

## ProcessMind Customer Agreement

Effective starting: June 23, 2024

### Introduction

This Agreement is between Customer and ProcessMind. “Customer” means the entity on behalf of which this Agreement is accepted or, if that does not apply, the individual accepting this Agreement. “ProcessMind” means the ProcessMind entity that owns or operates the Services that Customer uses or accesses listed here.

If you (the person accepting this Agreement) are accepting this Agreement on behalf of your employer or another entity, you agree that: (i) you have full legal authority to bind your employer or such entity to this Agreement, and (ii) you agree to this Agreement on behalf of your employer or such entity.

If you are accepting this Agreement using an email address from your employer or another entity, then: (i) you will be deemed to represent that party, (ii) your acceptance of this Agreement will bind your employer or that entity to these terms, and (iii) the word “you” or “Customer” in this Agreement will refer to your employer or that entity.

By clicking on the “Agree” (or similar button or checkbox) that is presented to you at the time of placing an Order, or by using or accessing the Services, you confirm you are bound by this Agreement. If you do not wish to be bound by this Agreement, do not click “Agree” (or similar button or checkbox), or use or access the Services.

## 1. Overview

This Agreement applies to Customer's Orders for Services and related Support and Advisory Services. Some Services may be subject to additional Service-Specific Terms, and Support and Advisory Services are subject to the applicable Policies.

## 2. Use of Services

**2.1. Permitted Use.** Subject to this Agreement and during the applicable Subscription Term, ProcessMind grants Customer a non-exclusive, worldwide right to use the Services and related Support and Advisory Services for its and its Affiliates' internal business purposes, in accordance with the Documentation and Customer's Scope of Use.

**2.2. Restrictions.** Except to the extent otherwise expressly permitted by this Agreement, Customer must not (and must not permit anyone else to): (a) rent, lease, sell, distribute or sublicense the Services or (except for Affiliates) include them in a service bureau or outsourcing offering, (b) provide access to the Services to a third party, other than to Users, (c) charge its customers a specific fee for use of the Services, but Customer may charge an overall fee for its own offerings (of which the Services are ancillary), (d) use the Services to develop a similar or competing product or service, (e) reverse engineer, decompile, disassemble or seek to access the source code or non-public APIs to the Services, (f) modify or create derivative works of the Services, (g) interfere with or circumvent Service usage limits or Scope of Use restrictions, (h) remove, obscure or modify in any way any proprietary or other notices or attributions in the Services, or (i) violate the Acceptable Use Policy.

**2.3. DPA.** The DPA applies to Customer's use of Services and related Support and Advisory Services and forms part of this Agreement.

### 3. Users

**3.1. Responsibility.** Customer may authorize Users to access and use the Services, in accordance with the Documentation and Customer's Scope of Use. Customer is responsible for its Users' compliance with this Agreement and all activities of its Users, including Orders they may place, apps and Third Party-Services enabled, and how Users access and use Customer Data.

**3.2. Login Credentials.** Customer must ensure that each User has a secure login and must promptly notify ProcessMind if it becomes aware of any unauthorized access to or use of the Services.

**3.3. Age Requirements.** The Services are not intended for use by anyone under the age of 18. Customer is responsible for ensuring that all Users are at least 18 years old.

### 4. Services

**4.1. Customer Data.** ProcessMind may process Customer Data to provide the Services and related Support or Advisory Services in accordance with this Agreement.

**4.2. Security Program.** ProcessMind has implemented and will maintain an information security program that uses appropriate physical, technical and organizational measures designed to protect Customer Data from unauthorized access, destruction, use, modification or disclosure, as described in its Security Measures.

**4.3. Service Levels.** Where applicable, service level commitments for the Services are set out in the Service Level Agreement.

**4.4. Removals and Suspension.** ProcessMind has no obligation to monitor Customer Data. Nonetheless, if ProcessMind becomes aware that: (a) Customer Data may violate Law, Section 2.2 (Restrictions), or the rights of others (including relating to a takedown request received following the guidelines for Reporting Copyright and Trademark Violations), or (b) Customer's use of the Services threatens the security or operation of the Services, then ProcessMind may: (i) limit access to, or remove, the relevant Customer Data, or (ii) suspend Customer's or any User's access to the

relevant Services. ProcessMind may also take any such measures where required by Law, or at the request of a governmental authority. When practicable, ProcessMind will give Customer the opportunity to remedy the issue before taking any such measures.

**4.5 Use of Customer Data.** Pursuant to the terms of this Agreement, ProcessMind reserves the right to utilize Customer Data for the purpose of enhancing the quality and functionality of its Services. Such utilization may encompass the analysis of usage patterns to identify potential improvements, the testing of new features to ensure compliance with our rigorous standards prior to their release, and the customization of our Services to more closely align with the specific needs of our customers. This clause is subject to adherence to all applicable data protection and privacy laws.

**4.6. Service Modifications.** ProcessMind reserves the right to modify the Services at its discretion to improve, enhance, or adapt to technological advancements or regulatory changes. Should any modifications materially alter the functionality or use of the Service, ProcessMind commits to providing the Customer with reasonable advance notice. This notice will detail the nature of the modification, the anticipated impact on the Customer's use of the Service, and any actions the Customer may need to take as a result of the modification. ProcessMind's goal in making such modifications is to ensure the continued delivery of high-quality and compliant services to all its customers.

## **5. Customer Obligations**

**5.1. Disclosures and Rights.** Customer must ensure it has made all disclosures and obtained all rights and consents necessary for ProcessMind to use Customer Data and Customer Materials to provide the Services, Support or Advisory Services.

**5.2. Service Assessment.** Customer is responsible for determining whether the Services meet Customer's requirements and any regulatory obligations related to its intended use.

**5.3. Sensitive Health Information and HIPAA.** Customer must not (and must not permit anyone else to) upload to the Services (or use the Services to process) any patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act.

**5.4. GDPR Compliance.** Customers are prohibited from using the Services to upload or process any Sensitive Data, as defined by GDPR or other applicable Laws.

## **6. Third-Party Code**

**6.1. Third-Party Code.** This Agreement and the Third-Party Code Policy apply to open source software and commercial third-party software ProcessMind includes in the Services.

## **7. Support and Advisory Services**

ProcessMind will provide Support and Advisory Services as described in the Order and applicable Policies. ProcessMind's provision of Support or Advisory Services is subject to Customer providing timely access to Customer Materials and personnel reasonably requested by ProcessMind.

## **8. Ordering Process and Delivery**

No Order is binding until ProcessMind provides its acceptance, including by sending a confirmation email or providing access to the Services. No terms of any purchase order or other business form used by Customer will supersede, supplement, or otherwise apply to this Agreement or ProcessMind. ProcessMind will deliver login instructions for Services electronically, to Customer's account (or through other reasonable means) promptly upon receiving payment of the fees.

## 9. Billing and Payment

### 9.1. Fees.

**(a) Direct Purchases.** If Customer purchases directly from ProcessMind or through one of its Payment Providers, fees and any payment terms are specified in Customer's Order with ProcessMind.

**(b) Resellers.** If Customer purchases through a Reseller, Customer must pay all applicable amounts directly to the Reseller, and Customer's order details (e.g., Services and Scope of Use) will be specified in the Order placed by the Reseller with ProcessMind on Customer's behalf.

**(c) Renewals.** Unless otherwise specified in an Order and subject to the Service, Support or Advisory Services continuing to be generally available, a Subscription Term will automatically renew at ProcessMind's then current rates for: (i) if Customer's prior Subscription was for a period less than twelve (12) months, another Subscription Term of a period equal to Customer's prior Subscription Term, or (ii) if Customer's prior Subscription Term was for twelve (12) months or more, twelve (12) months. Either party may elect not to renew a Subscription Term by giving notice to the other party before the end of the current Subscription Term. Customer must provide any notice of non-renewal through account settings in the Services, by contacting ProcessMind's support team or by otherwise providing ProcessMind notice.

**(d) Increased Scope of Use.** Customer may increase its Scope of Use by placing a new Order or modifying (by mutual agreement with ProcessMind) an existing Order. Unless otherwise specified in the applicable Order, ProcessMind will charge Customer for any increased Scope of Use at ProcessMind's then-current rates, prorated for the remainder of the then-current Subscription Term.

**(e) Refunds.** All fees and expenses are non-refundable, except as otherwise provided in this Agreement or the Refund Policy. For any purchases Customer makes through a Reseller, any refunds from ProcessMind payable to Customer relating to that purchase will be remitted by that Reseller, unless ProcessMind specifically notifies Customer otherwise at the time of refund.

(f) *Credit Cards.* If Customer uses a credit card or similar online payment method for its initial Order, then ProcessMind may bill that payment method for renewals, additional Orders, overages to scopes of use, expenses, and unpaid fees, as applicable.

## **9.2. Taxes.**

(a) *Taxes Generally.* Fees and expenses are exclusive of any sales, use, GST, value-added, withholding or similar taxes or levies that apply to Customer's Orders. Other than taxes on ProcessMind's net income, Customer is responsible for any such taxes or levies and must pay those taxes or levies, which ProcessMind will itemize separately, in accordance with an applicable invoice.

(b) *Withholding Taxes.* To the extent Customer is required to withhold tax from payment to ProcessMind in certain jurisdictions, Customer must provide valid documentation it receives from the taxing authority in such jurisdictions confirming remittance of withholding. This documentation must be provided at the time of payment of the applicable invoice to ProcessMind or the Payment Provider handling the payment.

(c) *Exemptions.* If Customer claims exemption from any sales tax, VAT, GST or similar taxes under this Agreement, Customer must provide ProcessMind or the Payment Provider handling the payment a valid tax exemption certificate or tax ID at the time of Order, and after receipt of valid evidence of exemption, ProcessMind will not include applicable taxes on the relevant Customer invoice.

**9.3. Return Policy.** Within fourteen (14) days of its initial Order for a Service, Customer may terminate the Subscription Term for that Service, for any or no reason, by providing notice to ProcessMind as detailed in the Refund Policy. Following such termination, upon request, ProcessMind will refund Customer the amount paid for that Service and any associated Support under the applicable Order. Unless otherwise specified in the Policies or Service-Specific Terms, this return policy does not apply to Advisory Services.



**9.4. Suspension for Non-payment.** ProcessMind may suspend Customer's rights to use Services or receive Support or Advisory Services if payment is overdue, and ProcessMind has given Customer no fewer than ten (10) days' written notice.

## **10. ProcessMind Warranties**

**10.1. Performance Warranties.** ProcessMind warrants to Customer that: (a) the Services will operate in substantial conformity with the applicable Documentation during the applicable Subscription Term, (b) ProcessMind will not materially decrease the functionality or overall security of the Services during the applicable Subscription Term, and (c) ProcessMind will use reasonable efforts designed to ensure that the Services, when and as provided by ProcessMind, are free of any viruses, malware or similar malicious code (each, a "Performance Warranty").

**10.2. Performance Warranty Remedy.** If ProcessMind breaches a Performance Warranty and Customer makes a reasonably detailed warranty claim within 30 days of discovering the issue, ProcessMind will use reasonable efforts to correct the non-conformity. If ProcessMind determines such remedy to be impracticable, either party may terminate the affected Subscription Term. ProcessMind will then refund to Customer any pre-paid, unused fees for the terminated portion of the Subscription Term. These procedures are Customer's exclusive remedy and ProcessMind's entire liability for breach of a Performance Warranty.

**10.3. Exclusions.** The warranties in this Section 11 (ProcessMind Warranties) do not apply to: (a) the extent the issue or non-conformity is caused by Customer's unauthorized use or modification of the Services, (b) Third-Party Services.

**10.4. Disclaimers.** Except as expressly provided in this Section 10 (ProcessMind Warranties), the Services, Support and Advisory Services and all related ProcessMind services and deliverables are provided “AS IS.” ProcessMind makes no other warranties, whether express, implied, statutory or otherwise, including warranties of merchantability, fitness for a particular purpose, title or non-infringement. ProcessMind does not warrant that Customer’s use of the Services will be uninterrupted or error-free. ProcessMind is not liable for delays, failures or problems inherent in use of the internet and electronic communications or other systems outside ProcessMind’s control.

## **11. Term and Termination**

**11.1. Term.** This Agreement commences on the date Customer accepts it and expires when all Subscription Terms have ended.

**11.2. Termination for Convenience.** Customer may terminate this Agreement or a Subscription Term upon notice for any reason. Subject to Section 9.3 (Return Policy), Customer will not be entitled to any refunds as a result of exercising its rights under this Section 11.2, and any unpaid amounts for the then-current Subscription Terms and any related service periods will become due and payable immediately upon such termination.

**11.3. Termination for Cause.** Either party may terminate this Agreement or a Subscription Term if the other party: (a) fails to cure a material breach of this Agreement (including a failure to pay fees) within 30 days after notice, (b) ceases operation without a successor, or (c) seeks protection under a bankruptcy, receivership, trust deed, creditors’ arrangement, composition or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days. If Customer terminates this Agreement or a Subscription Term in accordance with this Section 11.3, ProcessMind will refund to Customer any pre-paid, unused fees for the terminated portion of the Agreement or applicable Subscription Term.

**11.4. Effect of Termination.** Upon expiration or termination of this Agreement or a Subscription Term: (a) Customer's rights to use the applicable Services, Support or Advisory Services will cease, and (b) Customer must immediately cease accessing the Services. Following expiration or termination, unless prohibited by Law, ProcessMind will delete Customer Data in accordance with the Documentation.

**11.5. Survival.** These Sections survive expiration or termination of this Agreement: 2.2 (Restrictions), 4.2 (Security Program), 9.1 (Fees), 9.2 (Taxes), 10.4 (Disclaimers), 11.4 (Effect of Termination), 11.5 (Survival), 12 (Ownership), 13 (Limitations of Liability), 14 (Indemnification by ProcessMind), 15 (Confidentiality), 16.4 (Disclaimer), 17 (Feedback), 19 (General Terms) and 20 (Definitions).

## **12. Ownership**

Except as expressly set out in this Agreement, neither party grants the other any rights or licenses to its intellectual property under this Agreement. As between the parties, Customer owns all intellectual property and other rights in Customer Data and Customer Materials provided to ProcessMind or used with the Services. ProcessMind and its licensors retain all intellectual property and other rights in the Services, any Support and Advisory Services deliverables and related source code, ProcessMind technology, templates, formats and dashboards, including any modifications or improvements.

## **13. Limitations of Liability**

**13.1. Damages Waiver.** Except for Excluded Claims or Special Claims, to the maximum extent permitted by Law, neither party will have any liability arising out of or related to this Agreement for any loss of use, lost data, lost profits, interruption of business or any indirect, special, incidental, reliance or consequential damages of any kind, even if informed of their possibility in advance.

**13.2. General Liability Cap.** Except for Excluded Claims or Special Claims, to the maximum extent permitted by Law, each party's entire liability arising out of or related to this Agreement will not exceed in aggregate the amounts paid to ProcessMind for the Services, Support and Advisory Services giving rise to the liability during the twelve (12) months preceding the first event out of which the liability arose. Customer's payment obligations under Sections 9.1 (Fees) and 9.2 (Taxes) are not limited by this Section 13.2.

**13.3. Excluded Claims.** "Excluded Claims" means: (a) Customer's breach of Section 2.2 (Restrictions) or Section 6 (Customer Obligations), (b) either party's breach of Section 15 (Confidentiality) but excluding claims relating to Customer Data or Customer Materials, or (c) amounts payable to third parties under ProcessMind's obligations in Section 14 (Indemnification by ProcessMind).

**13.4. Special Claims.** For Special Claims, ProcessMind's aggregate liability under this Agreement will be the lesser of: (a) two times (2x) the amounts paid to ProcessMind for the Services, Support and Advisory Services giving rise to the Special Claim during the twelve (12) months preceding the first event out of which the Special Claim arose, and (b) EUR€100,000. "Special Claims" means any unauthorized disclosure of Customer Data or Customer Materials caused by a breach by ProcessMind of its obligations in Section 4.2 (Security Program).

**13.5. Nature of Claims and Failure of Essential Purpose.** The exclusions and limitations in this Section 14 (Limitations of Liability) apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy in this Agreement fails of its essential purpose.

## **14. Indemnification by ProcessMind**

**14.1. IP Indemnification.** ProcessMind must: (a) defend Customer from and against any third-party claim to the extent alleging that the Services, when used by Customer as authorized by this Agreement, infringe any intellectual property right of a third party (an “Infringement Claim”), and (b) indemnify and hold harmless Customer against any damages, fines or costs finally awarded by a court of competent jurisdiction (including reasonable attorneys’ fees) or agreed in settlement by ProcessMind resulting from an Infringement Claim.

**14.2. Procedures.** ProcessMind’s obligations in Section 14.1 (IP Indemnification) are subject to Customer providing: (a) sufficient notice of the Infringement Claim so as to not prejudice ProcessMind’s defense of the Infringement Claim, (b) the exclusive right to control and direct the investigation, defense and settlement of the Infringement Claim, and (c) all reasonably requested cooperation, at ProcessMind’s expense for reasonable out-of-pocket expenses. Customer may participate in the defense of an Infringement Claim with its own counsel at its own expense.

**14.3. Settlement.** Customer may not settle an Infringement Claim without ProcessMind’s prior written consent. ProcessMind may not settle an Infringement Claim without Customer’s prior written consent if settlement would require Customer to admit fault or take or refrain from taking any action (other than relating to use of the Services).

**14.4. Mitigation.** In response to an actual or potential Infringement Claim, ProcessMind may, at its option: (a) procure rights for Customer’s continued use of the Services, (b) replace or modify the alleged infringing portion of the Services without reducing the overall functionality of the Services, or (c) terminate the affected Subscription Term and refund to Customer any pre-paid, unused fees for the terminated portion of the Subscription Term.

**14.5. Exceptions.** ProcessMind’s obligations in this Section 14 (Indemnification by ProcessMind) do not apply to the extent an Infringement Claim arises from: (a) Customer’s modification or unauthorized use of the Services, (b) use of the Services in combination with items not provided by ProcessMind (including Third-Party Services), or (c) Third-Party Services, Customer Data or Customer Materials.

**14.6. Exclusive Remedy.** This Section 14 (Indemnification by ProcessMind) sets out Customer's exclusive remedy and ProcessMind's entire liability regarding infringement of third-party intellectual property rights.

## **15. Confidentiality.**

**15.1. Definition.** "Confidential Information" means information disclosed by one party to the other under or in connection with this Agreement that: (a) is designated by the disclosing party as proprietary or confidential, or (b) should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. ProcessMind's Confidential Information includes any source code and technical or performance information about the Services. Customer's Confidential Information includes Customer Data and Customer Materials.

**15.2. Obligations.** Unless expressly permitted by the disclosing party in writing, the receiving party must: (a) hold the disclosing party's Confidential Information in confidence and not disclose it to third parties except as permitted in this Agreement, and (b) only use such Confidential Information to fulfill its obligations and exercise its rights in this Agreement. The receiving party may disclose such Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know, provided the receiving party remains responsible for their compliance with this Section 15 (Confidentiality) and they are bound to confidentiality obligations no less protective than this Section 15 (Confidentiality).

**15.3. Exclusions.** These confidentiality obligations do not apply to information that the receiving party can demonstrate: (a) is or becomes publicly available through no fault of the receiving party, (b) it knew or possessed prior to receipt under this Agreement without breach of confidentiality obligations, (c) it received from a third party without breach of confidentiality obligations, or (d) it independently developed without using the disclosing party's Confidential Information. The receiving party may disclose Confidential Information if required by Law, subpoena or court order, provided (if permitted by Law) it notifies the disclosing party in advance and cooperates, at the disclosing party's cost, in any reasonable effort to obtain confidential treatment.

**15.4. Remedies.** Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone are an insufficient remedy. Each party may seek appropriate equitable relief, in addition to other available remedies, for breach or anticipated breach of this Section 15 (Confidentiality).

## **16. Free or Beta Services**

**16.1. Access.** Customer may receive access to certain Services features on a free, fully discounted or trial basis, or as an alpha, beta or early access offering (“Free or Beta Services”). Use of Free or Beta Services is subject to this Agreement and any additional terms specified by ProcessMind, such as the applicable scope and term of use.

**16.2. Termination or Modification.** At any time, ProcessMind may terminate or modify Customer’s use of (including applicable terms) Free or Beta Services or modify Free or Beta Services, without any liability to Customer. For modifications to Free or Beta Services or Customer’s use, Customer must accept those modifications to continue accessing or using the Free or Beta Services.

**16.3. Pre GA.** Free or Beta Services may be inoperable, incomplete or include errors and bugs or features that ProcessMind may never release, and their features and performance information are ProcessMind’s Confidential Information.

**16.4. Disclaimer.** Notwithstanding anything else in this Agreement, to the maximum extent permitted by Law, ProcessMind provides no warranty, indemnity, service level agreement or support for Free or Beta Services and its aggregate liability for Free or Beta Services is limited to €100.

## **17. Feedback**

If Customer provides ProcessMind with feedback or suggestions regarding the Services or other ProcessMind offerings, ProcessMind may use the feedback or suggestions without restriction or obligation.

## **18. Publicity**

ProcessMind may identify Customer as a customer of ProcessMind in its promotional materials. ProcessMind will promptly stop doing so upon Customer request sent to [info@processmind.com](mailto:info@processmind.com).

## **19. General Terms**

**19.1. Compliance with Laws.** Each party must comply with all Laws applicable to its business in its performance of obligations or exercise of rights under this Agreement.

### **19.2. Assignment.**

(a) Customer may not assign or transfer any of its rights or obligations under this Agreement or an Order without ProcessMind's prior written consent. However, Customer may assign this Agreement in its entirety (including all Orders) to its successor resulting from a merger, acquisition, or sale of all or substantially all of Customer's assets or voting securities, provided that Customer provides ProcessMind with prompt written notice of the assignment and the assignee agrees in writing to assume all of Customer's obligations under this Agreement and complies with ProcessMind's procedural and documentation requirements to give effect to the assignment.

(b) Any attempt by Customer to transfer or assign this Agreement or an Order, except as expressly authorized above, will be null and void.

(c) ProcessMind may assign its rights and obligations under this Agreement (in whole or in part) without Customer's consent.



### 19.3. Governing Law, Jurisdiction and Venue.

(a) This Agreement is governed by the laws of the Netherlands. Applicability of the Vienna Convention 1980 (The United Nations Convention on Contracts for the International Sale of Goods (CISG)) is excluded.

(b) Any disputes that may arise from this Agreement between parties and/or from any further agreements deriving from this Agreement are resolved by arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes (Stichting Geschillenoplossing Automatisering – SGOA – ([www.sgoa.eu](http://www.sgoa.eu)), this without prejudice to either party's right to request preliminary relief in preliminary relief proceedings or arbitral preliminary relief proceedings and without prejudice to either party's right to attach property before judgment. Arbitration proceedings take place in Amsterdam, or in any other place designated in the Arbitration Regulations.

(c) If a dispute that arises from this Agreement entered into by parties or from any further agreements deriving from this agreement is within the jurisdiction of the cantonal section of the Netherlands District Court (kantongerecht), either party is entitled, notwithstanding the provisions of article 19.3(b), to bring the case as a cantonal court case before the competent district court in the Netherlands. Parties are only entitled to initiate these proceedings if arbitration proceedings concerning the dispute have not yet been instituted under the provisions of article 19.3(b). If, with due observance of the provisions of this article 19.3(c), either party has brought the case before the competent district court to be heard and decided, the cantonal judge of that district court is competent to hear the case and to decide on it.

(d) Regarding a dispute that arises from this Agreement entered into by parties or from any further agreements deriving from this agreement, either party is always entitled to institute ICT mediation proceedings in accordance with the ICT Mediation Regulations of the Foundation for the Settlement of Automation Disputes (Stichting Geschillenoplossing Automatisering – SGOA – ([www.sgoa.eu](http://www.sgoa.eu))). The other party is then obliged to actively participate in the ICT mediation proceedings that have been instituted. This legally enforceable obligation in any case includes having

to attend at least one joint meeting of mediators and parties, in order to give this extrajudicial form of dispute resolution a chance of success. Either party is free to terminate the ICT mediation proceedings at any time after this first joint meeting of mediators and parties. The provisions of this paragraph do not prevent either party, if this party deems doing so necessary, from requesting preliminary relief in preliminary relief proceedings or in arbitral preliminary relief proceedings nor do they prevent either party from attaching property before judgment.

#### **19.4. Notices.**

(a) Except as specified elsewhere in this Agreement, notices under this Agreement must be in writing and are deemed given on: (i) personal delivery, (ii) when received by the addressee if sent by a recognized overnight courier with receipt request, (iii) the third business day after mailing, or (iv) the first business day after sending by email, except that email will not be sufficient for notices regarding Infringement Claims, alleging breach of this Agreement by ProcessMind, or of Customer's termination of this Agreement in accordance with Section 12.3 (Termination for Cause).

(b) Notices to ProcessMind must be provided according to the details provided here, as may be updated from time to time.

(c) Notices to Customer must be provided to the billing or technical contact provided to ProcessMind, which may be updated by Customer from time to time in Customer's account portal. However, ProcessMind may provide general or operational notices via email, on its website or through the Services.

**19.5. Entire Agreement.** This Agreement is the parties' entire agreement regarding its subject matter and supersedes any prior or contemporaneous agreements regarding its subject matter. In the event of a conflict among the documents making up this Agreement, the main body of this Agreement (i.e., Sections 1 through 20, inclusive) will control, except that the Policies, Service-Specific Terms and DPA will control for their specific subject matter.

**19.6. Interpretation, Waivers and Severability.** In this Agreement, headings are for convenience only and “including” and similar terms are to be construed without limitation. Waivers must be granted in writing and signed by the waiving party’s authorized representative. If any provision of this Agreement is held invalid, illegal or unenforceable, it will be limited to the minimum extent necessary so the rest of this Agreement remains in effect.

**19.7. Changes to this Agreement.**

(a) ProcessMind may modify this Agreement (which includes the Policies and DPA) from time to time, by posting the modified portion(s) of this Agreement on ProcessMind’s website. ProcessMind must use commercially reasonable efforts to post any such modification at least thirty (30) days prior to its effective date.

(b) For free subscriptions, modifications become effective during the then current Subscription Term, in accordance with ProcessMind’s notice.

(c) For paid subscriptions:

(i) except as specified below, modifications to this Agreement will take effect at the next Order or renewal unless either party elects to not renew pursuant to Section 10.1(c) (Renewals), and

(ii) ProcessMind may specify that modifications will become effective during a then-current Subscription Term if: (A) required to address compliance with Law, or (B) required to reflect updates to Service functionality or introduction of new Service features. If Customer objects, Customer may terminate the remainder of the then-current Subscription Term for the affected Services as its exclusive remedy. To exercise this right, Customer must notify ProcessMind of its termination under this Section 19.9(c) within thirty (30) days of the modification notice, and ProcessMind will refund any pre-paid fees for the terminated portion of the applicable Subscription Term.

**19.8. Force Majeure.** Neither party is liable for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) due to events beyond its reasonable control and occurring without

that party's fault or negligence. If a force majeure situation lasts for more than sixty days, either party has the right to terminate the agreement, in writing, for breach. In such event, all that has already been performed under the agreement must be paid for on a proportional basis, without anything else being due by either party to the other party

**19.9. Subcontractors and Affiliates.** ProcessMind may use subcontractors or its Affiliates in the performance of its obligations under this Agreement, but ProcessMind remains responsible for its overall performance under this Agreement and for having appropriate written agreements in place with its subcontractors to enable ProcessMind to meet its obligations under this Agreement.

**19.10. Independent Contractors.** The parties are independent contractors, not agents, partners or joint venturers.

**19.11. No Contingencies.** The Services, Support and Advisory Services in each Order are purchased separately and not contingent on purchase or use of other ProcessMind Services and services, even if listed in the same Order. Customer's purchases are not contingent on delivery of any future functionality or features.

## 20. Definitions

“Acceptable Use Policy” means ProcessMind’s Acceptable Use Policy.

“Advisory Services” means advisory services performed by ProcessMind.

“Affiliate” means an entity that, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a party, where “ownership” means the beneficial ownership of more than fifty percent (50%) of an entity’s voting equity securities or other equivalent voting interests and “control” means the power to direct the management or affairs of an entity.

“Agreement” means this ProcessMind Customer Agreement, as well as the DPA and the Policies.

“Customer Data” means any data, content or materials provided to ProcessMind by or at the direction of Customer or its Users via the Services, including from Third-Party Services.

“Customer Materials” means materials and other resources that Customer provides to ProcessMind in connection with Support or Advisory Services.

“Documentation” means ProcessMind’s usage guidelines and standard technical documentation for the applicable Service available at [processmind.com/docs](https://processmind.com/docs).

“DPA” means the ProcessMind Data Processing Addendum.

“Laws” means all applicable laws, regulations, conventions, decrees, decisions, orders, judgments, codes and requirements of any government authority (federal, state, local or international) having jurisdiction.

“Order” means ProcessMind’s ordering document or online order specifying the Services, Support or Advisory Services to be provided under this Agreement, accepted by ProcessMind in accordance with Section 8 (Ordering Process and Delivery).

“Payment Providers” means the external parties that process the payments on behalf of ProcessMind. This can be both merchants of records or seller of records.

“Policies” means the Acceptable Use Policy, Privacy Policy, Security Measures, Service Level Agreement, Support Policy, Third-Party Code Policy and any additional ProcessMind policies specified in the Service-Specific Terms.

“Privacy Policy” means ProcessMind’s Privacy Policy.

“Services” means the applicable services made available by ProcessMind in connection with an Order.

“Reseller” means a partner authorized by ProcessMind to resell ProcessMind’s Services, Support and Advisory Services to customers.

“Scope of Use” means Customer’s entitlements to the Services specified in an Order, which may include: (a) number and type of Users, (b) numbers of tenants, (c) amount of data, or (d) entity, division, business unit, website, field of use or other restrictions or billable units.

“Security Measures” means ProcessMind’s security practices.

“Service Level Agreement” means the service level commitments, if any, for a Service.

“Subscription Term” means the term for Customer’s use of or access to the Services and related Support and Advisory Services as identified in an Order.

“Support” means the level of support for the Services corresponding to Customer’s Scope of Use, as identified in the Support Policy.

“Support Policy” means the ProcessMind support offerings documentation available here.

“Third-Party Code Policy” means ProcessMind’s Third-Party Code Policy.

“User” means any individual that Customer authorizes to use the Services. Users may include: (i) Customer’s and its Affiliates’ employees, consultants, contractors and agents (ii) third parties with which Customer or its Affiliates transact business (iii) individuals invited by Customer’s users (iv) individuals under managed accounts, or (v) individuals interacting with a Service as Customer’s customer.