group for all acts and omissions of any person or entity, including all Authorized Users accessing or using the Subscription Services as fully as if Customer had committed such acts and omissions.

## 2. DEFINITIONS

The following terms shall have the following meanings and other capitalized terms used herein or elsewhere in the Agreement shall have the meanings set forth in such other parts of this Agreement (including in the Appendices).

**"Affiliate"** means an entity that is directly or indirectly controlled by or under common control with Customer. Affiliates may purchase the Subscription Services by executing an Order with MindPoint Group that incorporates the terms and conditions of the Agreement.

**"Applicable Law"** means any applicable law, rule, regulation or mandatory self-governance requirements.

**"Change Order Form"** means MindPoint Group's change order form or such other change order form agreed to by the parties and signed by the parties or electronically agreed to by the parties, which sets forth any changes to the Subscription Services to be provided to Customer as described in Section 6.1 below.

**“Channel Partner”** means a company that partners with a manufacturer or producer to market and sell the manufacturer’s products, services, or technologies.

**“Customer Materials”** means any files, content, information, media, communications, software, photos, video, programs, technology, graphics, music, sounds, data, scripts, credentials and other material in any form which Customer may import, upload, submit or otherwise provide to the Subscription Services.

**“Customer Offerings”** means Customer’s products, services, solutions, offerings, businesses, operations and activities.

**“Documentation”** means any documentation that may be made available by MindPoint Group in connection with the Subscription Services, which may be modified or amended during the Term.

**“Intellectual Property Rights”** means all intellectual property rights or interests and all proprietary rights, including without limitation, copyrights, trademarks, trade dress, patents, trade secrets, logos, trade names, any and all proprietary rights, publicity and/or privacy rights, industrial property rights, whether statutory or otherwise, and whether registered or not, all registrations, rights to register or apply for registration, renewals, reversions, all waivers and assignments of moral rights, all assignments of model and property releases, and all rights to enforce such rights or interests, in any work, including without limitation, the structure, sequence and organization of the same, worldwide and in perpetuity.

**“Losses”** means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers

**“Order Form”** or **“Order”** means the order form set forth on the first page of the Agreement or such other order form agreed to by the parties and signed by the parties or electronically agreed to by the parties, which sets forth the Subscription Services to be provided to Customer, as more fully described in Section 1.4.

**“Services”, “Subscription Services”, or “MindPoint Group Services”** means subscriptions to license MindPoint Group’s Subscription Services, as defined in Applicable Appendices.

**“Statement of Work” or “SOW”** means any statement of work that may be included with, attached to and/or incorporated in an Order (including as a separate section of the Order or an Exhibit thereto) for purposes of describing with more particularity the Subscription Services being performed thereunder.

### 3. CUSTOMER RESPONSIBILITIES

- 3.1 **Customer Responsibilities.** Customer agrees that, at all times during the Term, it shall: (i) perform those tasks and assume those responsibilities specified in the Order; (ii) upon MindPoint Group’s request, make available to MindPoint Group Customer personnel

familiar with Customer's business requirements related to the Subscription Services; (iii) provide to MindPoint Group complete and accurate information regarding Customer's business requirements regarding any Subscription Services under this Agreement; and (iv) reasonably cooperate with MindPoint Group regarding the Subscription Services (collectively, the "**Customer Responsibilities**"). Each Order shall also contain any assumptions of MindPoint Group for providing the Subscription Services and/or additional responsibilities required of Customer for MindPoint Group's performance of the Subscription Services. Customer understands that MindPoint Group's performance is dependent on Customer's timely and effective satisfaction of Customer Responsibilities hereunder and timely decisions and approvals by Customer.

#### 4. FEES, EXPENSES AND PAYMENT TERMS.

- 4.1 **Fees.** Customer will pay MindPoint Group the fees specified on each Order for the Subscription Services described thereon ("**Fees**"). Each Order may specify the basis for calculating such Fees, if applicable, including whether Fees are payable on a periodic basis or the standard net 30.
- 4.2 **Taxes.** Fees are stated in United States Dollars, must be paid in United States Dollars and are exclusive of all sales, use, value added or other form of taxation and any fines, penalties, surcharges or interest based thereon, but excluding any taxes based solely on the net income of MindPoint Group ("**Taxes**"). Customer shall pay or reimburse MindPoint Group for any Taxes, such as sales or use taxes, assessed on the basis of Subscription Services provided to Customer or payments made by Customer under this Agreement, except taxes based on MindPoint Group's net income or gross receipts. If Customer is required to withhold or deduct any portion of the payment due to MindPoint Group in order to satisfy any such Tax obligations, Customer will increase the sum payable to MindPoint Group by the amount necessary so that MindPoint Group receives an amount equal to the sum it would have received had Customer made no withholding or deductions.
- 4.3 **Payment.** Unless otherwise specified in an Order Form, all Fees shall be immediately due and payable, in United States denomination, without any deduction or setoff. Customer shall pay interest, at a rate equal to one and a half percent (1.5%) per month (or the highest allowed under Applicable Law if lower) on any amount that remains unpaid thirty (30) days after invoice. Customer shall be deemed to have accepted an invoice in full if Customer does not reasonably object in good faith in writing providing reasonable detail of Customer's basis for objecting to such invoice within seven (7) calendar days after Customer's receipt of such invoice.
- 4.4 **Renewal Fee.** Upon the commencement of each Renewal Term, Customer shall be liable to MindPoint Group for payment of a Renewal Fee. Customer hereby consents to MindPoint Group charging any such Renewal Fee to the credit card, or other payment method, associated with Customer's account without need to provide any further notice or receive any further consent, if applicable. Each "Renewal Fee" shall equal the lower of: (i) the Subscription Services Fee or Renewal Fee, as applicable, paid by Customer during the previous term and increased by 5%, and (ii) to the extent applicable to the particular Subscription Services being provided, the manufacturer's suggested retail price for such

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Subscription Services.

- 4.5 **Audit Rights.** Customer shall keep reasonable records relating to its use of the Subscription Services and Customer's compliance with the terms of the Agreement. MindPoint Group or its agents or representatives may, upon reasonable notice and during normal business hours, but no more often than once a year (unless MindPoint Group has a reasonable basis for more frequent requests), inspect Customer's records, systems and materials related to use of the Subscription Services and compliance with the terms of the Agreement. MindPoint Group will have the right and ability (and Customer hereby grants MindPoint Group all rights and licenses) to monitor Customer's use of the Subscription Services remotely and/or electronically to confirm Customer's compliance with the terms of the Agreement.

## 5. CHANGE ORDERS.

**Change Orders.** All change requests with respect to any Order or any specification relating to the Subscription Services must be approved by both parties pursuant to a change order (a "**Change Order**"). Customer shall request a Change Order Form from MindPoint Group and detail the changes that Customer requests. Upon receipt of such request, MindPoint Group will promptly provide the Customer with a firm price, terms and conditions for the provision of such new or changed services. The Customer will have ten (10) calendar days to accept or reject such price, terms and conditions in the Change Order Form. If the Customer accepts, the parties will amend the Order as appropriate to reflect such price, terms and conditions, such new or changed services will be deemed Subscription Services under the Agreement, and MindPoint Group will commence to provide such Subscription Services in accordance with the terms hereof and thereof. A change request will only be effective when changed by a written amendment or final Change Order Form signed by the authorized representative of each party which specifically refers to the provisions of the Agreement or Order to be modified. MindPoint Group will have no obligation to commence work in connection with any changed Subscription Services until the change order is agreed upon by the parties.

## 6. TERMS AND TERMINATION.

- 6.1 **Term of the Agreement.** The Agreement shall remain in effect until its termination as provided below (the "**Term**"). The term of each Order shall begin on the applicable Order Form Effective Date and continue for the "**Term Length**" specified in such Order Form. Each Order Form shall renew for additional (i) one (1) year periods if the Term Length is equal to or greater than one (1) year, or (ii) periods equal to the Term Length if the Term Length is less than one (1) year (each, a "**Renewal Term**"), unless written notice of non-renewal is received by the other party at least sixty (60) days prior to the expiration of the then current term. If no Term Length is specified in an Order, MindPoint Group's standard term shall apply to the provided Subscription Services or, if addressed in the Applicable Terms, any standard term set forth in the Applicable Terms shall apply (e.g. standard one year license terms for Lockdown subscriptions). Notwithstanding the foregoing, an Order may be earlier terminated in accordance with the terms of this Section 6.
- 6.2 **Termination.** Either party may terminate the Agreement (including all Subscription

Services set forth in an Order Form and all Applicable Terms) upon written notice to the other party in the event that the other party breaches any material provision of the Agreement and has not cured the breach within thirty (30) days after receiving written notice of such breach. In addition, the Agreement may be terminated by either party in the event (i) the other party makes a general assignment for the benefit of creditors, (ii) the other party files a voluntary petition in bankruptcy or for reorganization under the bankruptcy laws, (iii) a petition in bankruptcy is filed against the other party, or (iv) a receiver or trustee is appointed for all or any part of the property or assets of the other party. In the event of termination of the Agreement, MindPoint Group will have no obligation to refund any fees (license fees, support or other fees) received from Customer during the Term.

- 6.3 **Effect of Termination on Order.** The valid expiration or termination of any specific Subscription Services set forth in an Order shall not operate to terminate or affect any other Subscription Services set forth in an Order or a different Order, unless otherwise agreed to by the parties or unless the Agreement is terminated by a party pursuant to Section 6.2.
- 6.4 **Payments.** If the Agreement is terminated, Customer shall pay to MindPoint Group all amounts due for Subscription Services performed through the effective date of termination. In the event of such termination, Customer shall also reimburse MindPoint Group for any and all reasonable uncancellable or non-refundable obligations to third parties or otherwise that MindPoint Group incurred prior to the date of termination and in compliance with a particular Order.
- 6.5 **Cessation of Services.** Upon notice of termination, MindPoint Group shall stop performance of Subscription Services, except as may be necessary to carry out such notice of termination. Upon termination, the obligations of Customer and MindPoint Group to one another or the portion thereof that is terminated shall cease, except for such obligations which, by their nature, survive completion of the Subscription Services hereunder (including any provisions that expressly survive). If only a portion of the Subscription Services is terminated, MindPoint Group shall continue to perform all portions of the Subscription Services not terminated, and as to the portions of the Subscription Services not terminated, the Agreement shall remain in full force and effect.
- 6.6 **Return of Materials.** Upon receipt of notice of termination, upon Customer's request, MindPoint Group shall return all Customer Materials that it has under its control. Customer shall reimburse MindPoint Group for all costs incurred as a result of MindPoint Group's return of Customer Materials. Upon receipt of Customer's final payment following termination, including reimbursement for MindPoint Group's costs to return Customer Materials, MindPoint Group will promptly return all Customer Materials to Customer.
- 6.7 **Additional Termination Terms.** In addition to the terms of this Section 6, in the event that any Applicable Terms contain terms and provisions that are in addition to those set forth in this Section 6, such additional terms shall also apply to the specific Subscription Services covered by the Applicable Terms.

## 7. INTELLECTUAL PROPERTY.

- 7.1 **MindPoint Group IP.** MindPoint Group shall own and otherwise retain all Intellectual Property Rights in and to: (i) the Subscription Services and Documentation and all related intellectual property and works, including but not limited to any derivative works of the foregoing; (ii) any and all methods, processes, procedures, or components thereof, systems, software programming, know-how, and other intellectual property of MindPoint Group developed by, related to, associated with, or otherwise comprising the Subscription Services; and (iii) all Inventions except any Customer Owned Work Product.
- 7.2 **Customer IP.** Customer shall own and otherwise retain all Intellectual Property Rights in and to all Customer Materials.
- 7.3 **Customer Owned Work Product.**
- 7.3.1 Unless explicitly set forth in an Order, MindPoint Group shall own all right, title and interest, including all Intellectual Property Rights, in and to all inventions, improvements, developments, discoveries, marks, logos, know-how, trade secrets, notes, records, reports, drawings, designs, data, computer programs and all other works of authorship conceived, made, discovered or developed by MindPoint Group or MindPoint Group Personnel in performing the Subscription Services hereunder or provided or delivered to Customer hereunder (collectively, the “Inventions”). In the event the parties have mutually agreed in writing in the applicable Order that Customer shall own certain Customer Owned Work Product, then upon full payment of all amounts due from Customer to MindPoint Group, MindPoint Group agrees to assign (or cause to be assigned) and does hereby assign fully to Customer all right, title and interest in and to any and all Customer Owned Work Product including all Intellectual Property Rights therein. In addition, any Customer Owned Work Product which constitute copyrightable subject matter shall be considered “works made for hire” within the meaning of the United States Copyright Act and any similar laws of other jurisdictions. For purposes of this Agreement, “**Customer Owned Work Product**” means those certain Inventions that are specifically developed by MindPoint Group pursuant to an Order Form that are expressly allocated to be owned by Customer in a separately numbered section of the Order that specifically references this Section 7.3 of these General Terms by section number and title and provided that such Order is signed by an executive officer of MindPoint Group. By way of example and without limiting the foregoing, if the parties identify or reference certain deliverables in an Order Form (including in any SOW attached to such Order), such deliverables shall not be owned by Customer unless so stated in a separate section titled “Customer Owned Work Product” and such provision otherwise meets the requirements of this Section 7.3.
- 7.3.2 Customer shall, and hereby does, grant to MindPoint Group a fully paid-up, non-exclusive, perpetual, sub-licensable (through multiple tiers of sublicenses), irrevocable, transferable, worldwide and royalty-free right and license to (i) use, disclose, reproduce, modify, license, distribute and otherwise commercialize any Customer Owned Work Product, (ii) modify and otherwise create derivative works based on Customer Owned Work Product, (iii) reproduce, distribute, perform and

display (publicly or otherwise), and otherwise make, use, sell, product, services and intellectual property that practice the Customer Owned Work Product, and otherwise utilize the Customer Owned Work Products if the MindPoint Group was the owner of such Customer Owned Work Product, and (iv) to make, have made, use, offer to sell, sell, have sold, import, duplicate, create derivative works and improvements based upon, distribute, have distributed and otherwise exploit the Customer Owned Work Product for any purpose. For the avoidance of doubt and without limiting the foregoing, Customer acknowledges that MindPoint Group may use any such licensed Customer Owned Work Product to improve the Subscription Services or for any of MindPoint Group's commercial or non-commercial purposes. Such right shall extend to MindPoint Group's present and future Affiliates, successors and assigns.

- 7.4 **Feedback.** By submitting feedback and suggestions to MindPoint Group, Customer hereby grants to MindPoint Group a non-exclusive, perpetual, sub-licensable, irrevocable, and royalty-free license to any Intellectual Property Rights Customer may have in the feedback and suggestions, in order for MindPoint Group to use such feedback and suggestions to improve the Subscription Services or for any of MindPoint Group's commercial or non-commercial purposes. Customer acknowledges that submission of feedback and suggestions is voluntarily, and MindPoint Group may consider or is developing technology or intellectual property that is the same or similar to the feedback or suggestions.
- 7.5 **Customer Materials.** Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, and copyright of all Customer Materials that Customer inputs or uploads to the Subscription Services or otherwise provides to MindPoint Group in connection with the Subscription Services. MindPoint Group assumes no responsibility for the deletion, correction, destruction, loss, infringement or failure of the Subscription Services to store any Customer Materials. MindPoint Group reserves the right to establish a maximum amount of memory or other computer storage and a maximum amount of Customer Materials that Customer may store, post or transmit on or through the Subscription Services. MindPoint Group shall not be required to maintain a backup or copy of any Customer Materials and Customer shall have no liability for any loss of Customer Materials, whether caused by MindPoint Group, Customer, any third-party service provider or any third party. Customer shall comply with all Applicable Laws and regulations applicable to the transmission or storage of data through the Subscription Services. Customer shall be solely responsible for its actions while using the Subscription Services and the contents of its transmissions through the Subscription Services. Customer is solely responsible for ensuring that it has all rights necessary to provide the Customer Materials to MindPoint Group and the Subscription Services. Customer acknowledges and agrees that no transmission or hosting of data is 100% secure and there remains a possibility that Customer Materials may be subject to unauthorized access by hacking, malware, systems breach or other unauthorized method and MindPoint Group shall have no liability relating to any such breach or access.
- 7.6 **Third Party Products.** Customer is responsible for ensuring that Customer is in possession of any and all third-party technology, software, licenses or other documentation required by, or related to, the Subscription Services. Customer shall comply with all of the terms and conditions of such licenses and products.



- 7.7 **Open Source.** In the event the Subscription Services include or distribute any open source software to Customer (for example Ansible and software licensed under the Apache, GPL, MIT or other open source licenses, collectively “**Open Source Software**”) then such Open Source Software is subject to the terms of the applicable open source license. To the extent there is a conflict with the Agreement or any Order and the applicable open source license, the terms of the applicable open source license shall control solely with respect to such open source software.
- 7.8 **Third Party Sites and Information.** The Subscription Services and/or Documentation may link Customer to other sites on the Internet or otherwise include references to or otherwise make available information, documents, software, applications, products, materials and/or services provided by other parties. These other sites and parties are not under MindPoint Group’s control, and Customer acknowledges that MindPoint Group is not responsible for the accuracy, copyright compliance, legality, decency, or any other aspect of the content of such sites, nor is MindPoint Group responsible for errors or omissions in any references to other parties or their sites, products and services. The inclusion of such a link or reference is provided merely as a convenience and does not imply endorsement of, or association with, the Subscription Services, MindPoint Group or MindPoint Group’s Affiliates, or any warranty of any kind, either express or implied. Customer’s use of any third-party sites, products or services, and any exchange of any information between Customer, on the one hand, and a third-party provider, on the other hand, is solely between Customer and the applicable third-party provider. MindPoint Group makes no warranties of any kind and assumes no liability whatsoever for Customer’s use of any such third-party site, products or services.

## 8. CONFIDENTIAL INFORMATION.

- 8.1 **Confidentiality.** The term “**Confidential Information**” shall include any information, whether tangible or intangible, including, but not limited to, techniques, discoveries, inventions, ideas, processes, software (in source or object code form), designs, technology, technical specifications, flow charts, procedures, formulas, concepts, any financial data, and all business and marketing plans and information, in each case which is maintained in confidence by the disclosing party (“**Disclosing Party**”) and disclosed to the other party (“**Recipient**”) hereunder. The failure by the Disclosing Party to designate any information as Confidential Information shall not give Recipient the right to treat such information as free from the restrictions imposed by the Agreement if the circumstances would lead a reasonable person to believe that such information is Confidential Information. Confidential Information does not include information which Recipient documents (a) is now, or hereafter becomes, through no act or failure to act on the part of Recipient, generally known or available to the public; (b) was rightfully in Recipient’s possession prior to disclosure by the Disclosing Party and there is adequate documentation to demonstrate prior possession; (c) becomes rightfully known to Recipient, without restriction, from a source other than the Disclosing Party and without any breach of duty to the Disclosing Party; (d) is developed independently by Recipient without use of or reference to any of the Confidential Information and without violation of any confidentiality restriction contained herein; or (e) is approved by the Disclosing Party for disclosure without restriction, in a written document executed by a duly authorized officer of the Disclosing Party.

- 8.2 **Obligations.** Recipient shall hold the Confidential Information received from the Disclosing Party in strict confidence and shall not, directly or indirectly, disclose it, except as expressly permitted herein, and shall not use the Confidential Information for any purpose other than exercising its rights and performing its obligations hereunder. Recipient shall have the right to disclose the Disclosing Party's Confidential Information to Recipient's employees, Affiliates and contractors, who have a "need to know" such information in connection with the exercise of rights and obligations hereunder, provided that such employees, Affiliates and contractors shall be bound by confidentiality obligations that are at least as protective of such Confidential Information as the terms and conditions of the Agreement. Recipient shall promptly notify the Disclosing Party upon learning of any loss, misappropriation or misuse of Confidential Information disclosed hereunder.
- 8.3 **Non-Exclusivity.** Subject to Customer's rights in Customer's Confidential Information, (i) the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of providing the Subscription Services may be used by MindPoint Group for any purpose, including by or for itself or its end users or customers, without an obligation to account; and (ii) nothing in the Agreement will preclude or limit MindPoint Group from providing software, materials, or services for itself or other clients, irrespective of the possible similarity of such software, materials or services to those that might be delivered to Customer.
- 8.4 **Judicial Compulsion.** In the event that the Recipient or its representatives are requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any information supplied to the Recipient in the course of the Agreement, it is agreed that the Recipient will provide the Disclosing Party with prompt notice of such request or requirement so that either party or both may seek an appropriate protective order and/or by mutual agreement waive the Recipient's compliance with any contrary provisions of the Agreement. It is further agreed that, if in the absence of a protective order or the receipt of a waiver hereunder, the Recipient or any of its representatives is nonetheless, in the opinion of its counsel, compelled to disclose information concerning the Disclosing Party to any tribunal or else stand liable for contempt or suffer other censure or penalty, the Recipient or such representative may disclose such information to such tribunal without liability hereunder.
- 8.5 **No Use for Benchmarking.** Customer agrees not to publish, or to make available publicly, any tests, benchmarks, or product comparisons mentioning MindPoint Group without the prior written consent of MindPoint Group, which consent shall not be unreasonably withheld.

## 9. REPRESENTATIONS AND WARRANTIES.

- 9.1 **Mutual.** Each party represents and warrants that: (a) it is a corporation, limited liability company or partnership duly incorporated or formed and organized, validly existing and in good standing under the laws of the state of its incorporation or formation; (b) it is duly qualified to carry on its business wherever it conducts its business; (c) it has the corporate,

company or partnership power and authority and legal right to enter into the Agreement and to perform its obligations hereunder, including under the Order, and that it has taken all necessary corporate, company or partnership action to authorize execution and performance of the Agreement; and (d) it is not subject to and will not enter into any agreements or arrangements which preclude its compliance with the provisions of the Agreement.

- 9.2 **Customer.** Customer represents and warrants to MindPoint Group that: (a) Customer will provide MindPoint Group with physical and/or electronic access to its computer systems, networks, related equipment, software, stored data, information and personnel as reasonably required for MindPoint Group to render the Subscription Services contemplated in the Order; (b) Customer has obtained all required authorizations and approvals necessary in order for MindPoint Group to perform the Subscription Services and to have access to such systems, networks, equipment, software, data and information necessary therefor without violating the rights of any third party; (c) MindPoint Group has the authorization to access such computers, computer systems and computer networks in the regular course of work under the Agreement, and, notwithstanding any other provision of the Agreement, Customer shall indemnify, defend, and hold MindPoint Group harmless for any damages or liability resulting from direct or third party claims that MindPoint Group did not have the authorization to obtain such access; (d) Customer shall comply with all Applicable Laws and shall ensure that all Customer Offerings comply with Applicable Laws, including, without limitation, that Customer's use of any Subscription Services in connection with the Customer Offerings complies with all Applicable Laws; (e) Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Materials as necessary in order to grant the rights to MindPoint Group contemplated by the Agreement; (f) the Customer Materials do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any Applicable Law; and (g) the Customer Materials is not unlawful or otherwise gives rise to civil or criminal liability.

- 9.3 **Disclaimer.** THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND MINDPOINT GROUP EXPRESSLY DISCLAIMS ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, TITLE AND NON-INFRINGEMENT, AND ANY OTHER IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, MINDPOINT GROUP MAKES NO WARRANTY THAT (A) THE SERVICES WILL MEET CLIENT REQUIREMENTS, (B) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE EFFECTIVE, ACCURATE OR RELIABLE.

CLIENT UNDERSTANDS AND AGREES THAT NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MIND POINT GROUP, ITS EMPLOYEES, AGENTS, OR CONTRACTORS, SHALL CREATE ANY ADDITIONAL WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF SERVICE MINDPOINT GROUP'S OBLIGATIONS.

CLIENT ALSO UNDERSTANDS AND AGREES THAT NONE OF THE SERVICES ARE DESIGNED OR

INTENDED FOR USE IN THE PLANNING, OPERATION, MAINTENANCE, OPERATION OR CONTROL OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, DIRECT LIFE SUPPORT SYSTEMS OR CONTROL OF COMMUNICATIONS OR WEAPONS SYSTEMS.

ANY CAUSE OF ACTION CLIENT MAY HAVE ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE SERVICES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

#### 10. LIMITATION OF LIABILITY.

- 10.1 SUBJECT TO SECTION 10.3, IN NO EVENT WILL MINDPOINT GROUP BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, PROFIT, GOODWILL, DATA, OR OTHER INTANGIBLE LOSSES OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT MINDPOINT GROUP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND FURTHER INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM THE USE OR THE INABILITY TO USE ANY PARTICULAR MINDPOINT GROUP SERVICES OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES.
- 10.2 SUBJECT TO SECTION 10.3, IN NO EVENT WILL MINDPOINT GROUP'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS THAT HAVE ACTUALLY BEEN PAID BY CLIENT TO MINDPOINT GROUP PURSUANT TO THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING SUCH CLAIM.
- 10.3 SECTIONS 10.1 AND 10.2 SHALL NOT APPLY TO MINDPOINT GROUP'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11.1, BREACHES BY MINDPOINT GROUP OF ITS OBLIGATIONS UNDER SECTIONS 8.1 AND 8.2, OR CLAIMS ARISING FROM MINDPOINT GROUP'S GROSS NEGLIGENCE OR INTENTIONAL OR WILLFUL MISCONDUCT.
- 10.4 MINDPOINT GROUP NEITHER WARRANTS NOR GUARANTEES SOFTWARE PROVIDED BY THIRD PARTIES, INCLUDING ANSIBLE, ANSIBLE ENGINE, ANSIBLE TOWER, OR OTHER SOFTWARE PROVIDED BY RED HAT, INC., IBM, INC., OR OTHER COMPANIES REGARDLESS OF THEIR AFFILIATION TO MINDPOINT GROUP.

#### 11. INDEMNIFICATION.

- 11.1 **MindPoint Group.** MindPoint Group shall indemnify, defend and hold harmless Customer and its officers, directors, employees and agents from and against any and all Losses relating to, or arising out of, any third party claim alleging that (i) the Subscription Services infringe, misappropriate or violate the valid Intellectual Property Rights of a third party, or (ii) any gross negligence, willful misconduct or fraud of MindPoint Group, or (iii) any violation of any Applicable Law by MindPoint Group. Customer will not be responsible for any settlement that requires it to pay any amounts that it does not approve in writing, which approval shall not be unreasonably withheld. The obligations in subsection (i)

above do not apply with respect to (and MindPoint Group shall have no obligation to indemnify or defend Customer with respect to) any Losses related to or arising out of the Subscription Services or any portions or components of the Subscription Services (a) not supplied by MindPoint Group, (b) made in whole or in part in accordance with Customer specifications, (c) that are modified after delivery by Customer, (d) combined with other products, processes or materials where the alleged infringement relates to such combination, (e) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, (f) where Customer's use of the Subscription Services is not strictly in accordance with the Agreement and any provided Documentation, or (g) where the Losses are based on or arises from Customer Materials or Customer Offerings. If, due to a claim of infringement, the Subscription Services are held by a court of competent jurisdiction to be or are believed by MindPoint Group to be infringing, MindPoint Group may, at its option and expense (1) replace or modify the Subscription Services to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (2) obtain for Customer a license to continue using the Subscription Services, or (3) if neither of the foregoing is commercially practicable, terminate the Agreement and Customer's rights hereunder and provide Customer refund of any prepaid, unused fees for the Subscription Services.

- 11.2 **Customer.** Customer shall indemnify, defend and hold harmless MindPoint Group and its officers, directors, employees, agents, suppliers and customers from and against all Losses relating to, or arising out of, (i) any claim alleging that any Customer Materials infringe, misappropriate or violate the Intellectual Property Rights of a third party, (ii) any gross negligence, willful misconduct or fraud of Customer, (iii) any breach or violation of the Agreement, (iv) any violation of any Applicable Law by Customer, (v) the Customer Offerings or any of Customer's customers or clients, (vi) Authorized Users or any third party that may access or use any Subscription Services based on Customer's acts or omissions; or (vii) claims that a MindPoint Group channel partner have offered or provided any additional obligations, conditions or warranties to Customer.

Upon expiration or termination for uncured Customer breach(es), Customer will no longer receive Updates, Upgrades, or Support to the Subscription Services related to the Appendices listed in Section 1.2. Without limiting the foregoing, Customer shall defend, indemnify and hold MindPoint Group harmless from any and all Losses arising from Customer's continued retention and use of such local copies of the Subscription Services related to the Appendices listed in Section 1.2.

## 12. INSURANCE.

- 12.1 **Customer.** Customer shall maintain, at its expense, insurance coverage of the kind, type, and limits consistent with similarly situated companies of Customer's size and industry; provided that, at a minimum, such coverage shall be reasonable.
- 12.2 **MindPoint Group.** MindPoint Group shall maintain, at its expense, insurance coverage of the kind, type, and limits specified below.

Commercial General Liability	\$1,000,000 each occurrence;
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	\$2,000,000 general aggregate
Umbrella Liability	\$6,000,000
Professional Liability (Errors & Omissions)	\$5,000,000
Cyber Liability	\$5,000,000
Business Automobile Liability	\$1,000,000
Workers' Comp / Employer's Liability	Statutory; Employer's Liability limit \$2,000,000

### 13. General.

- 13.1 **Assignment.** A party shall not assign the Agreement or any task, duty or obligation under an Order, or otherwise dispose of its right, title, or interest therein or any part thereof to any person or entity, without obtaining the prior written consent of the other party, which shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing and any other provision in the Agreement, MindPoint Group shall have the right to (i) use subcontractors and other third parties as set forth in the Agreement, and (ii) assign and/or transfer the Agreement and/or its rights herein to any parent, subsidiary or Affiliate of MindPoint Group or otherwise in connection with a corporate reorganization or sale of MindPoint Group including, without limitation, a merger, restructuring, or other equivalent transaction that involves a change-in-control or a sale of all or substantially all of the assets of MindPoint Group, without obtaining Customer's prior approval therefor. In connection with any such assignment or transfer by MindPoint Group, MindPoint Group's successor(s) or assign(s) shall have the right but not the obligation to continue the Agreement in effect; and, if so continued, MindPoint Group's successor(s) or assignee(s) shall be fully vested as a party to the Agreement in full substitution, and with all of the rights, of MindPoint Group hereunder.
- 13.2 **Waiver.** No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, or waiver of, or excuse for any other different or subsequent breach. No waiver of any one or several of the terms, conditions or obligations of the Agreement, and no partial waiver thereof, shall be construed as a waiver of any of the other terms, conditions or obligations of the Agreement. No failure or delay by either party at any time to enforce one or more of the terms, conditions or obligations of the Agreement shall constitute waiver of such terms, conditions or obligations or shall preclude such party from requiring performance by the other party at any later time.

- 13.3 **Specific Performance; Injunctive Relief.** Customer recognizes that MindPoint Group would suffer irreparable harm if Customer breaches its obligations under the Agreement and that monetary damages might not be adequate to compensate MindPoint Group for any breach hereof. In the event of a breach or attempted breach of any of the provisions herein, MindPoint Group, in addition to its other remedies, will be entitled to seek specific performance or injunctive relief in order to enforce performance or prevent any violation of the provisions of the Agreement. If a suit or action is instituted in connection with any claim or controversy arising out of the Agreement, the prevailing party will be entitled to recover, in addition to costs, such sums the court may adjudge reasonable as attorneys' fees.
- 13.4 **Export.** As part of the Subscription Services, MindPoint Group may supply Customer with software and/or technical information that is subject to U.S. Export Administration Regulations (the "EAR"). MindPoint Group will not be responsible for compliance by Customer with applicable export obligations and requirements for this software and/or technical information. Customer agrees to comply with all applicable export obligations or requirements for this software and/or technical information. Customer also agrees that it will not export, re-export or transfer this software and/or technical information, directly or indirectly, to: (1) any country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR; (2) any end user who Customer knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, or sounding rockets, or unmanned air vehicle systems; or (3) any end user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. In addition, Customer is responsible for complying with any local laws in its jurisdiction which may impact Customer's right to import, export or use the software and/or technical information. Customer will not provide to MindPoint Group any "technical data" or "defense articles" or engage MindPoint Group in any activity which would constitute the development of a "defense article" or provision of a "defense service" to Customer, as such terms are defined in Section 120 of the International Traffic in Arms Regulations. If Customer breaches this paragraph or the export provisions of an applicable end user license agreement for the relevant software and/or technical information, or any provision referencing these provisions, MindPoint Group may terminate the Agreement and/or the applicable Order and its obligations thereunder without liability to Customer. Customer acknowledges and agrees that to provide the Subscription Services, it may be necessary for Customer's information to be transferred among MindPoint Group, its Affiliates, business partners, Data Centers, and/or subcontractors, which may be located worldwide.
- 13.5 **No Third-Party Beneficiary Rights.** No provision of the Agreement shall in any way inure to the benefit of any third person or entity (including the public at large) so as to constitute any such person or entity a third-party beneficiary of the Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person or entity not a party hereto.

- 13.6 **Severability.** The invalidity, illegality, or unenforceability of any provisions of the Agreement, by statute, court or otherwise, shall not affect the validity, legality, or enforceability of any other provision of the Agreement, which shall remain in full force and effect.
- 13.7 **Non-solicitation.** During the term of the Agreement, and for eighteen (18) months following termination hereof, Customer shall not directly or indirectly solicit for the purpose of hiring, employing or contracting with, or assisting in the solicitation, hiring, employing or contracting with, any person or entity that is, or was at any time during the term of the Agreement, a consultant, employee, or subcontractor of MindPoint Group, without express written permission from MindPoint Group. If Customer breaches this Section, Customer shall, on demand, pay to MindPoint Group a sum equal to one year's basic salary or the annual fee that was payable by MindPoint Group to that employee, worker or independent contractor, any recruitment costs incurred in replacing such person, and reasonable attorneys' fees expended by MindPoint Group in enforcing the Agreement. This provision shall not restrict customer from hiring any individual who independently responds to employment advertising in newspapers, trade publications or other public media forms.
- 13.8 **Dispute Resolution.** The parties will attempt to resolve through good faith negotiations any dispute, claim or controversy (individually or collectively, a "**Dispute**") arising out of or relating to the Agreement, to performance by any parties hereunder, or to the threatened, alleged, or actual breach thereof by any party. If the parties are unable to resolve such Dispute through good faith discussions, higher level management representatives from each party shall meet and attempt to resolve the Dispute. If the parties are not able to resolve a Dispute within a period of thirty (30) calendar days after one party has provided written notice of the Dispute to the other party, then either party shall be free to submit the Dispute for resolution via arbitration pursuant to the Commercial Rules of the American Arbitration Association with respect to matters of procedural law; and provided that the discovery rules of the Federal Rules of Civil Procedure shall apply in such proceedings. The arbitration shall be conducted by a single arbitrator mutually agreed upon by the parties. Any such arbitration shall be held in Fairfax County, Virginia or elsewhere as mutually agreed to by the parties. The arbitrator's decision shall be final and binding absent fraud or manifest error. Judgment upon an award rendered by the arbitrator may be entered in any court of competent jurisdiction in Fairfax County, Virginia. No party shall institute any action or proceeding against any other party in any court with respect to any Dispute which is or could be the subject of a claim or proceeding pursuant to this Article; provided that the foregoing shall not limit either party's rights under Section 13.3. In the event that any arbitration is instituted or commenced by either party hereto against the other party arising out of or related to the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party. Nothing in this Section prevents any party from exercising its right to terminate the Agreement in accordance with the terms and conditions herein.
- 13.9 **Governing Law and Choice of Forum.** The validity, interpretation, and performance of the Agreement shall be governed by the laws of the State of Delaware, without giving effect to any conflicts of laws principles that may require the application of the law of a different



jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Subject to the terms of Section 13.8, each party hereby expressly and irrevocably consents that any suit, action, or proceeding arising under Section 13.3 or challenging the final arbitration decision shall be brought in the appropriate state or federal court within or presiding over Fairfax County, Virginia.

- 13.10 **Survival.** The parties agree that the terms and conditions of this Agreement (including those contained in an Order or in any Applicable Terms) that would, by their nature survive the expiration or termination of this Agreement, including without limitation Sections 1.5, 1.6, 1.7, 4, 6.4, 6.5, 6.6, 6.7, 6.8, 7, 8, 9.3, 10, 11, and 13 hereof, shall survive the termination or expiration of the Agreement for any reason.
- 13.11 **Integration and Execution.** This Agreement constitutes the entire Subscription Services agreement between the parties and supersedes all prior written or oral understandings, bids, offers, negotiations, or communications of every kind. No course of dealing between parties and no usage of trade shall be relevant to supplement any term used in the Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of the Agreement. The Agreement may NOT be altered, supplemented, or amended by the use of any other document(s) outside of a Change Order. Any attempt to alter, supplement or amend this Agreement or to enter an order for Subscription Services which are subject to additional or altered terms and conditions will be null and void, unless otherwise agreed to in a Change Order signed by Customer and an officer of MindPoint Group. The Agreement may be executed through signatures to any number of counterparts, but any or all of such counterparts and documents shall constitute but one agreement.
- 13.12 **Publicity.** Customer acknowledges and agrees that during the term and after the termination or expiration of the Agreement, MindPoint Group shall have the right to use Customer's name and logo and identify Customer as a client in MindPoint Group's marketing, publicity, and promotional activities and materials, including but not limited to press releases, marketing collateral, presentations, customer lists and print, radio, internet and television advertisements, without further consent or approval of Customer. Customer grants MindPoint Group a limited license to use Customer's name and logo in accordance with this Section.
- 13.13 **U.S. Government as Customer.** If any MindPoint Group software or other Subscription Services are being acquired by or on behalf of the U.S. government hereunder, such services, software and all related documentation are (as applicable) "Commercial items," "Commercial computer software" and "Computer software documentation" as defined by the Federal Acquisition Regulations ("FAR") and Defense Federal Acquisition Regulations Supplement ("DFARS"). Pursuant to FAR 12.211, FAR 12.212, DFARS, 227.7202-1 through 227.7202-4, and their successors, the U.S. Government acquires the software and its documentation subject to the terms of the Agreement. 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 the Agreement and will be prohibited except to the extent expressly permitted by the terms of the Agreement.

- 13.14 **Force Majeure.** MindPoint Group shall not be considered in default in the performance of its obligations under the Agreement to the extent that performance of its obligations is prevented or delayed by any cause beyond its reasonable control, including, without limitation, acts of God; acts or omissions of governmental authorities or the other party; strikes; lockouts or other industrial disturbances; acts of public enemies; wars; blockades; riots; civil disturbances; epidemics; floods; hurricanes; tornadoes; and any other similar acts, events, or omissions. When determined that force majeure results in a delay of MindPoint Group's performance, the date of delivery or performance of any other obligations hereunder shall be extended for a period of equal duration to the time lost by reason of the delay.
- 13.15 **Titles; Language.** The titles of the paragraphs of the Agreement are for convenience only and have no legal or contractual effect. The use of the term "including" shall mean "including, without limitation" when used in the Agreement.
- 13.16 **Independent Contractor.** The relationship between the parties is that of independent contractors. The Agreement will not create or be deemed to create any agency, partnership or joint venture between the parties.

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