



## Article 1. Definitions

- 1.1. Mindtime: Mindtime Backup B.V. registered with the chamber of commerce under number 51172313.
- 1.2. User software: Mindtime online backup programming, used for storing digital data. The digital data is sent to the Mindtime backup server by the user through a communication channel, by means of the user software.
- 1.3. User: the natural person or legal person who has accepted the Mindtime Backup user terms and conditions and a client of Mindtime Backup by Supplier.
- 1.4. Pro Backup: Backup account for one or multiple PCs / laptops / servers with standard backup modules including Exchange, (MY)SQL, Sharepoint, VMWare, Lotus Notes en Oracle.
- 1.5. PC Backup: Backup Account for 1 PC or laptop.
- 1.6. VM Backup: Backup Account as Pro Backup. However, VM Backup is only single stored.
- 1.7. Documentation: Information, brochures, instructions and manuals for the User, provided by the supplier along with the user software and/or goods.
- 1.8. Supplier: The supplier of the user software for the user.

## Article 2. Acceptance of the user terms and conditions

- 2.1. The user agrees to the user terms and conditions by accepting the user terms and conditions during the installation of the user software.

## Article 3. Rights/Obligations Mindtime

- 3.1. Mindtime or her suppliers have the right to alter the user software from time to time in order to improve the functionality and correct errors. If a modification leads to a significant change in functionality, the supplier will inform the user of this modification. Because the user software is supplied to multiple users, it is not possible for one user to refuse a certain modification. Mindtime or the supplier is not obliged to compensate for any damage caused during the modification of the user software.

## Article 4. Conditions of the User software

- 4.1. User is obliged to follow the instructions as stated in the Documentation strictly.
- 4.2. Unless agreed otherwise in written form, the user is responsible for the installation and configuration of the user software in accordance with the Documentation.
- 4.3. The user determines which digital data is stored by means of the user software. Mindtime has no knowledge of this digital data. The user is also obliged to ensure that the data is lawful and that it does not infringe the rights of any third parties. The user will safeguard Mindtime against any claims made by third parties that are based upon the proposition that the user has stored unlawful digital data using the user software.
- 4.4. If Mindtime should discover that digital data stored by the user by means of the user software is unlawful, Mindtime will take immediate action in order to remove this data or block access to it. In such a case, mindtime also has the right to block access to or remove the user's digital data. This in accordance with Mindtime's judgement. In no case will Mindtime be held liable for any damage that may come forth out of this act.
- 4.5. The user is to keep the user names and passwords provided by the supplier strictly confidential. Mindtime or the supplier is not responsible for abuse of user names and passwords and may assume that the user that logs in, is indeed the user. The user is to inform the supplier if the user suspects that user names and passwords have fallen into the hands of unauthorised persons. Mindtime or the supplier has the right to take effective action in such cases.
- 4.6. The user is to refrain from any unauthorised use of the user software and will behave in accordance with what Mindtime or the supplier may expect from a careful manager of the user software.
- 4.7. Neither Mindtime nor Supplier are liable for any damage that may come forth out of the loss of the encryption key by the user, or that a third party may have gained access to the encryption key, thus providing him with access the the user's digital data.

- 4.8. The user is responsible for keeping and safeguarding the encryption key, and is aware that by destruction or loss of the encryption key, the data stored with Mindtime will become unusable and unreadable.

- 4.9. The user will safeguard Mindtime from all damage and any claims from third parties arising from breach by the user of the guarantees and/or statements made by the user in the previous paragraph.

## Article 5. Rights of intellectual property

- 5.1. All intellectual property rights on the user software belong solely to Mindtime. User only receives a right of use that is not exclusive, nor transferable, and authorisations that are expressly granted with these conditions or in any other way and for all other, the user will not duplicate or make copies of the user software, excepting one spare copy for personal use.
- 5.2. The user is not permitted to remove or change any indication of copyright, brands, trade names or any other rights of intellectual property from the user software or the manuals.
- 5.3. Mindtime is allowed to take technical measures in order to protect the user software programming. If Mindtime has used technical means to protect the user software, the user is not allowed to remove or avoid this protection.
- 5.4. In case of termination or interim dissolution of the user conditions, the User will remove or destroy all the user software and Documentation and all copies.

## Article 6. Liability

- 6.1. Mindtime or the Supplier are not liable for any indirect damage to the user of third parties, including consequential damage, lost sales and profits and intangible damage.
- 6.2. Mindtime or the Supplier's liability towards the User, on any account whatsoever, is limited to the fees (excl. Vat) that the User has actually paid the supplier over the past six months, per event (a related series of events counts as one event).
- 6.3. The user will safeguard Mindtime or the Supplier from all claims made by third parties on any account whatsoever, in respect of compensation for damage, costs or interest, relating to this agreement and/or user software.
- 6.4. The preceding paragraphs of this article shall not apply if and for as far as the damage in questions has been caused by intent or by deliberate recklessness of Mindtime or the supplier.
- 6.5. The condition for any right of compensation arising, is that in any case, the user will inform Mindtime or the Supplier of the damage in written form within two weeks after it happens.

## Article 7. Data Storage

- 7.1. The backed up data from user are first compressed and encrypted before they are stored in 2 secured data centres of Mindtime Backup.
- 7.2. The Pro Backup Data is stored on two physical locations.
- 7.3. The PC Backup Data is stored on two physical locations.
- 7.4. The VM Backup Data is stored on one physical location. This is called single storage by Mindtime Backup.



## Article 8. Force Majeure

8.1. In case of a force majeure situation, meaning in any case malfunctions or failure of the internet, the telecommunication infrastructure, of any operator or internet service or access provider, the full occupation of dialup lines or insufficient bandwidth of an access provider, domestic disturbances, mobilisation, war, disruption in transport, company malfunctions, interruption in supply, fire, flood, in and export impairment, and in the event that Mindtime cannot reasonably be expected by its own suppliers to fulfil the user conditions, the implementation of the user conditions will be suspended or terminated if the force majeure situation takes longer than 30 days, all without any obligation to compensation.

## Article 9. Duration and termination

9.1. The user conditions are entered into for at least 12 (twelve) months and can only be terminated as determined in these user conditions. Without termination, the user conditions are implied for an equally long period without notice.

9.2. A party may terminate the user conditions in compliance with 2 (two) months notice. For this, the termination form has been filled in and should be in Mindtime Backup's possession at least two months before the expiry of the contract year.

9.3. If a party does not meet certain obligations that come forth out of the user conditions properly or within a prescribed period, the party in question is in default and the other party is entitled to terminate the user conditions partially or entirely without notice, without prejudice to the other rights of the dissolving party and without the dissolving party being liable for damage.

9.4. In case of a dissolution or termination, as specified in the preceding articles, the following obligations will remain standing after the expiry of the user conditions:

- Intellectual property rights;
- Liability.

These will continue for as long as Mindtime or the Supplier can reasonably presume the continuance of these.

## Article 10. Changes User Conditions

10.1. Mindtime reserves the right to alter or make additions to these user conditions.

10.2. Changes also apply to already closed user conditions, in compliance with a period of 30 days after the publication of the changes by Mindtime, by means of electronic messages. Changes of secondary interest may be made at any time. The user can find the most recent version at [www.mindtime.nl](http://www.mindtime.nl).

10.3. If the user does not want to accept a change in these conditions, he can terminate the user conditions, as long as this is done before the date that the changes are to take force. The conditions can be terminated from the date of receipt of the notice, or after the date that the changes take force.

## Article 11. Final Provisions

11.1. These user terms are governed by Dutch law.

11.2. Changes in management or business entity are of no influence on these user conditions.

11.3. As far as not otherwise specified by the mandatory rules of law, all disputes that may arise from the user conditions will be submitted to the competent Dutch court in Zwolle.

11.4. Partial Invalidity:

If a certain provision in these user conditions turns out to be invalid, this does not influence the validity of the entire user conditions.

Parties will establish (a) new provision(s) in replacement, which will resemble the intent of the original user conditions as far as legally possible.

## Contact Details

If you have any questions or comments after reading these user conditions, feel free to contact us by mail or e-mail.

## Signature User:

Name:

Company:

Function:

Date:

Signature: