MindSampler, Inc. Terms and Conditions

This MindSampler Inc. Terms and Conditions Agreement (“Agreement”), is between **MindSampler Inc. (“MindSampler”)**; and the user of the MindSampler software **(“Licensee”)**. MindSampler has developed a set of computer and mobile software tools that facilitate and automate the process of conducting experience sampling surveys (the “**Software**”). Access to the Software is provided by MindSampler as a service to Licensee via an the MindSampler website ([www.mindsampler.com](http://www.mindsampler.com)) and its related mobile applications. The Software is hosted on servers of MindSampler or of a third party engaged by MindSampler, where the third party is in the business of hosting Internet services and/or applications.

1. MindSampler maintains the Software, hardware and systems to deliver the Service to subscribing Licensees via the Internet. The specific Software and services provided to Licensee as part of the “**MindSampler Service**” are defined in Exhibit 1 hereunder.
2. Licensee desires to utilize the MindSampler Service, and MindSampler desires to provide the MindSampler Service to Licensee, pursuant to the terms and conditions of this Agreement.

# Background

MindSampler will provide the MindSampler Service to Licensee as an end user customer. MindSampler will use, operate, and/or make available applicable software, hardware, network, systems, platforms, and/or other technologies and expertise reasonably required to provide the MindSampler Service to Licensee.

# License of MindSampler Service

MindSampler grants Licensee a non-exclusive, non-transferable worldwide license and lease, during the term of the Licensee’s subscription, to use the MindSampler Service for Licensee’s own internal business or research purposes.

* 1. ***Access***: During the term of this Agreement, provided that Licensee has paid all fees due and owed to MindSampler and is in compliance with the terms of this Agreement, Licensee will be able to access the MindSampler Service by going to the web site provided by MindSampler. The website will prompt Licensee for its login and password information and, if correct, will provide Licensee with access to the MindSampler Service. Additionally, survey participants, as well as the Licensee will be able to utilize the mobile application provided as part of the MindSampler Service.
	2. ***Unauthorized Duplication or Use***: Licensee shall use commercially reasonable efforts to prevent its employees and other third parties from making unauthorized copies of any content in the MindSampler Software or using the MindSampler Service in violation of this Agreement. If Licensee discovers any such unauthorized duplication or use, it will promptly notify MindSampler and take commercially reasonable actions to resolve the problem as soon as reasonably possible.
	3. ***Restrictions:*** Licensee is not permitted to sublicense the MindSampler Software to third parties without written permission of MindSampler except to affiliates and third party vendors solely for providing services for Licensee and not for their own use.

# Support and Maintenance

In consideration of the fees paid by Licensee, as part of the MindSampler Services, MindSampler will provide the following support and maintenance services:

* 1. ***Technical Support:*** MindSampler shall provide Licensee with telephone-based and web site-based technical support services to assist Licensee in utilizing the MindSampler Service, including the Software. Licensee may e-mail MindSampler’ offices for support during to resolve issues or coordinate a phone call to do the same. MindSampler shall make reasonable, good faith efforts to respond to technical support requests and to correct errors within a reasonable time. Licensee agrees to cooperate with MindSampler in providing such documentation and information as MindSampler may reasonably request, so that MindSampler can verify and reproduce the reported error.
	2. ***Modifications and Enhancements*:** MindSampler may also make modifications to the MindSampler Service to improve and enhance the MindSampler Service, as it deems appropriate in its sole discretion, by adding additional service options, improving the user interface and otherwise responding to its licensees’ feedback and requests. MindSampler will make all such improvements and enhancements (including, but not limited to, error corrections, bug fixes and performance or functionality improvements) available to Licensee under the terms of this Agreement at no additional charge. Licensee may also utilize MindSampler’ support web site to make enhancement requests and other special requests.
	3. ***Survey Participants*:** The Licensee acknowledges that unless the Licensee has contracted the Service defined on the MindSampler website as “Auto-Pilot” for a specific study or survey, MindSampler is not obligated to respond directly to individual survey participant errors or emails at any time. Should issues come up during a survey, MindSampler will address them based on the terms and conditions outlined in this Agreement when brought to its attention by the Licensee.
1. ***Ownership***

Subject to the licenses and rights granted herein, the parties acknowledge that:

* 1. As between the parties, MindSampler owns all right, title and interest in and to the MindSampler Service, all related software and technology, and all MindSampler content provided in connection with the MindSampler Service, including all intellectual property rights in the foregoing. MindSampler reserves all rights not expressly granted to Licensee in this Agreement.
	2. Licensee owns all right, title and interest in and to any questions, responses, and other data and information input by Licensee and its survey recipients in the surveys conducted through the MindSampler Service (“Data”) including, but not limited to, any survey created by Licensee, as well as any additional data provided by the Licensee as part of the survey process including personally identifiable information provided by Licensee’s survey recipients and respondents. All such Data shall be deemed Confidential Information of Licensee pursuant to the terms of Section 7 and shall not be utilized by MindSampler for any purpose other than to perform its obligations under this Agreement or as agreed to in writing by an authorized representative of the Licensee.
1. ***Term and Termination***
	1. ***Effect of Termination***: Upon termination of the subscription period, MindSampler shall discontinue providing the MindSampler Service to Licensee and Licensee shall cease using the MindSampler Service. Each party shall promptly return or destroy all Confidential Information of the other party, as applicable, in accordance with the terms of the Confidential Information in Section 7 (defined below). For thirty (30) days of the date of termination, Licensee shall have reasonable access to retrieve and secure its data contained in the service. In addition, any terms that by their nature extend beyond termination of this Agreement shall survive.

# Representations and Warranties

* 1. ***By MindSampler:*** MindSampler represents and warrants to Licensee that:
		1. it will comply with the laws, rules and regulations that apply to MindSampler in connection with the conduct of its business and its provision of the MindSampler Service;
		2. it will not knowingly infringe on any party’s patent, trademark, mask work, copyright, trade secret, or other intellectual property right; and will not violate any laws, rules, or regulations applicable to MindSampler or the MindSampler Service; and
		3. it will use commercially reasonable efforts to allow Licensee to access the MindSampler Service seven (7) days per week, twenty-four (24) hours per day with a goal of ninety-nine percent (99%) reliability to the MindSampler Service, excluding downtime (i) scheduled in advance for maintenance on a periodic basis, or (ii) due to faults caused by Licensee or Licensee’s system, or (iii) due to other causes outside of the reasonable control of MindSampler, including without limitation malfunction or cessation of Internet services by any third party network or ISP. It is understood by the Licensee that the MindSampler mobile application cannot be guaranteed to work on all phones. The Android and Apple operating systems are constantly being updated and MindSampler focuses on ensuring that its Service and mobile applications work on the most recent [2] iterations of the each respective operating system.
		4. it will use commercially reasonable efforts to ensure that updates and/or new releases will not

introduce, any program, routine, subroutine, or data (including malicious software or “malware,” viruses, worms, and Trojan Horses) that are designed to disrupt the proper operation of the Service or any software or system used by Licensee in connection with the Service, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause the Service or any system or software used in connection with the Software to be destroyed, damaged, or rendered inoperable.

* + 1. to the best of MindSampler’s knowledge, it shall not violate the software as delivered to the Licensee, shall not violate any proprietary rights of third parties, including, without limitation, patents, copyrights or trade secrets; and, that the software as delivered to the Licensee will not violate any applicable law, rule, regulation or contractual obligations or confidential relationships which MindSampler may have or with any third party, or violate the privacy of any third party from whom MindSampler may obtain any information in connection therewith.
	1. ***By Licensee:*** Licensee warrants and represents to MindSampler that:
		1. it will comply with the laws, rules and regulations that apply to Licensee in connection with the conduct of its business and its use of the MindSampler Service; and
		2. it will not knowingly utilize (or allow utilization of) the MindSampler Service in any manner prohibited by this Agreement or written MindSampler policies provided to Licensee, or reverse engineer or tamper with the security of any MindSampler computer software.
	2. ***Limitation of Warranties:*** EXCEPT AS SET FORTH IN THIS SECTION 6, (i) NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY, AND (ii) ALL PRODUCTS AND SERVICES ARE PROVIDED BY MINDSAMPLER ON AN “AS IS” BASIS. MINDSAMPLER DOES NOT WARRANT THAT THE MINDSAMPLER SERVICE OR ITS SOFTWARE WILL BE ERROR-FREE OR THAT ALL NON-CONFORMITIES CAN BE OR WILL BE CORRECTED. MINDSAMPLER DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS WITH RESPECT TO ANY THIRD PARTY CONTENT, EXPRESS OR IMPLIED. EXCEPT AS SET FORTH IN THIS SECTION 8, EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, CONDITIONS AND REPRESENTATIONS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND MERCHANTABILITY.

# Confidential Information

* 1. ***Definition:*** “Confidential Information” means the substantive terms of this Agreement, business and marketing plans and strategies, non-public business and technology information, trade secrets, data and information included in surveys by Licensee and all personally identifiable information provided by survey respondents, any written materials marked as confidential and any other information, including visual or oral information, which reasonably should be understood to be confidential. Confidential Information does not include information that a party can prove: (a) is now or later becomes generally available to the public without fault of the party who received such information (“Recipient”) from the

other party (“Discloser”); (b) was rightfully in Recipient’s possession prior to its disclosure by Discloser;

(c) is independently developed by Recipient without the use of any Confidential Information of Discloser; or (d) is obtained by Recipient without obligation of confidentiality from a third party who has the right to disclose it. Additionally, a disclosure of Confidential Information that is (a) in response to a valid order by a court or other government body, (b) required by law, or (c) necessary to establish the rights of either party hereunder, shall not be considered to be a breach of this Agreement.

* 1. ***Use and Disclosure:*** Recipient shall not disclose to any person or use for any purpose, except as expressly permitted by this Agreement, any Confidential Information of Discloser. Recipient may disclose Confidential Information only to its employees, independent contractors and advisors who need to know such information, and who are bound to keep such information confidential. Recipient shall give Discloser’s Confidential Information at least the same level of protection as it gives its own Confidential Information of similar nature, but not less than a reasonable level of protection. Recipient shall maintain Confidential Information in a safe and secure place and shall not copy Confidential Information except to the extent necessary for the purposes of this Agreement. All confidentiality obligations shall survive termination of this Agreement.
	2. ***Data Protection:*** MindSampler shall use commercially reasonable technology, industry best practices and best efforts to ensure the integrity and security of all Confidential Information with respect to theft, piracy, unauthorized access, copying, duplication and distribution.
1. ***Limitation of Liability***

UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW, NEITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST DATA OR PROFITS AS A RESULT OF OR IN ANY WAY CONNECTED TO THE MINDSAMPLER SERVICE OR THIS AGREEMENT, WHETHER LIABILITY IS ASSERTED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABLITY), AND EVEN IF EITHER PARTY HAS BEEN SPECIFICALLY ADVISED CONCERNING THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WITH RESPECT TO AN INFRINGEMENT, EITHER PARTY’S AGGREGATE LIABILITY FOR ANY CLAIMS OR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID OR PAYABLE BY LICENSEE TO MINDSAMPLER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM.

# Force Majeure

Neither party shall be liable for any loss or damage or be deemed to be in breach of this Agreement to the extent that performance of such party’s obligations or attempts to cure any breach under this Agreement are delayed or prevented as a result of any event or circumstance beyond its reasonable control.

***EXHIBIT 1***

1. **MINDSAMPLER SERVICE:** Develop and host the survey website which includes all survey development tools, online analysis tools, online survey libraries, tutorials and help facilities.
2. **MINDSAMPLER MOBILE APPLICATION:** The applications available for download in both the Google and Apple stores. These applications have been developed for use by the survey participant.
3. **SUPPORT AND TRAINING:** MindSampler will provide online tutorials, phone support and respond to e-mails during normal business hours. As each survey project tends to be uniquely structured the majority of training will occur through the website and e-mail support. Training calls may also be scheduled by the MindSampler Account Manager to discuss and/or demonstrate new features that have been made available by MindSampler.
4. **DISTRIBUTION OF USERNAMES AND PASSWORDS:** MindSampler will give the Licensee account manager an admin login name and password. With this admin login the account manager will be able to view the use of all users and create new usernames and passwords with unique permissions.