

## Terms of Service for the Mind Garden Website and Services

Effective Date: April 1, 2025

Welcome to [www.mindgarden.com](http://www.mindgarden.com) and all related subdomains and other electronic platforms hosted by Mind Garden, including the Transform platform (together, this “**Site**”). This Site is owned and operated by Mind Garden®, Inc., a California corporation (“**Mind Garden**”). Mind Garden is a registered trademark of Mind Garden, Inc.

### INTRODUCTION

These Terms of Service (“**Terms**”) govern your access to the Site. By visiting and using the Site, you agree to be bound by these Terms. Those that use the Services, or visit our Site or are subjects of any of the Pre-Written Inventories or other Services are referred to as “**End Users**”, which includes Customers and test-takers as the case may be (each as defined in these Terms).

These Terms also govern your purchase and use of our services and Products including Inventories (collectively referred to as the “**Services**”) as well as your access to the Site. By signing up for and/or purchasing, licensing, or otherwise accessing the Services, you agree to be bound by these Terms. Those that purchase the Services are deemed “**Customers**”. For purposes of clarification, those that purchase the Services for their own personal use are both Customers and End Users.

“**You**” refers to End Users, Customers, and any other individuals or entities that access or use the Site or the Services, all of whom are bound by the terms of these Terms by their use or access.

**If you have any questions about these Terms, you may contact Mind Garden at:**

<https://www.mindgarden.com/contact-us>

### TERMS

#### 1) User Account, Password, and Security

When you are using a Mind Garden Service that requires a login, you are responsible for maintaining the confidentiality of the password and account that you receive from Mind Garden, and you are fully responsible for all activities that occur under your password or account. You hereby agree to (a) immediately notify Mind Garden of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session. You are solely liable for any loss or damage arising from your failure to comply with this Section 1.

#### 2) Ineligible Persons.

You may not use the Services and may not accept these Terms if you are a person barred from

receiving the Services under the laws of the United States or other countries including the country in which you are resident or from which you use the Services. You may not use the Services and may not accept the Terms if you are a Child, and you may not use our Services with Children. “Child” or “Children” means (a) in the United States, UK, and European Union, you are not at least 16 years of age and of legal capacity to form a binding contract with Mind Garden, or (b) in other countries or territories, you are not the minimum age of threshold or over to be considered an adult in those countries or territories. Our Services are not directed to persons under 16. If you become aware that your Child has provided us with personal information without your consent, please contact us. We do not knowingly collect personal information from Children. If we become aware that a Child has used or accessed our Services or provided us with personal information, we take steps to remove such information and terminate the Child's account.

### 3) Prohibited Conduct

In connection with any use of the Sites or Services you represent and warrant that you shall:

- a) not violate any applicable laws;
- b) not copy, reproduce, amend, modify, or make any alteration to the Mind Garden products (including assessments, Pre-written Inventories and associated materials, reports, descriptions or other Mind Garden products and information) (together “**Products**”);
- c) not disclose, share, circulate, transfer or otherwise disseminate any Products, including assessment items, except to permitted End Users as explicitly provided in these Terms where you are authorized hereunder to provide Product(s) questionnaires to test-taker for the purposes of administration of Product(s) other than on the Mind Garden platform under these Terms or a license to administer or other terms agreed with Mind Garden from time to time. In such event, you shall ensure that the test-taker understands and accepts by electronic or written means that they shall not circulate, transfer or otherwise disclose or disseminate the Products questionnaire or items with any third party;
- d) not back/ reverse engineer, decompile or make any other attempts to extract source code from the Product, including in relation to the scoring of Product(s) questionnaires specifically;
- e) not license, lend, exchange, give or otherwise dispose of Products to third parties other than as set out above in relation to providing the Product questionnaire to test-takers;
- f) not act as an agent, distribution channel or stocklist of the Products;
- g) not upload, download, post, email, reproduce, distribute or otherwise transmit any materials including but not limited to text, data, photos, graphics, etc. (“**Content**”) that are unlawful, harmful, threatening, abusive, vulgar, harassing, defamatory, obscene, pornographic, indecent, inflammatory, libelous, tortuous, hateful, or racially, ethnically or

otherwise objectionable, or invasive of another's (including without limitation Mind Garden's and/or its licensors') rights, including but not limited to rights of celebrity, privacy, and intellectual property;

h) not use or integrate any AI (artificial intelligence tool) with any customization of the Products that you may be permitted to undertake hereunder ie in any Customer Created Inventories, or otherwise;

i) not impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;

j) not upload, download, post, email, reproduce, distribute or transmit any Content that infringes any patent, trademark, trade secret, copyright, or other intellectual or proprietary right or moral right. By uploading or downloading any Content, you represent and warrant to Mind Garden that you have the lawful right to upload, download, email, post, reproduce, distribute, and transmit that Content;

k) not upload, download, post, email, reproduce, distribute or transmit any: (i) Content that would constitute or encourage a criminal offense, violate the rights of any person, or that would otherwise create liability or violate any applicable local, state, national, or international law, (ii) unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, or any other form of solicitation; (iii) software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment; (iv) false or misleading information;

l) not disrupt or interfere with the security of, attempt to access non-public areas of, or otherwise abuse the Site, or any services, system resources, accounts, servers, or networks connected to or accessible through the Site or affiliated or linked websites; or

m) not disrupt or interfere with any other user's use of the Site or affiliated or linked websites.

#### **4) Pre-Written Inventories and Customer- and Custom-Created Works**

Under the licenses granted to Mind Garden and/or licensors, Mind Garden is licensed to undertake activities to enable it to supply Services (which may, amongst others, include provision of Products and reproductions of the Pre-Written Inventories to Customers for the Customers to administer in connection with the Customer's own internal business, research, and/or personal operations, as the case may be. For the purposes of these Terms:

**“Pre-Written Inventories”** means those inventories which are provided by Mind Garden as standard on the Mind Garden platform, all intellectual property rights of Mind Garden which are exclusively owned by Mind Garden and/or its applicable licensor;

**“Customer Created Inventories”** means those inventories which are added to Pre-Written Inventories by the Customer, whereby Mind Garden and its licensors as applicable retain all intellectual property rights in the Pre-Written Inventories except that the intellectual property

rights in relation to add Customer- added inventories is owned by the Customer; and “**Custom Created Reports**” means bespoke reports created by Mind Garden, on request for a particular customer, whereby Mind Garden and its licensors as applicable retain all intellectual property rights in the Custom Created Reports except that any intellectual property rights in relation to Customer-confidential content is owned by the Customer.

In connection with Pre-Written Inventories, you represent and warrant that:

(a) Compliance With Instructions & Law. You will only use and report the Pre-Written Inventories and Pre-Written Inventories results in conformance with the Pre-Written Inventories' instructions and rules and only in conformance with applicable law, including but not limited to conformance with all laws relating to data protection and privacy, confidentiality, personnel selection, discrimination, disabilities and accessibility;

(b) No Further Distribution. You will not act as a distributor or reseller, i.e., you will not sell Pre- Written Inventories to others who re-use or re-sell, the Pre-Written Inventories without Mind Garden’s (or its pertinent licensor’s) written approval. You will not, therefore, sell Pre-Written Inventories to others who in turn use Pre-Written Inventories with their own client or who sell Pre-Written Inventories to their own customers or clients. Mind Garden reserves the right to determine at its sole, absolute discretion whether your conduct constitutes a breach of this section (or any section under these Terms). If Mind Garden makes such a determination, then Mind Garden may terminate the Services provided under these Terms and terminate your account including deactivating your password, account (or any part thereof) or use of the Site, and remove and discard any Content you may have contributed to the Site, and you agree to pay to Mind Garden immediately all proceeds you received in connection with such unauthorized sales of Pre-Written Inventories;

No Sharing or App Development. You may administer assessment questionnaires to research participants/ test-takers via the Mind Garden platform or, in the case of researchers, via a third-party online survey platform set up by you, or in paper form in person. You may not circulate versions of the Products to third parties, nor provide PDF versions of the Products, including Pre-Written Inventory, to third parties including research participants/ test-takers, by email or otherwise or via a software program. For example, you may not create a program or an "app" that when run on a computer, iPad or other device would allow persons to act as subjects in completing a Pre-Written Inventory.

## **5. Select Remedies**

(a) Right To Halt Wrongful Use. Mind Garden (and its licensors) shall be entitled (but not obligated) to halt any use of any Pre-Written Inventory in breach of any of the provisions of these Terms or in violation of any applicable laws or regulation.

(b) Right To Halt Wrongful Emails. In the event that the Customer enters email addresses on the Site for the purposes of generating emails to the Customer's subjects, participants, or to

any other persons, Mind Garden may (but is not required to) elect not to send any such emails which it believes may violate SPAM laws or other applicable laws, rules, or regulations.

(c) Payment Of Copyright Holder's License Fees. If you have purchased a license to reproduce or administer a fixed number of copies of an existing Mind Garden Pre-Written Inventory, manual, or workbook, it is your legal responsibility to compensate the copyright holder of this work -- via payment to Mind Garden for reproduction or administration of that Pre-Written Inventory, manual or workbook in any medium, including but not limited to furnishing or administering the same electronically, on a computer network or over the Internet.

The terms "reproduce" and "administer" include all forms of physical or electronic administration or reproductions including on a physical medium such as paper, on a computer, via a CD-loaded onto a computer, through an application or "App" on any electronic device, any online survey, any handheld survey devices, or any other means or method of reproduction or administration, whether using technology now known or created in the future. If you plan to use a website other than Mind Garden to administer the Inventory for research, you must get written permission from Mind Garden according to the License to Administer associated with each Product

(d) Tracking Number of Copies. If you are a Customer, you must track the number of reproductions or administrations of the inventories and you will be responsible for compensating Mind Garden for any reproductions or administrations in excess of the number purchased or for any reproductions or administrations after the end of the three year license period. For purposes of clarification, you may administer assessment questionnaires to research participants/ test-takers via the Mind Garden platform or, in the case of researchers, via a third-party online survey platform set up by you, or in paper form in person. You may not circulate versions of the Products to third parties, nor provide PDF versions of the Products, including Pre-Written Inventory, to third parties including research participants/ test-takers, by email or otherwise or via a software program. This is a violation of these Terms as it creates an unrestricted distribution and does not allow for tracking of copies.

## **6. Data Protection and Privacy**

Your use of the Site and Services involves several types of data, including (without limitation): personal information of you and End-Users and responses to assessments from End-User test-takers, and business contact data of Customers.

### **6.1 Personal Information**

(a) All personal information will be used in accordance with Mind Garden's Privacy Policy <https://www.mindgarden.com/content/22-privacy>. Mind Garden will comply with applicable US laws governing the use of personal information.

(b) As between you and Mind Garden with regard to Site account data, you are the data controller and the Company is the data processor, except in respect of any business contact data you and End-Users provides to Mind Garden, in which case Mind Garden is data controller (each of data controller and data processor as defined in applicable data protection legislation).

(c) As data controller of personal information on behalf of your test-takers, you are responsible for ensuring you comply with data protection requirements based on your location and that of your End-User test-takers, including any required obtaining of consent.

(d) Subject to 6(e) below, if you and any End-User provide personal information to Mind Garden, other than business contact data, Mind Garden will process that personal information in accordance with our Privacy Policy and only on your documented instructions, unless required to do otherwise by applicable law.

(e) Specifically in relation to EU and UK test-takers, you shall not provide any personal information of EU or UK data subjects and in relation EU and UK test-takers, you will only use the Services and Products on a pseudonymized basis, where no personal information of test-takers is disclosed to Mind Garden and instead you provide Mind Garden with a code for each test-taker and you retain the key to the code and do not disclose the key to Mind Garden. For further information on this pseudonymization process, please contact us at [info@mindgarden.com](mailto:info@mindgarden.com).

(f) Mind Garden may engage additional sub-processors to provide the Services, as set out in our Privacy Policy, and you agree to Mind Garden's use of such additional sub-processors.

(g) Your use of the Site and that of your End-Users requires the collection and/or transmission of your personal information to Mind Garden in the United States. If you are using the Site outside the United States, then by agreeing to these Terms you acknowledge and agree to such transfer and in relation thereto we also draw your attention to Section 6(e).

(h) Notwithstanding the foregoing, Mind Garden reserves the right to alter or remove a Subject's personal information if required to do so by applicable law. If a Subject exercises a right afforded to that Subject under applicable law against you as the data controller, either to us or via you, Mind Garden will reasonably cooperate with you and provide reasonable assistance and information to facilitate your ability to respond to such a request.

(i) Mind Garden will store data associated with your Mind Garden account as follows:  
- in relation to personal information provided by test-takers in relation to administration of our Products, Mind Garden hold personal information for at least one (1) year, and indefinitely unless you notify us of your wish for test-takers' personal information to be deleted, or where we receive a data deletion request from a Subject; and  
- in relation to research data, we hold aggregated Non-Person Specific Data (as defined in

Section 6.2) for research and development purposes indefinitely, as further set forth in Section 6.2 below; and

- in relation to business contact data of Customers, we hold personal information for the time that you are a Customer, plus at least 7 years.

(j) Notwithstanding the foregoing, in the event that a Subject requests that Mind Garden delete their personal information, and such request is authorized by the applicable data controller, then any contact details and other personal information will be removed from the Site.

(k) Notwithstanding any Privacy Notices to users on the Site, it is your duty to ensure that you comply with applicable data protection and privacy laws and requirements, including that you have the consent of the Subject to provide any personal information to Mind Garden for use in connection with the Services.

## 6.2 Non-Person-Specific Data.

(a) Defined. "**Non-Person-Specific Data**" is information furnished by a data subject ("**Subject**") but which information does not contain any information that can be used to specifically identify the Subject. For example, Non-Person-Specific Data would not contain the Subject's (i) name; (ii) mailing address; (iii) any identification number (e.g. passport, driver's license, social security, etc.); (iv) employer's name; (v) any family members' names; (vi) other data that could under normal circumstances link the Non-Person-Specific Data to any identifiable person.

(b) Right To Use Non-Person-Specific Data. Mind Garden will have the right, but not the obligation, to store, aggregate, use, and publish Non-Person-Specific Data received through performance of the Services, from Pre-Written Inventories or otherwise, for research and development purposes, provided such is stored without identifying the Customer. Mind Garden will not use the name, address, contact information, social security number, exact date of birth, or other individual identifying characteristics for any of Pre-Written Inventory subjects but, Mind Garden may, for example, use Non-Person-Specific Data to report that males in the age range of 25 to 34 with a college education scored thus and so on a certain Pre-Written Inventory.

You hereby grant Mind Garden a non-exclusive, irrevocable, perpetual, transferable, and sublicenseable license to use Non-Person-Specific Data from Pre-Written Inventories or otherwise as follows:

(i) Aggregation of Non-Person-Specific Data. Mind Garden may aggregate and use, without compensation to Customers, End Users, or other subjects, Non-Person-Specific Data furnished in connection with Pre-Written Inventories or otherwise obtained from the forms, scoring, or other processing of any products or materials published by Mind Garden or otherwise sold by or licensed by Mind Garden, and Mind Garden may utilize those data for research, product development, statistical purposes, or for any other purposes whatsoever.

(ii) Disclosure of Non-Person-Specific Data. Mind Garden may disclose Non-Person-Specific Data to third parties, with or without compensation to Mind Garden, as Mind Garden sees fit from time to time.

(c) Data Retention Limitation. Mind Garden has the right to retain personal information indefinitely but is not obligated to keep data or honor unused or unrequested assessments beyond a period of **one year** from the creation of the personal information or assessment data, unless the Customer contacts Mind Garden via email prior to the end of that year with a request to retain it longer. Mind Garden may choose to grant or reject the request in its sole discretion. This does not affect a Subject's rights to request deletion of personal information.

## **7) Representations and Warranties of Customer.**

Customer represents and warrants that:

a) it will not, under these Terms, collect or transmit any protected health information as defined by HIPPA or other applicable laws;

b) it will follow best practices in securing all data related to these Terms;

c) it will get proper consents and provide proper notices to all End Users or other subjects as required by applicable law or as necessary under industry best practices including under applicable data protection legislation;

d) it will ensure that all End Users or other subjects review and agree to these Terms including if they access the Services in a manner other than the Site;

e) it will ensure that the administration and use of all Services comply with all applicable laws;

f) it will ensure that it and all End Users are aware of the ownership of Services including Products intellectual property rights of Mind Garden as set out in Section 8;

g) it will ensure that where any translations are made for any Products, all intellectual property rights will be assigned to Mind Garden and all moral rights waived; and

h) it will ensure that no End Users are Children.

## **8) Intellectual Property Rights and Copyright Violations**

Mind Garden and its licensors, as applicable, are the exclusive owners of all intellectual property rights in relation to the Services, including the Products. Where any amendments, adaptations, derivatives, translations or other works of the Services, including the Products are made, whether authorized or unauthorized, such shall be deemed works made for hire and accrue to the benefit of, or otherwise be assigned to and exclusively owned by Mind Garden



and its licensors, as applicable.

All copyright and trademark statements on the Services, including Products, shall remain visible and not be removed.

If you are a copyright holder and believe that your copyrighted content has been copied in a way that constitutes copyright infringement, please promptly notify Mind Garden's Copyright agent as below, and provide the following information:

- i) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- ii) a description of the copyrighted work claimed to have been infringed;
- iii) a description of where the claimed infringing Content is located on our Site and details about any claimed infringing use of your copyrighted materials;
- iv) your address, telephone number, and email address;
- v) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- vi) a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are authorized to act on behalf of the owner of the copyright interest involved.

For purposes of this IPR and Copyright Violations section, "you" refers to any individual or entity.

Mind Garden's Copyright Agent can be reached at:

Mind Garden, Inc.

[info@mindgarden.com](mailto:info@mindgarden.com)

More information about Mind Garden's copyright policies in general is at:

<https://www.mindgarden.com/content/23-faq#horizontalTab5>

## **9) Indemnity**

You agree to defend, hold harmless and indemnify, Mind Garden and its licensors and Mind Garden's and its licensors' officers, directors, employees, and agents harmless from all judgments, awards, losses, liabilities, costs and expenses, including but not limited to reasonable attorney's fees, expert witness fees, and costs of litigation arising out of or based on (a) your use of the Site, Services, or Pre-Written Inventories or any combination of the foregoing, (b) your violation of these Terms; (c) your violation of any rights of a third person (including without limitation privacy or non-discrimination rights) or any applicable law, rule, or regulation; (d) your administration, scoring, evaluation, release, or distribution of any Pre-Written Inventories, Customer Created Inventories, Mind Garden created reports, Custom Created Reports, scorings, or evaluations. If you are a Customer, you also agree to defend, indemnify, and hold Mind Garden and its licensors and Mind Garden's and its licensors' officers, directors, employees, and agents harmless from all judgments, awards, losses, liabilities, costs and expenses, including but not limited to reasonable attorney's fees, expert witness fees, and costs of litigation arising out of or based on any claims by (x) your End

Users or (y) any other individual or entity that gains access to the Site or Services through you.

## **10) No Resale or Reuse; Proprietary Rights**

You agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any portion of the Site, use of the Site, Services, or access to the Site without Mind Garden's (and/or its pertinent licensor's) express written consent. While you are granted a limited license to use the Site, and Services provided that you have paid for the applicable use and otherwise are in compliance with these Terms, any other rights and licenses are expressly retained by Mind Garden and the rights holders and no implied licenses are granted.

## **11) Termination**

(a) Mind Garden May Terminate. If you or your End Users breach these Terms or Mind Garden determines in its sole discretion that it is no longer commercially reasonable to offer you the Site and/or the Services, it may terminate these Terms and terminate access to your password, account (or any part thereof) or use of the Site, and remove and discard any Content you may have contributed to the Site. If termination is based on a reason other than yours or End-User's breach or Customer's at-will termination, namely, where Mind Garden terminates at-will and without cause, Mind Garden will refund any prepaid subscription fees for periods in which the Services will not be available.

(b) Termination Effective Without Advance Notice. If necessary in order to avoid legal violations, to comply with applicable law, or to avoid harm to any person or property, Mind Garden may terminate your access to the Site without prior notice and Mind Garden may immediately deactivate or delete your account and all related information and files in your account and/or may bar any further access to such files on the Site in its sole discretion. Further, you agree that Mind Garden shall not be liable to you or any third-person for any such termination of your access to or use of the Site and/or Services.

(c) Survival. In the event of a termination of these Terms, your obligations and liabilities hereunder these Terms will survive as applicable, but any licenses granted to you shall immediately terminate concurrent with such termination of these Terms.

(d) Your Only Recourse Is Termination. Should you object to any terms and conditions within these Terms or become dissatisfied with the Services and/or Site in any way, your only recourse is to immediately discontinue your use of the Services and Site and terminate your account. Should you terminate your account in this manner, then you will not receive any refunds for any Services you have purchased or licensed hereunder these Terms.

## **12) Links**

Under certain circumstances the Site may provide, or third parties may provide, links to other websites or resources. Mind Garden is not responsible for the availability of such sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. Mind Garden shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

### **13) DISCLAIMER OF WARRANTIES; WAIVER OF CERTAIN LIABILITIES; LIMITATION OF LIABILITY**

ACCESS TO AND USE OF THE SERVICES AND THE INFORMATION AND CONTENT CONTAINED ON THE SITE IS PROVIDED "AS IS" AND "AS AVAILABLE" AND MIND GARDEN HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE. MIND GARDEN DOES NOT WARRANT THAT THE SERVICES AND/OR THE SITE WILL BE UNINTERRUPTED, ERROR FREE, OR WITHOUT BREACHES OF SECURITY, AND YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON MIND GARDEN SERVICES AND/OR THE INFORMATION IN THE SERVICES AND/OR SITE, INCLUDING INACCURATE OR INCOMPLETE INFORMATION, LOSS OF DATA FROM DELAYS, NONDELIVERIES OF CONTENT OR EMAIL, ERRORS, SYSTEM DOWN TIME, MISDELIVERIES OF CONTENT OR EMAIL, NETWORK OR SYSTEM OUTAGES, FILE CORRUPTION, MALWARE, OR SERVICE INTERRUPTIONS. MIND GARDEN EXPRESSLY DISCLAIMS ANY LIABILITY WITH RESPECT TO ANY INJURY CAUSED BY ANY END USER, OR ANY DAMAGE SUFFERED BY ANY END USER, AS A RESULT OF THE ACTIONS OR INACTIONS OF ANY OTHER END USER. IF YOU ARE DISSATISFIED WITH THE SERVICES, THE SITE, OR ANY INFORMATION OR CONTENT CONTAINED THEREIN, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING AND ACCESSING MIND GARDEN SERVICES AND THE SITE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, SO IN THESE JURISDICTIONS THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY.

YOU ACKNOWLEDGE THAT MIND GARDEN DOES NOT CONTROL IN ANY RESPECT ANY INFORMATION OR SERVICES OFFERED BY THIRD PARTIES THROUGH MIND GARDEN. EXCEPT AS OTHERWISE AGREED IN WRITING, MIND GARDEN AND ITS AFFILIATES ASSUME NO RESPONSIBILITY FOR AND MAKE NO WARRANTY OR REPRESENTATION AS TO THE ACCURACY, CURRENCY, COMPLETENESS, RELIABILITY, OR USEFULNESS OF CONTENT OR SERVICES DISTRIBUTED OR MADE AVAILABLE BY THIRD PARTIES THROUGH THE SITE.

YOU ACKNOWLEDGE THAT MIND GARDEN MAKES NO WARRANTY OR REPRESENTATION THAT CONFIDENTIALITY OF INFORMATION TRANSMITTED THROUGH THIS SITE WILL BE MAINTAINED.

#### **Risks You Assume**

WITHOUT LIMITING ANY OF THE OTHER RISKS MIND GARDEN HAS DISCLOSED TO YOU IN THESE TERMS, YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF THE SERVICES AND THE SITE, INCLUDING ANY CONTENT YOU (INCLUDING YOUR CUSTOMERS OR THEIR END USERS) SUBMIT OR ANY INVENTORIES YOU, YOUR CUSTOMERS OR END USERS USE, AND YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR (AND END USERS') USE AND ACCESS TO THE SERVICES, THE SITE, AND THE INFORMATION AND CONTENT CONTAINED IN EITHER OF THE FOREGOING, AND ANY SITES LINKED THROUGH THE SERVICES AND ANY DATA TRANSMITTED THROUGH THE SERVICES IS AT YOUR SOLE RISK. ACCORDINGLY, MIND GARDEN, ANY OF ITS SUBSIDIARIES OR AFFILIATES, ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, AND LICENSORS (COLLECTIVELY, THE "MIND GARDEN ENTITIES") DO NOT ASSUME ANY LIABILITY TO YOU FOR OR RELATING TO ANY OF YOUR ACTIONS, INCLUDING THE PUBLICATION OF ANY CONTENT YOU SUBMIT, THE RESULTS OF ANY TESTS OR INVENTORIES TAKEN, OR MIND GARDEN'S EXERCISE OF THE RIGHTS YOU GRANT TO MIND GARDEN.

#### **Limitation of Liability**

IN NO EVENT SHALL THE MIND GARDEN ENTITIES OR ITS LICENSORS BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES OR OTHER LOSS OF BUSINESS, LOSS OF USE, LOSS OF GOODWILL OR LOSS OF INFORMATION, HOWEVER CAUSED AND WHETHER BASED ON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EVEN IF THE MIND GARDEN ENTITY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING IN THESE TERMS TO THE CONTRARY, MIND GARDEN ENTITIES' TOTAL AGGREGATE LIABILITY, AND THAT OF ITS LICENSORS, IN RESPECT OF ANY CLAIM OR ACTION YOU MAY BRING AGAINST MIND GARDEN OR ANY OF THE MIND GARDEN ENTITIES, REGARDLESS OF FORM OF ACTION OR THEORY OF LIABILITY, SHALL BE LIMITED TO THE GREATER OF (1) ONE HUNDRED UNITED STATES DOLLARS (US\$100), OR (2) THE AGGREGATE FEES ACTUALLY PAID BY YOU (OR THE APPLICABLE CUSTOMER ON YOUR BEHALF) TO MIND GARDEN FOR THE 6 MONTH PERIOD PRECEDING THE EVENT FIRST GIVING RISE TO SUCH CLAIM OR ACTION. YOU ACKNOWLEDGE THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE UNKNOWN OR UNSUSPECTED. ACCORDINGLY, YOU AGREE TO WAIVE THE BENEFIT OF ANY LAW, INCLUDING, TO THE EXTENT APPLICABLE, CALIFORNIA CIVIL CODE § 1542 (OR SIMILAR PROVISIONS OF THE LAWS OF OTHER STATES), WHICH STATES, A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

IN THE CASE OF A JURISDICTION THAT RESTRICTS LIMITATION CLAUSES, THIS LIMITATION SHALL BE APPLIED TO THE GREATEST EXTENT PERMITTED BY LAW. NOTHING IN THESE TERMS OF USE IS INTENDED TO LIMIT ANY RIGHTS YOU MAY HAVE THAT MAY NOT BE LAWFULLY TERMINATED.

#### **14) Services Are No Substitute For Professional Help**

(a) Only Informational Tools. Mind Garden's Site and Services are intended to be

informational tools to be used by professionals in evaluating certain aspects of human responses, actions, attitudes, personalities and conditions. Customers are responsible for proper administration of Mind Garden's Content and Services and ensuring that proper professionals are engaged at all stages of the testing process. For example, Mind Garden Inventory that is improperly scored, interpreted, or applied may yield an inaccurate assessment and other injury.

(b) Not A Substitute For Licensed Professionals. A Mind Garden Inventory can never be a substitute for professional evaluation and counseling. The Inventory is a tool designed to help skilled professionals, not as a substitute for a professional's personal evaluation of a Subject. No one should view Inventories, Scoring or Reports as substitutes for professional evaluation and counseling of a Subject and no one should view them as error-free, always correct or infallible. They should be used within the inherent error in the Inventory and the context of the assessment and the Subject's understanding. For more information see <https://www.mindgarden.com/content/23-faq#horizontalTab2>

(c) No Warranty By Mind Garden. Mind Garden does not warrant that any of Services can substitute for skilled professional evaluations and counseling. In contrast, Mind Garden specifically discloses that its Services are not substitutes for professional evaluation and counseling.

## **15) General Provisions**

(a) Severability. If any provision of these Terms is invalid, illegal, or unenforceable under any applicable statute or rule of law, such provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision and the remaining provisions of these Terms shall in no way be affected or impaired.

(b) Applicable Law. These terms and conditions shall be governed by and construed in accordance with the laws of the state of California, without resort to its conflict of law provisions. You agree that any action at law or in equity arising out of or relating to these Terms or the Services shall be filed only in the Superior Court of San Mateo, California, or the United States District Court for the Northern District of California, and you hereby irrevocably and unconditionally consent and submit to the exclusive jurisdiction of such courts over any such suit, action, or proceeding.

If you administer any Pre-Written Inventories or Customer Created Inventories to persons outside the United States or if you furnish scoring, evaluations, or reports to persons located outside the United States then you will comply with all laws applicable to such Inventories, scoring and reports including, but not limited to privacy laws and we draw your attention to Section 6(e).

(c) Headings. The headings are for navigational purposes only and shall not be deemed to constitute terms of these Terms.

(d) Entire Agreement. These Terms are the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. The terms of any purchase order, invoice, sales request shall be given no effect as these Terms are the sole and exclusive terms governing Mind Garden Products, Services and Site even if you require us to acknowledge your terms and conditions. These Terms may be amended by Mind Garden by providing you notice of the new terms. Your continued use of the Products, Services and/or the Site indicates your assent to the new terms.

(e) No Assignment. You may not assign these Terms and any attempt to do so will be void.

(f) Rights of Third Parties. Mind Garden is an authorized reseller of certain products. As such, the licensor of such licensed products reserves the right, and Mind Garden agrees that the licensor holds such right, to independently, or together with Mind Garden, enforce through all legal means available, any violations of these Terms or any other terms and conditions of Mind Garden relating to the Services, in relation to Services provided by Mind Garden which are owned by such licensors and authorized for use by Mind Garden.

(g) Compliance and Remedies. In the event of any breach, unauthorized use, reproduction, distribution, or modification of any materials made available to you under these Terms, licensors may, at its discretion and in addition to any remedies available to Mind Garden: (i) seek injunctive relief or other equitable remedies to prevent further misuse or unauthorized use; (ii) demand immediate cessation of the infringing activity and/or destruction of unauthorized copies; and/or (iii) pursue claims for damages, including but not limited to, unpaid licensing fees, lost revenue, or statutory damages. You agree to cooperate with any requests made by licensors of any products licensed to Mind Garden in connection with an investigation or enforcement action related to your use of the materials licensed to you under these Terms.