

## TERMS OF SERVICE

These Terms of Service together with its Exhibits (the “**Agreement**”) are entered into by and between the Marmind entity set forth below (“**Marmind**”) and the entity or person placing an order for or accessing any Services (the “**Customer**”). The Agreement consists of the terms and conditions set forth below, any attachments or exhibits identified below and all Order Forms (as defined below) that reference this Agreement.

The “**Effective Date**” of this Agreement is the date which is the earlier of (a) Customer's initial access to any Services (as defined below) or (b) the effective date of the first Order Form referencing this Agreement.

If the Customer’s “Company Address” set forth on the Order Form is in the United States or Canada, the Marmind entity executing this Agreement shall be Marmind, Inc., 150 N Michigan Ave FL 35TH Chicago, IL 60601, USA. If the Customer’s “Company Address” set forth on the Order Form is elsewhere, the Marmind entity executing this Agreement shall be MARMIND GmbH, Seering 5, 8141 Premstätten, Austria.

### 1. DEFINITIONS

Other than the terms defined in the body of this Agreement, these terms have the following meaning

“**Affiliate**” means any entity under the control of a Party where “control” means ownership of or the right to direct greater than 50% of the voting securities of such entity.

“**Beta Offerings**” mean pre-release services, features, or functions identified as alpha, beta, preview, early access, or words or phrases with similar meanings.

“**Contractor**” means an independent contractor or consultant of the Customer who is not a competitor of Marmind.

“**Customer Data**” means any data of any type that is submitted to the Services by or on behalf of the Customer, including without limitation data submitted, uploaded, or imported to the Services by the Customer (including from Third-Party Platforms).

“**DPA**” means the data processing addendum attached hereto as Exhibit A.

“**Documentation**” means the technical user documentation provided with the Services.

“**Feedback**” means comments, questions, suggestions, or other feedback relating to the Services, but excluding any Customer Data.

“**Initial Term**” means a set term designated in an Order Form during which the Services are provided to the Customer.

“**Intellectual Property Rights**” include all valid patents, trademarks, copyrights, trade secrets, moral rights, feedback and other intellectual property rights, as may exist now or hereafter come into existence, and all renewals and extensions thereof, and all improvements to any of the foregoing, regardless of whether any of such rights arise under the laws of any state, country, or other jurisdiction.

“**Laws**” mean all applicable local, state, federal, and international laws, regulations, and conventions.

“**Order Form**” means a written or electronic form to order the Services referencing this Agreement. Upon execution by the authorized parties each Order Form will be subject to the terms and conditions of this Agreement.

“**Party**” means either Marmind or the Customer; the “**Parties**” both Marmind and the Customer.

**“Permitted User”** means an employee or a Contractor of the Customer or its Affiliate who is authorized to access the Services.

**“Renewal Term”** means successive periods equal to Initial Term, beginning after the then-current Subscription Term.

**“Sensitive Personal Information”** means any of the following: (i) credit, debit or other payment card data subject to the Payment Card Industry Data Security Standards (**“PCI DSS”**); (ii) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act (**“HIPAA”**); or (iii) any other personal data of an EU citizen deemed to be in a “special category” (as identified in the EU General Data Protection Regulation or any successor Laws).

**“Services”** mean Marmind’s proprietary software-as-a-service solution, including all products, services, and software provided by Marmind to the Customer.

**“Subscription Term”** means either the Initial Term or then-current Renewal Term.

**“Support”** means standard technical support and maintenance as further set forth under Marmind’s Service Level Agreement and Support Policy attached to an applicable Order Form.

**“Taxes”** mean any sales, use, GST, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of Marmind.

**“Third-Party Platform”** means any software, software-as-a-service, data sources or other products or services not provided by Marmind that are integrated with or otherwise accessible through the Services.

## **2. MARMIND SERVICES**

**2.1. Provision of Services.** The Services are provided on a subscription basis for a Subscription Term. The Customer will purchase and Marmind will provide the specific Services as identified and agreed upon in the applicable Order Form.

**2.2. Access to Services.** The Customer may access and use the Services solely for its own benefit and in accordance with the terms and conditions of this Agreement, the Documentation, and any scope of use restrictions designated in the applicable Order Form. Use of and access to the Services is permitted only by Permitted Users. If Customer is given API keys or passwords to access the Services on Marmind’s systems, the Customer will require that all Permitted Users keep API keys, user ID and password information strictly confidential and not share such information with any unauthorized person. User IDs are granted to individual, named persons, and may not be shared. If the Customer is accessing the Services using credentials provided by a third party (e.g., Google), then the Customer will comply with all applicable terms and conditions of such third party regarding provisioning and use of such credentials. The Customer will be responsible for all actions taken using Customer’s accounts and passwords. If a Permitted User who has access to a user ID is no longer an employee or Contractor of the Customer, then the Customer will promptly delete such user ID and otherwise terminate such Permitted User’s access to the Services.

**2.3. Contractors and Affiliates.** The Customer may permit its Affiliates and Contractors to serve as Permitted Users, provided the Customer remains responsible for compliance by such individuals with all of the terms and conditions of this Agreement, and all use of the Services by such individuals is for the sole benefit of the Customer.

**2.4. General Restrictions.** The Customer will not (and will not permit any third party to): (a) rent, lease, provide access to, or sublicense the Services to a third party; (b) use the Services to provide, or incorporate the Services into, any product or service provided to a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Services, except to the extent expressly permitted by applicable law (and then only upon advance notice to Marmind); (d) copy or modify the Services or any Documentation, or create any derivative work from any of the foregoing; (e) remove or obscure any proprietary

or other notices contained in the Services (notices on any reports or data printed from the Services); or (f) publicly disseminate information regarding the performance of the Services.

**2.5. Marmind APIs.** If Marmind makes access to any APIs available as part of the Services, Marmind may monitor Customer's usage of such APIs and limit the number of calls or requests Customer may make if Marmind believes that the Customer's usage is in breach of this Agreement or may negatively affect the security, operability or integrity of the Services (or otherwise impose liability on Marmind).

**2.6. Trial Subscriptions.** If the Customer receives free access or a trial or evaluation subscription to the Services (a "**Trial Subscription**"), then the Customer may use the Services in accordance with the terms and conditions of this Agreement for a period of fourteen (14) days or such other period granted by Marmind (the "**Trial Period**"). Trial Subscriptions are permitted solely for the Customer's use to determine whether to purchase a paid subscription to the Services. Trial Subscriptions may not include all functionality and features accessible as part of a paid Subscription Term. If the Customer does not enter into a paid Subscription Term, this Agreement and the Customer's right to access and use the Services will terminate at the end of the Trial Period. Marmind has the right to terminate a Trial Subscription at any time for any reason. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, MARMIND WILL HAVE NO WARRANTY, LIABILITY, INDEMNITY, SUPPORT, OR OTHER OBLIGATIONS WITH RESPECT TO TRIAL SUBSCRIPTIONS.

**2.7. Beta Offering.** From time to time, Marmind may make Beta Offerings available to the Customer at no charge. The Customer may elect to try such Beta Offering in its sole discretion. Beta Offerings are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Beta Offerings are not considered "Services" under this Agreement; however, all restrictions, our ownership and the Customer obligations concerning the Services shall apply. Unless otherwise stated or communicated to the Customer, any Beta Offerings trial period will expire upon the date that a version of the Beta Offerings becomes generally available without the applicable Beta Offerings designation. Marmind may discontinue Beta Offerings at any time in its sole discretion and may never make them generally available. Beta Offerings may not be supported and may be modified at any time without notice. Beta Offerings may not be as reliable, available, or subject to the same security requirements as in the Security Policy (as defined below).

### **3. CUSTOMER DATA**

**3.1. Data Processing by Marmind.** All data processing activities by the Services will be governed by the Data Protection Addendum (the "**DPA**") found attached hereto as Exhibit A and incorporated by reference herein.

**3.2. Rights in Customer Data.** As between the parties, the Customer will retain all right, title, and interest (including all Intellectual Property Rights) in and to the Customer Data as provided to Marmind. Subject to the terms of this Agreement, the Customer hereby grants to Marmind a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, and display the Customer Data solely to the extent necessary to provide the Services to Customer.

**3.3. Storage of Customer Data.** Marmind does not provide an archiving service. Marmind agrees only that it will not intentionally delete any Customer Data from the Services prior to termination of the Customer's applicable Subscription Term and expressly disclaims all other obligations with respect to storage.

#### **3.4. Customer Obligations.**

a) **In General.** The Customer is solely responsible for the accuracy, content, and legality of all Customer Data. The Customer represents and warrants to Marmind that the Customer has all necessary rights, consents and permissions to collect, share and use all Customer Data as contemplated in this Agreement (including granting Marmind the rights in Section 3.2 (Rights in Customer Data)) and that no Customer Data will violate or infringe (i) any third party Intellectual Property Rights or publicity, privacy or other rights, (ii) any Laws, or (iii) any terms of service, privacy policies or other agreements governing Customer's accounts with any Third-Party Platforms. The Customer further represents and warrants that all Customer Data complies with the Agreement. The Customer will be fully responsible for all Customer Data submitted to the Services by any person as if it was submitted by the Customer.

b) No Sensitive Personal Information. Except as otherwise expressly agreed between the Parties in writing, the Customer specifically agrees not to use the Services to collect, store, process, or transmit any Sensitive Personal Information. The Customer acknowledges that Marmind is not a payment card processor and that the Services are not PCI DSS compliant. Except for Marmind's obligations as a business associate pursuant to this Agreement, the Customer shall be responsible for any Sensitive Personal Information it inadvertently submits to the Services, and Marmind will treat such submissions as Customer Data as defined in this Agreement such that Marmind is not subject to any additional obligations that apply to Sensitive Personal Information.

c) Compliance with Laws. The Customer agrees to comply with all applicable Laws in its use of the Services. Without limiting the generality of the foregoing, the Customer will not engage in any unsolicited advertising, marketing, or other activities using the Services, including without limitation any activities that violate the applicable Laws.

**3.5. Indemnification by Customer.** The Customer will defend Marmind from and against any claim arising from or relating to any Customer Data, Customer's use of a Third Party Platform, or Customer's use of the Services in violation of Laws and will indemnify and hold Marmind harmless from and against any damages and costs awarded against Marmind or agreed in settlement by the Customer (including reasonable attorneys' fees) resulting from such claim, provided that the Customer will have received from Marmind: (i) prompt written notice of such claim (but in any event notice in sufficient time for the Customer to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense and settlement (if applicable) of such claim; and (iii) all reasonably necessary cooperation of Marmind (at the Customer's expense). Notwithstanding the foregoing sentence, (a) Marmind may participate in the defense of any claim by counsel of its own choosing, at its cost and expense; and (b) the Customer will not settle any claim without Marmind's prior written consent, unless the settlement fully and unconditionally releases Marmind and does not require Marmind to take any action or admit any liability.

**3.6. Aggregated Anonymous Data.** Notwithstanding anything to the contrary herein, the Customer agrees that Marmind may obtain and aggregate technical and other data about Customer's use of the Services that is non-personally identifiable with respect to the Customer ("**Aggregated Anonymous Data**"), and Marmind may use the Aggregated Anonymous Data to analyze, improve, support, and operate the Services and otherwise for any business purpose during and after the term of this Agreement, including without limitation to generate industry benchmark or best practice guidance, recommendations, or similar reports for distribution to and consumption by the Customer and other Marmind customers. For clarity, this Section 3.6 does not give Marmind the right to identify the Customer as the source of any Aggregated Anonymous Data.

#### **4. SECURITY.**

Marmind agrees to use commercially reasonable technical and organizational measures designed to prevent unauthorized access, use, alteration, or disclosure of the Services or Customer Data, as further described in Marmind's Technical and Organizational Measures set forth as Annex 2 to the DPA (the "**Security Policy**"). However, Marmind will have no responsibility for errors in transmission, unauthorized third-party access, or other causes beyond Marmind's control.

#### **5. THIRD-PARTY INTEGRATIONS**

The Services may support integrations with certain Third-Party Platforms. To enable the Services to access and receive Customer's information from a Third-Party Platform, the Customer may be required to input its credentials for such Third-Party Platform. By enabling use of the Services with any Third-Party Platform, the Customer authorizes Marmind to access Customer's accounts with such Third-Party Platform for the purposes described in this Agreement. The Customer is responsible for complying with any relevant terms and conditions of the Third-Party Platform and for maintaining appropriate accounts in good standing with the providers of the Third-Party Platforms. Customer acknowledges and agrees that Marmind has no responsibility or liability for any Third-Party Platform, or how a Third-Party Platform uses or processes Customer Data after such is exported to a Third-Party Platform. Marmind cannot ensure that the Services will maintain integrations with any Third-Party Platform and Marmind may disable integrations of the Services with any Third-Party Platform at any time with or without notice to the Customer. For clarity, this Agreement governs Customer's use of and access to the Services, even if accessed through an integration with a Third-Party Platform. TO THE EXTENT THE CUSTOMER

USES FEATURES IN THE SERVICES THAT INTEGRATE WITH A THIRD-PARTY PLATFORM AND THE CUSTOMER REQUESTS THAT MARMIND INTEGRATE WITH SUCH THIRD-PARTY PLATFORM'S BETA OR PRE-RELEASE FEATURES (the "**THIRD-PARTY BETA RELEASES**"), MARMIND WILL HAVE NO LIABILITY ARISING OUT OF OR IN CONNECTION WITH MARMIND'S PARTICIPATION IN SUCH THIRD-PARTY BETA RELEASES OR CUSTOMER'S USE OF SUCH INTEGRATED FEATURES.

## **6. OWNERSHIP.**

**6.1. Marmind Technology.** This is a subscription agreement for access to and use of the Services. The Customer acknowledges that it is obtaining only a limited right to the Services and that irrespective of any use of the words "purchase", "sale", or like terms in this Agreement, no ownership rights are being conveyed to the Customer under this Agreement. The Customer agrees that Marmind or its suppliers retain all right, title, and interest (including all Intellectual Property Rights) in and to the Services and all Documentation, Professional Services' deliverables and all related and underlying technology and documentation and any derivative works, modifications or improvements of any of the foregoing, including Feedback (collectively, "**Marmind Technology**"). Except as expressly set forth in this Agreement, no rights in any Marmind Technology are granted to the Customer.

**6.2. Feedback.** The Customer may, from time to time, submit Feedback to Marmind. Marmind may freely use or exploit Feedback in connection with the Services and may also disclose such Feedback to third party. Marmind shall not disclose the name of the Customer in any use or exploitation of the Feedback.

## **7. SUBSCRIPTION TERM, FEES & PAYMENT**

**7.1. Subscription Term and Renewals.** The Subscription Term and Renewal Term will be as set forth in the applicable Order Form. Unless otherwise specified in an applicable Order Form, each Subscription Term will automatically renew for the Renewal Term set forth in such Order Form unless either party gives the other written notice of termination at least thirty (30) days prior to expiration of the then-current Subscription Term.

**7.2. Fees and Payment.** All fees are as set forth in the applicable Order Form and will be paid by the Customer in accordance with the payment terms set forth in the Order Form. Except as expressly set forth in Section 9 (Limited Warranty), Section 12.5 (Indemnification), or Section 16.7 (Modifications to this Agreement), all fees are non-refundable. Marmind may adjust its fees for inflation, as of the start of each Renewal Term, based on the Harmonized Index of Consumer Prices (or its successor) published in the third month before each Renewal Term.

**7.3. Suspension of Service.** Without limiting Marmind's termination or other rights hereunder, Marmind reserves the right to suspend Customer's access to the applicable Services (and any related Professional Services and Support) in whole or in part, without liability to the Customer: (i) if Customer's account is thirty (30) days or more overdue; (ii) for Customer's breach of Sections 2.4 (General Restrictions) or 3.4 (Customer Obligations); or (iii) to prevent harm to other customers or third parties or to preserve the security, availability or integrity of the Services. Unless this Agreement has been terminated, Marmind will restore Customer's access to the Services promptly after the Customer has resolved the issue requiring suspension.

## **8. TERM AND TERMINATION**

**8.1. Term.** This Agreement is effective as of the Effective Date and expires on the date of expiration or termination of all Subscription Terms.

**8.2. Termination for Cause.** Either party may terminate this Agreement (including all related Order Forms) if the other party (a) fails to cure any material breach of this Agreement (including with respect to the Customer any of the events set forth in Section 7.3 (Suspension)) within thirty (30) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter).

**8.3. Effect of Termination.** Upon any expiration or termination of this Agreement, the Customer will immediately cease all use of and access to all Services (including all related Marmind Technology) and delete (or, at Marmind's request, return) all copies of the Documentation, all Marmind passwords or access codes and all other Marmind Confidential Information in its possession. The Customer acknowledges that thirty (30) days following termination it will have no further access to any Customer Data input into any Services, and that Marmind may delete any such data as may have been stored by Marmind at any time thereafter. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise.

**8.4. Survival.** The following Sections will survive any expiration or termination of this Agreement: 2.4 (General Restrictions), 2.6 (Trial Subscriptions), 3.3 (Storage of Customer Data), 3.5 (Indemnification by Customer), 3.6 (Aggregated Anonymous Data), 6 (Ownership), 7.2 (Fees and Payment), 8 (Term and Termination), 9.1 (Warranty Disclaimer), 12 (Limitation of Remedies and Damages), 13 (Indemnification), 14 (Confidential Information), and 16 (General Terms).

## **9. LIMITED WARRANTY**

**9.1. Limited Warranty.** Marmind warrants, for Customer's benefit only, that the Services will operate in substantial conformity with the applicable Documentation and in accordance with applicable law. Marmind's sole liability (and Customer's sole and exclusive remedy) for any breach of this warranty will be, at no charge to the Customer, for Marmind to use commercially reasonable efforts to correct the reported non-conformity, or if Marmind determines such remedy to be impracticable, either Party may terminate the applicable Subscription Term and the Customer will receive as its sole remedy a refund of any fees the Customer has pre-paid for use of such Services for the terminated portion of the applicable Subscription Term. The limited warranty set forth in this Section 9.1 will not apply: (i) unless the Customer makes a claim within thirty (30) days of the date on which the Customer first noticed the non-conformity, (ii) if the error was caused by misuse, unauthorized modifications, or third-party hardware, software, or services, or (iii) to use provided on a no-charge, trial, or evaluation basis.

**9.2. Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 9.1, ALL SERVICES, SUPPORT, AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" (SUBJECT TO OBLIGATIONS IN SERVICE LEVEL AGREEMENT AND SUPPORT). NEITHER MARMIND NOR ITS AFFILIATES MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. MARMIND DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, MARMIND SHALL NOT BE LIABLE FOR THE RESULTS OF ANY COMMUNICATIONS SENT OR ANY COMMUNICATIONS THAT WERE FAILED TO BE SENT USING THE SERVICES. MARMIND SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICES' FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, THIRD-PARTY PLATFORMS, OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF MARMIND.

## **10. AVAILABILITY, SERVICE LEVELS, AND SUPPORT**

The Services will be available, and Marmind will provide Support, subject to Service Level Agreement and Support, if applicable.

## **11. PROFESSIONAL SERVICES.**

Marmind will provide professional consulting services (the "Professional Services") purchased in the applicable Order Form. The scope of Professional Services will be as set forth in a Statement of Work referencing this Agreement and executed by both parties describing the work to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information (an "SOW"). Unless the Professional Services are provided on a fixed-fee basis, the Customer will pay Marmind at the per-hour rates set forth in the Order Form (or, if not specified, at Marmind's then-standard rates) for any excess services. The Customer will reimburse Marmind for reasonable travel and lodging expenses as incurred. The Customer may use anything delivered as part of the Professional Services in support of authorized use of the Services and

subject to the terms regarding Customer's rights to use the Services set forth in Section 2 (Marmind Services) and the applicable SOW, but Marmind will retain all right, title, and interest in and to any such work product, code or deliverables and any derivative, enhancement or modification thereof created by Marmind . For any Professional Services provided to the Customer at no charge, the Customer further acknowledges and agrees that Marmind will not warrant the performance of such Professional Services.

## **12. LIMITATION OF REMEDIES AND DAMAGES**

**12.1. Consequential Damages Waiver.** EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), NEITHER PARTY (NOR ITS AFFILIATES) SHALL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF USE, LOST DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

**12.2. Liability Cap.** EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), EACH PARTY'S ENTIRE LIABILITY TO THE OTHER ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED IN AGGREGATE THE AMOUNT ACTUALLY PAID OR PAYABLE BY THE CUSTOMER TO MARMIND UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO ACT THAT GAVE RISE TO LIABILITY.

**12.3. Limitations to Exclusions.** SOME JURISDICTIONS DO NOT ALLOW FOR EXCLUSIONS OR LIMITATIONS OF LIABILITY AS SPECIFIED IN THIS SECTION 12. IN SUCH CASE THESE EXCLUSIONS AND LIMITATIONS WILL BE ENFORCED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

**12.4. Excluded Claims.** "Excluded Claims" means any claim arising (a) under Section 2.4 (General Restrictions); (b) 3.4 (Customer Obligations), 3.5 (Indemnification by Customer); or (c) from a party's breach of its obligations in Section 14 (Confidential Information) (but excluding claims relating to Customer Data).

**12.5. Nature of Claims and Failure of Essential Purpose.** The parties agree that the waivers and limitations specified in this Section 12 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 specified in this Agreement is found to have failed of its essential purpose.

## **13. INDEMNIFICATION.**

Marmind will defend the Customer from and against any claim by a third party alleging that the Services infringes any Intellectual Property Right and will indemnify and hold the Customer harmless from and against any damages and costs finally awarded against the Customer or agreed in settlement by Marmind (including reasonable attorneys' fees) resulting from such claim, provided that Marmind will have received from the Customer: (i) prompt written notice of such claim (but in any event notice in sufficient time for Marmind to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonable necessary cooperation of Customer. Notwithstanding the foregoing sentence, (a) the Customer may participate in the defense of any claim by counsel of its own choosing, at its cost and expense and (b) Marmind will not settle any claim without Customer's prior written consent, unless the settlement fully and unconditionally releases Marmind and does not require the Customer to take any action or admit any liability. If Customer's use of the Services is (or in Marmind's opinion is likely to be) enjoined, if required by settlement or if Marmind determines such actions are reasonably necessary to avoid material liability, Marmind may, in its sole discretion: (a) substitute substantially functionally similar products or services; (b) procure for the Customer the right to continue using the Services; or if (a) or (b) are not commercially reasonable, (c) terminate this Agreement and refund to the Customer the fees paid by the Customer for the portion of the Subscription Term that was paid by the Customer but not rendered by Marmind. The foregoing indemnification obligation of Marmind will not apply: (1) if the Services are modified by any party other than Marmind, but solely to the extent the alleged infringement is caused by such modification; (2) if the Services are combined with products or processes not provided by Marmind, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Services; (4) to any action arising as a result of Customer Data; (5) to any action arising from Customer's use of the Third-Party Platform; or (6) if the Customer settles or makes any admissions with respect to a claim without Marmind's prior written consent. THIS SECTION SETS FOR MARMIND'S AND ITS AFFILIATES' SOLE LIABILITY AND

THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

#### **14. CONFIDENTIAL INFORMATION.**

Each party (as "**Receiving Party**") agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party (the "**Disclosing Party**") constitute the confidential property of the Disclosing Party (the "**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any Marmind Technology, performance information relating to the Services, and the terms and conditions of this Agreement will be deemed Confidential Information of Marmind without any marking or further designation. Except as expressly authorized herein, the Receiving Party will (1) hold in confidence and not disclose any Confidential Information to third parties and (2) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know (including, Marmind's Affiliates and the subcontractors referenced in Section 16.9 (Subcontractors)), provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 14 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 14. The Receiving Party's confidentiality obligations will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law. This confidentiality obligation applies for 3 years after the lapse of all Subscription Terms.

#### **15. PUBLICITY.**

At the request of Marmind, the Customer agrees to the issuance of a joint press release (the "**Press Release**") on a mutually agreed upon date or the 90th day from the Effective Date, whichever is earlier. Each party will have the right to approve the Press Release in advance, but such approval will not be unreasonably delayed or withheld. The Customer also agrees to participate in other reasonable marketing activities that promote the benefits of the Services to other potential customers and to use of Customer's name and logo on Marmind's web site and in Marmind promotional materials. The Customer agrees that Marmind may disclose the Customer as a customer of Marmind, including on Marmind's public website. Marmind agrees that any such use shall be subject to Marmind complying with any written guidelines that the Customer may deliver to Marmind regarding the use of its name and shall not be deemed Customer's endorsement of the Services.

#### **16. GENERAL TERMS**

**16.1. Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 16.1 will be null and void.

**16.2. Severability.** If any provision of this Agreement will be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect.

**16.3. Governing Law; Dispute Resolution.**



a) Governing Law. This Agreement is construed and governed by the Laws of (i) the State of Delaware, if the Customer is incorporated in the United States or Canada; or (ii) England and Wales, if the Customer is incorporated elsewhere, both as of the date of the Agreement.

b) Direct Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, whether arising in contract, tort or otherwise, (the “**Dispute**”), the parties shall first use their best efforts to resolve the Dispute. If a Dispute arises, the complaining party shall provide written notice to the other party in a document specifically entitled “Initial Notice of Dispute,” specifically setting forth the precise nature of the dispute (the “**Initial Notice of Dispute**”). If an Initial Notice of Dispute is being sent to Marmind it must be emailed to [office@marmind.com](mailto:office@marmind.com).

Following receipt of the Initial Notice of Dispute, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interest, attempt to reach a just and equitable solution of the Dispute that is satisfactory to both parties (“**Direct Dispute Resolution**”). If the parties are unable to reach a resolution of the Dispute through Direct Dispute Resolution within thirty (30) days of the receipt of the Initial Notice of Dispute, then the Dispute shall subsequently be resolved by arbitration as set forth below.

c) Arbitration. IN THE EVENT THAT A DISPUTE BETWEEN THE PARTIES CANNOT BE SETTLED THROUGH DIRECT DISPUTE RESOLUTION, AS DESCRIBED ABOVE, THE PARTIES AGREE TO SUBMIT THE DISPUTE TO BINDING ARBITRATION. BY AGREEING TO ARBITRATE, THE PARTIES AGREE TO WAIVE THEIR RIGHT TO A JURY TRIAL. The arbitration shall be conducted under the Rules of the Vienna International Arbitral Centre, by three (3) arbitrators appointed in accordance with the said Rules. The language of the proceedings shall be English. The limitation of one discovery deposition per side shall be applied by the arbitrators, unless it is determined, based on all relevant circumstances, that more depositions are warranted. The arbitrators shall consider the amount in controversy, the complexity of the factual issues, the number of parties and the diversity of their interests and whether all of the claims appear, on the basis of the pleadings, to have sufficient merit to justify the time and expense associated with the requested discovery.

The arbitration will occur in Vienna, Austria, but the parties may choose to appear by person, by phone, by another virtual means, or through the submission of documents.

The arbitrators will issue a ruling in writing. Any issue concerning the extent to which any dispute is subject to arbitration, the applicability, interpretation, or enforceability of this Agreement shall be resolved by the arbitrators.

All aspects of the arbitration shall be treated as confidential and neither the parties nor the arbitrators may disclose the content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. The result of the arbitration shall be binding on the parties and judgment on the arbitrators’ award may be entered in any court having jurisdiction. The arbitrators shall award to the prevailing party, if any, the costs and attorneys’ fees reasonably incurred by the prevailing party in connection with the arbitration.

d) Construction and Joinder. THIS AGREEMENT MUST BE CONSTRUED AS IF IT WAS JOINTLY WRITTEN BY BOTH PARTIES. BOTH THE CUSTOMER AND MARMIND AGREE THAT EACH MAY BRING OR PARTICIPATE IN CLAIMS AGAINST THE OTHER ONLY IN THEIR RESPECTIVE INDIVIDUAL CAPACITIES, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS. NO ARBITRATION OR CLAIM UNDER THIS AGREEMENT SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF THE SERVICES, AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED. IN THE EVENT OF ANY DISPUTE CONCERNING THE VALIDITY OR ENFORCEABILITY OF THIS PROVISION, SUCH CLAIM MUST BE ADJUDICATED BY A COURT AND NOT BY AN ARBITRATOR.

e) Injunctive Relief. Notwithstanding the above provisions, Marmind may apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

**16.4. Notice.** Any notice or communication required or permitted under this Agreement will be in writing to the parties at the addresses set forth on the Order Form or at such other address as may be given in writing by either party to the other in accordance with this Section and will be deemed to have been received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first

business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail or (iv) next business day if sent by email.

**16.5. Amendments; Waivers.** No supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by the Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

**16.6. Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. The Customer acknowledges that the Services are on-line, subscription-based products, and that in order to provide improved customer experience Marmind may make changes to the Services, and Marmind will update the applicable Documentation accordingly. The support, security and service level availability terms described Service Level Agreement and Support and Annex 2 of Exhibit A (Technical and Organizational Measures) may be updated from time to time upon reasonable notice to the Customer to reflect process improvements or changing practices (but the modifications will not materially decrease Marmind's obligations as compared to those reflected in such terms as of the Effective Date).

**16.7. Modifications to this Agreement.** From time to time, Marmind may modify this Agreement. Unless otherwise specified by Marmind, changes become effective for the Customer upon renewal of Customer's current Subscription Term or entry into a new Order Form. Marmind will use reasonable efforts to notify Customer of the changes through communications via Customer's account, email or other means. In any event, continued use of the Services after the updated version of this Agreement goes into effect will constitute Customer's acceptance of such updated version. If Marmind specifies that changes to the Agreement will take effect prior to Customer's next renewal or order (such as for legal compliance or product change reasons) and the Customer objects to such changes within 10 calendar days, Marmind may either (i) move the effective date of a change of the Agreement to Customer's next renewal or order; or (ii) terminate the applicable Subscription Term and give to the Customer as its sole remedy a refund of any fees the Customer has pre-paid for use of the applicable Services for the terminated portion of the Subscription Term, commencing on the date notice of termination was received or a different date the Parties agree on.

**16.8. Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events that occur after the signing of this Agreement and that are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

**16.9. Subcontractors.** Marmind may use the services of subcontractors and permit them to exercise the rights granted to Marmind in order to provide the Services under this Agreement, provided that Marmind remains responsible for (i) compliance of any such subcontractor with the terms of this Agreement, (ii) for the overall performance of the Services as required under this Agreement and (iii) compliance with the terms of the DPA.

**16.10. Subpoenas.** Nothing in this Agreement prevents Marmind from disclosing Customer Data to the extent required by law, subpoenas, or court orders, but Marmind will use commercially reasonable efforts to notify the Customer where permitted to do so.

**16.11. Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

**16.12. Export Control.** In its use of the Services, the Customer agrees to comply with all export and import laws and regulations of the applicable jurisdictions. Without limiting the foregoing, (i) the Customer represents and

warrants that it is not listed on any US, UK, or EU government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a US, UK, or EU government embargo or that has been designated by the US, UK, or EU government as a “terrorist supporting” country, (ii) the Customer will not (and will not permit any of its users to) access or use the Services in violation of any US, UK, or EU export embargo, prohibition or restriction, and (iii) the Customer will not submit to the Services any information that is controlled under the U.S. International Traffic in Arms Regulations.

**16.13. Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement.

## Exhibit A

### DATA PROCESSING ADDENDUM

This DPA, including its annexes and the Standard Contractual Clauses, is made by and between Marmind and the Customer, pursuant to the Agreement and will be effective on the date both parties have signed the Agreement.

This DPA forms part of the Agreement and sets out the terms that apply when Account Data (as defined below) is processed by Marmind under the Agreement. The purpose of the DPA is to ensure such processing is conducted in accordance with applicable laws and with due respect for the rights and freedoms of individuals whose personal data is processed.

#### 1. DEFINITIONS.

Other than the terms defined in the Agreement and in the body of this DPA, these terms have the following meaning in this DPA:

**1.1. "Account Data"** means Personal Data that relates to Customer's relationship with Marmind, including to access Customer's account and billing information, identity verification, maintain or improve performance of the Services, provide support, investigate, and prevent system abuse, or fulfill legal obligations.

**1.2. "Applicable Data Protection Legislation"** refers to laws and regulations applicable to Marmind's processing of personal data under the Agreement, including but not limited to (a) the GDPR, (b) in respect of the UK, the GDPR as saved into United Kingdom law by virtue of section 3 of the United Kingdom's European Union (Withdrawal) Act 2018 ("**UK GDPR**") and the Data Protection Act 2019 (together, "**UK Data Protection Laws**"), and (c) CCPA, in each case, as may be amended, superseded or replaced.

**1.3. "CCPA"** means the California Consumer Privacy Act of 2018 and any binding regulations promulgated thereunder, in each case, as may be amended from time to time.

**1.4. "Controller" or "controller"** means the natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data.

**1.5. "EEA"** means, for the purposes of this DPA, the European Economic Area and Switzerland.

**1.6. "GDPR"** means Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation).

**1.7. "Personal Data" or "personal data"** means any information, including personal information, relating to an identified or identifiable natural person ("data subject") or as defined in and subject to Applicable Data Protection Legislation.

**1.8. "Privacy Policy"** means the then-current privacy policy for the Services available at <https://www.marmind.com/privacy-policy/>.

**1.9. "Processor" or "processor"** means the entity which processes Personal Data on behalf of the Controller.

**1.10. "Processing" or "processing" (and "Process" or "process")** means any operation or set of operations performed upon Personal Data, whether or not by automated means, means any operation or set of operations that is performed upon Personal Data, whether or not by automatic means, such as collection, recording, securing, organization, storage, adaptation or alteration, access to, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure, or destruction.

**1.11. “Security Breach”** means a breach of security leading to any accidental, unauthorized or unlawful loss, disclosure, destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data transmitted, stored or otherwise processed by Marmind. A Security Breach shall not include an unsuccessful attempt or activity that does not compromise the security of Customer Data, including (without limitation) pings and other broadcast attacks of firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond headers) or similar incidents.

**1.12. “Standard Contractual Clauses” or “SCCs”** mean (i) where the GDPR applies, the standard contractual clauses annexed to the European Commission's Implementing Decision (EU) 2021/914 of 4 June 2021 standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021D0914&from=EN> (“EU SCCs”); and (ii) where the UK GDPR applies, the applicable standard data protection clauses adopted pursuant to Article 46(2)(c), or (d) of the UK GDPR (“UK SCCs”) (in each case, as updated, amended or superseded from time to time).

**1.13. “Sub-processor” or “sub-processor”** means (a) Marmind, when Marmind is processing the Account Data and where Customer is itself a processor of such Account Data, or (b) any third-party Processor engaged by Marmind or its Affiliates to assist in fulfilling Marmind's obligations under the Agreement and which processes the Account Data. Sub-processors may include third parties or Marmind Affiliates but shall exclude Marmind employees, contractors, or consultants.

## **2. SUBJECT MATTER OF THE DPA.**

**2.1. Roles Of The Parties.** The Parties acknowledge and agree that with regard to the Processing of the Account Data under this DPA the Customer is the Controller of the Account Data and Marmind is the Processor of such data, except when the Customer acts as a Processor of the Account Data, in which case Marmind is a Sub-processor. For clarity, this DPA shall not apply with respect to Marmind's processing activity as a Data Controller.

**2.2. Customer's Processing Of The Account Data.** The Customer shall, in its use of the Services, Process the Account Data in accordance with the requirements of the Applicable Data Protection Laws and comply at all times with the obligations applicable to Controllers (including, without limitation, Article 24 of the GDPR). For the avoidance of doubt, the Customer's instructions for the Processing of the Account Data shall comply with the Applicable Data Protection Laws. The Customer shall have sole responsibility for the means by which the Customer acquired the Account Data. Without limitation, the Customer shall comply with all transparency-related obligations (including, without limitation, displaying all relevant and required privacy notices or policies) and shall at all times have all required ongoing legal bases in order to collect, process and transfer to Marmind the Account Data and to authorize the Processing by Marmind of the Account Data which is authorized in this DPA. The Customer shall defend, hold harmless and indemnify Marmind, its Affiliates, and subsidiaries (including without limitation their directors, officers, agents, and employees) from and against any liability of any kind related to any breach, violation or infringement by Client or its authorized users of this DPA.

## **3. OBLIGATIONS OF MARMIND**

**3.1. Marmind's Processing.** Marmind will process the Account Data and the processing results exclusively within the scope of the written assignment of the Customer and as specified in Annex No. 1 to this DPA. Should Marmind be required to release the Account Data by request of the governmental authorities, then Marmind must – as far as it is legally permitted - inform the Customer of the above without delay and refer the authorities to the Customer. Likewise, the processing of the Account Data for Marmind's own benefit requires written approval by the Customer.

**3.2. Confidentiality.** Marmind shall grant access to the Account Data to persons under its authority (including, without limitation, its personnel) only on a need-to-know basis and ensure that such persons engaged in the Processing of the Account Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

**3.3. Technical And Organizational Measures.** Marmind implements the appropriate technical and organizational measures so that the Customer can comply with the rights of the affected individuals as per chap. III of the GDPR (information, access, rectification and erasure, data portability, objection as well as automated individual decision-making) at any time and within the legal deadlines and will submit all necessary information to the Customer. Should a relevant request be sent to Marmind and should this request show that the sender of the request mistakenly considers him the controller of the processing operated by Marmind, then Marmind will forward this request to the Customer without delay and notify the sender of the above. The current Technical and Organizational Measures are attached as Annex No. 2 to this DPA.

**3.4. Cooperation.** Marmind will, at Customer's expense, support the Customer with adhering to the obligations, as outlined in Art. 32 to 36 GDPR (data security, notification of a Security Breach to the supervisory authority, communication of a Security Breach to the data subject, data protection impact assessment, prior consultation).

**3.5. Audits.** Upon Customer's written request at reasonable intervals, and subject to the confidentiality obligations set forth in the Agreement and this DPA, Marmind shall make available to Customer that is not a competitor of Marmind (or Customer's independent, third-party auditor that is not a competitor of Marmind) a copy or a summary of Marmind's then most recent third-party audits or certifications, as applicable (provided, however, that such audits, certifications and the results therefrom, including the documents reflecting the outcome of the audit and the certifications, shall only be used by Customer to assess compliance with this DPA, and shall not be used for any other purpose or disclosed to any third party without Marmind's prior written approval and, upon Marmind's first request, the Customer shall return all records or documentation in Customer's possession or control provided by Marmind in the context of the audit or the certification). At the Customer's cost and expense, Marmind shall allow for and contribute to audits, including inspections of Marmind, conducted by the Customer or another auditor mandated by the Customer (who is not a direct or indirect competitor of Marmind), provided that the parties shall agree on the scope, methodology, timing, and conditions of such audits and inspections. Notwithstanding anything to the contrary, such audits and inspections shall not contain any information, including without limitation, personal data that does not belong to the Customer.

**3.6. Deletion Of Data.** Following the termination of this agreement, Marmind is obligated to forward to the Customer or destroy, at Customer's request, all processing results and documents that contain the Account Data. If Marmind should process the Account Data in a unique, technical format, then Marmind is obligated to submit the data in this format, or, if requested by the Customer, in another, common format, following the termination of the Agreement.

**3.7. Breach Of Applicable Data Protection Legislation.** Marmind must inform the Customer immediately, if an instruction of the Customer constitutes a violation of the data protection regulations of the Applicable Data Protection Legislation.

#### **4. SECURITY BREACH AND NOTIFICATION.**

To the extent required under the Applicable Data Protection Legislation, Marmind shall notify the Customer without undue delay, but in any case, within 48 hours after becoming aware of a Security Breach. Marmind shall make reasonable efforts to identify the cause of such Security Breach and take those steps as Marmind deems necessary, possible, and reasonable in order to remediate the cause of such a Security Breach to the extent the remediation is within Marmind's reasonable control. In any event, the Customer will be the party responsible for notifying supervisory authorities and concerned data subjects (where required by the Applicable Data Protection Legislation).

#### **5. USE OF SUB-PROCESSORS.**

**5.1. Sub-Processors.** Current list of Sub-processors is attached as Annex No. 3 to this DPA and is approved by the Customer.

**5.2. Notification.** Marmind shall provide notification of any new Sub-processor before authorizing such new Sub-processor to Process the Account Data in connection with the provision of the Services to Customer's email provided in the Order Form or later disclosed to Marmind by Customer.

**5.3. Objections.** The Customer may reasonably object to Marmind's use of a Sub-processor for reasons related to the GDPR by notifying Marmind promptly in writing within ten (10) days after receipt of Marmind's notice in accordance with the mechanism set out in Section 4 and such written objection shall include the reasons related to the GDPR for objecting to Marmind's use of such Sub-processor. Failure to object to such Sub-processor in writing within thirty 10 days following Marmind's notice shall be deemed as acceptance of the Sub-Processor. In the event the Customer reasonably objects to a Sub-processor, as permitted in the preceding sentences, Marmind will use reasonable efforts to make available to the Customer a change in the Services or recommend a commercially reasonable change to Customer's use of the Services to avoid Processing of the Account Data by the objected-to Sub-processor without unreasonably burdening the Customer. If Marmind is unable to make available such change within a reasonable period of time, which shall not exceed thirty (30) days, the Customer may, as a sole remedy, terminate the applicable Agreement and this DPA by providing written notice to Customer.

## **6. TRANSFERS OF DATA.**

**6.1. Transfer To Countries With Adequate Level Of Data Protection.** The Account Data may be transferred from the EEA or the UK to countries that offer an adequate level of data protection under or pursuant to the adequacy decisions published by the relevant data protection authorities of the EEA, the Union, the Member States or the European Commission (the "**Adequacy Decisions**"), without any further safeguards being necessary.

**6.2. Transfer To Other Countries.** If the Processing of the Account Data includes transfers from the EEA or the UK to countries which do not offer adequate level of data protection or which have not been subject to an Adequacy Decision, the following terms shall apply:

The Customer as a Data Exporter (as defined in the applicable SCCs) and Marmind on behalf of itself and each Marmind Affiliate (as applicable) as a Data Importer (as defined in the applicable SCCs) hereby enter into (i) the EU SCCs, with respect to the transfers of the Account Data from the EEA; and (ii) the UK SCCs, with respect to the transfers of the Account Data from the UK. To the extent that there is any conflict or inconsistency between the terms of the applicable SCCs and the terms of this DPA, the terms of the applicable SCCs take precedence.

## **7. TERMINATION.**

This DPA will automatically terminate upon the termination or expiration of the Agreement under which the Services are provided. This DPA cannot, in principle, be terminated separately from the Agreement, except where the Processing ends before the termination of the Agreement, in which case, this DPA shall automatically terminate.

## **8. LIABILITY.**

To the maximum extent permitted by law, each Party and its Affiliates' aggregate liability to the other party arising out of or in relation to this DPA (including the SCCs), whether in contract, tort or under any other theory of liability, will be subject to the limitations and exclusions of liability (including any agreed aggregate financial cap) set forth under the Agreement. For the avoidance of doubt, nothing in this DPA is intended to limit the rights a Data Subject may have against either Party arising out of such Party's breach of the SCCs, where applicable.

## Annex 1

### Annex 1 (A) List of Parties:

Details   Party	Customer	Marmind
<b>Name</b>	The entity identified as the "Customer" in the Agreement	The entity identified as Marmind in the Agreement
<b>Address</b>	The Customer's address specified in the Agreement.	Marmind's address specified in the Agreement.
<b>Contact Person's Name, position and contact details:</b>	The contact details specified in the Agreement.	
<b>Activities relevant to the processing:</b>	Activities relevant to the processing: See Annex 1(B) below	
<b>Role</b>	Controller or Processor (as applicable)	Processor or sub-processor (as applicable)
<b>Role for the purpose of transfer under Clause 6 of the DPA:</b>	Data Exporter	Data Importer
<b>Signature and Date:</b>	Subject to Clause 6 of the DPA, by using the Services to transfer Personal Data to Marmind located in a non-adequate country, the data exporter will be deemed to have signed this Annex 1.	Subject to Clause 6 of the DPA, by transferring Personal Data to a non-adequate country on Customer's instruction, the data importer will be deemed to have signed this Annex 1.



**Annex 1 (B) Details of Processing:**

This Annex includes certain details of the Processing of Personal Data as required by Art. 28(3) of the GDPR.

<b>Subject-matter, nature, purpose and duration of the Processing:</b>	<p>Marmind provides the Customer with the Services according to the Agreement. During this provision of the Services, Marmind shall carry out all the data processing activities to fulfil its obligations arising out of or in connection with the Agreement. The nature and purpose of the processing shall always follow the nature and purpose of the Services provided by the Marmind to the Customer. Marmind will process the Account Data during the Subscription Term.</p> <p>Marmind undertakes the following processing operations on behalf of the Customer:</p> <ul style="list-style-type: none"><li>a) Budget and track marketing spend across different spend sources (e.g., search engine marketing, social media marketing, market research)</li><li>b) Facilitate automated workflows enabling the planning and delivery of marketing campaigns to customers (e.g., email marketing, social media marketing, marketing collateral and website design)</li><li>c) Connect with 3rd party software or systems to exchange data (pass through) relating to the above activities</li></ul> <p><b>Duration of the Processing.</b> The processing will be carried out for an indefinite period of time until the Agreement is terminated in writing by one of the Parties.</p>
<b>Type(s) of Personal Data:</b>	<p><b>Personal Data:</b> The Marmind shall process information relating to (i) an identified or identifiable natural person or, (ii) an identified or identifiable legal entity (where such information is protected by Data Protection Legislation similarly to data which identifies a living individual), where for each (i) or (ii), such data is Customer Data; which shall include personal data of persons visiting Customer’s websites using Marmind’s Services, i.e.:</p> <ul style="list-style-type: none"><li>a) Customer user data (first name, last name, email address, team)</li><li>b) Marketing spend data (spend amounts, purpose, vendors)</li><li>c) Marketing performance results (activity taken, results generated)</li><li>d) Transmission of email lists (customer and marketing opt-in) for the generation of target lists</li></ul> <p><b>Special categories of Personal Data:</b> No processing.</p>
<b>Categories of Data Subjects:</b>	<ul style="list-style-type: none"><li>a) Customer’s employees</li><li>b) Customer’s suppliers</li><li>c) Customer’s agencies</li></ul>

**Annex 1(C): Competent supervisory authority**

The Customer's competent supervisory authority will be determined in accordance with the GDPR, where applicable.

## Annex 2

### TECHNICAL AND ORGANIZATIONAL MEASURES

The technical and organizational measures (TOMs) are subject to technical progress and development. Marmind may implement alternative adequate measures as long as the security level of the measures matches the outlined measures. Significant changes are to be documented.

Marmind provides the following technical-organizational measures:

#### A) Confidentiality

**Entry control:** Avoidance of unauthorized entry to data processing facilities by:

<input checked="" type="checkbox"/> Key	<input checked="" type="checkbox"/> Magnetic or chip cards
<input checked="" type="checkbox"/> Electric door opener	<input checked="" type="checkbox"/> Doorman
<input checked="" type="checkbox"/> Security personnel	<input checked="" type="checkbox"/> Alarm system
<input checked="" type="checkbox"/> Video system	<input checked="" type="checkbox"/> Burglar-restraining windows and/or security doors
<input checked="" type="checkbox"/> Registration at reception desk and identity check	<input checked="" type="checkbox"/> Follow-up of visitors on company premises
<input checked="" type="checkbox"/> Use of visitor or staff card/ID	<input type="checkbox"/> Other(s):

**Access control:** Avoidance of unauthorized system usage through:

<input checked="" type="checkbox"/> Password (including relevant policies)	<input checked="" type="checkbox"/> Encryption of data carriers
<input checked="" type="checkbox"/> Automated locking mechanism	<input type="checkbox"/> Other(s):
<input checked="" type="checkbox"/> Two-factor authentication	

Avoidance of unauthorized reading, copying, changing or deleting within the system through:

<input checked="" type="checkbox"/> Standard correction profile on a "need to know basis"	<input checked="" type="checkbox"/> Standard process for assigning authorizations
<input checked="" type="checkbox"/> Logging of access	<input type="checkbox"/> Safe storage of data carriers
<input checked="" type="checkbox"/> Regular checks of the assigned authorizations and of administrative user accounts in particular	<input checked="" type="checkbox"/> Privacy-compliant reuse of data carriers
<input checked="" type="checkbox"/> Privacy-compliant disposal of data carriers that are no longer needed	<input type="checkbox"/> Clear-desk/Clear-screen policy
<input type="checkbox"/> Other(s):	

**Pseudonymization:** If possible for the data processing operation, the primary identifiers are removed from within the data processing operation and saved elsewhere.

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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**Data classification scheme:** Based on legal obligations or self-assessment (secret/confidential/internal/public).

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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## B) Data integrity

**Control of data transfer:** No unauthorized reading, copying, changing or deleting during electronic transfer or transport by way of:

<input checked="" type="checkbox"/> Encryption of data carriers	<input checked="" type="checkbox"/> Encryption of data files
<input checked="" type="checkbox"/> Virtual Private Networks (VPN)	<input type="checkbox"/> Electronic signatures
<input type="checkbox"/> Other(s):	

**Data entry control:** Determining whether and by whom personal data has been entered into the data processing system, changed or deleted by:

<input type="checkbox"/> Logging	<input checked="" type="checkbox"/> Document management
<input type="checkbox"/> Other(s):	

**C) Availability and resilience**

**Availability control:** Protection against negligent and/or wilful destruction or loss through:

<input checked="" type="checkbox"/> Backup strategy (online/offline; on-site/off-site)	<input checked="" type="checkbox"/> Uninterrupted power supply (UPS, diesel generator)
<input checked="" type="checkbox"/> Virus protection	<input checked="" type="checkbox"/> Firewall
<input checked="" type="checkbox"/> Reporting channels and emergency procedures	<input checked="" type="checkbox"/> Security checks with regard to infrastructure and application
<input checked="" type="checkbox"/> Multi-level back-up approach with encrypted outsourcing of back-ups in a separated data center	<input checked="" type="checkbox"/> Standard procedures for staff changes
<input type="checkbox"/> Other(s):	

**Rapid recoverability:**

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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**D) Procedures for regular testing, assessing and evaluating**

**Data protection management,** including regular employee training:

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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**Incident response management:**

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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**Data protection by design:**

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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**Data processing control:** No data processing in the sense of Art 28 GPDR without specific instruction by the client through:

<input checked="" type="checkbox"/> Definite contract design	<input type="checkbox"/> Formalized project management
<input checked="" type="checkbox"/> Strict selection of data processors	<input type="checkbox"/> Due diligence
<input type="checkbox"/> Follow-up checks	<input checked="" type="checkbox"/> Obligation of data secrecy

### Annex 3

#### LIST OF SUB-PROCESSORS

<b>Name</b>	<b>Processing Location</b>	<b>services provided</b>
Microsoft	Germany	Hosting
mySec IT Consulting e. U.	Austria	IT Systems Management
Matthias Reisner REMA-IT	Austria	Software Development and Support