

## TERMS OF SERVICE

DATED MARCH 16, 2023

### 1 Legal information

Botmind is a *société par actions simplifiée* incorporated under the laws of France, with share capital of 1,430 euros, having its registered office located 54, passée des Vaches, 77630 Arbonne-la-Forêt, France, registered with the trade and companies register of Melun under number 844 279 380, with VAT number FR 51844279380 (« **Botmind** »).

Botmind may be contacted as follows:

- Phone number: +(33) 6 23 23 25 06
- Email: chris@botmind.io

The Software Service API is hosted by Google Cloud Platform in Paris, France, and Amazon Web Services in Ireland.

The manager of the Site is: Christophe Chevalier.

### 2 Definitions

In this Agreement, the terms with a capital letter shall have the meaning ascribed below, it being specified that terms defined in the Intent Order shall have the meaning ascribed to such terms in this Agreement unless otherwise provided.

- 2.1 "**Agreement**" or "**Terms of Use**" means these terms of service.
- 2.2 "**Bot**" means Botmind's proprietary conversational, artificial intelligence powered, virtual assistant that can access End User Data and be deployed on the Channel.
- 2.3 "**Channel**" means the communication channel specified in the Intent Order.
- 2.4 "**Customer**" means the company buying Botmind's Services as defined in the Intent Order.
- 2.5 "**End User**" means any user of the Customer's website who accesses the Bot via the Channel.
- 2.6 "**End User Data**" means all data relating to End Users which Customer gets, gathers, processes, stores or has access to.
- 2.7 "**Conversation**" means an instance of conversation between an End User and the Bot on any Channel.
- 2.8 "**Initial Term**" has the meaning given to it in Section 9.1.
- 2.9 "**Intellectual Property Rights**" means all industrial and other intellectual property rights relating to and including in particular: (a) patents; (b) trade-marks; (c) Internet domain names, web addresses, website and URLs (including in particular the Site); (d) works of authorship, designs, software and firmware, application programming interfaces, architecture, files, records, data, data files, and databases and documentation; (e) trade secrets; and (f) all other intellectual property rights, and all rights, interests and protections that are associated with it, such rights or protections under the laws of any jurisdiction in any part of the world.
- 2.10 "**Intent Order**" means either (i) an online form submitted by the Customer through the Site registering for the Services; or (ii) a form signed by Customer and Botmind subscribing for the Services, that incorporates these Terms of Use.

- 2.11 "**Pattern Data**" means non-personally identifiable information and data compiled through the Service, including but not limited to demographics, location and trend data or statistics indicating usage and popularity of the Services. Pattern Data is data that does not identify a specific Customer or its End Users and is data which does not relate to a specific Customer's business.
- 2.12 "**Site**" means www.botmind.io and any sub-site of that site.
- 2.13 "**Services**" has the meaning given to it in Section 5.1.
- 2.14 "**Software Service API**" means the application programmable interface that enables the access to End User Data by Bot.
- 2.15 "**Term**" means the period of the Initial Term and any subsequent Renewal Term.
- 2.16 "**You**" means Customer or any other user of the Site.

### 3 **General provisions**

- 3.1 The Terms of Use are exclusively applicable to the provision to the Customer of the Service by Botmind as described herein.
- 3.2 The Terms of Use are enforceable vis-à-vis the Customer who acknowledges being aware of its content and having accepted the Terms of Use before placing any order. The confirmation of an order is deemed to incur full acceptance by the Customer of the Terms of Use in force on the date of the order, the record-keeping of which is handled by Botmind.
- 3.3 The Terms of Use are attached to each confirmation of order sent by Botmind to the Customer. Any Customer is then deemed to have full knowledge and having accepted without any reserve all the provisions of the Terms of Use, that shall apply to any Service rendered by Botmind. The Terms of Use shall prevail over any others contrary provisions or conditions which may be included in the general terms and conditions of purchase or any other document from the Customer (subject to any exception provided herein). Any contrary conditions set forth by the Customer shall be unenforceable against Botmind, unless the latter accepts these conditions. Nevertheless, Botmind retains the right to derogate to some provisions of the Terms of Use, depending on the negotiations conducted with the Customer, by establishing specific conditions of sale (in particular through the entering into of a service agreement) which shall be approved by the Customer.
- 3.4 The Customer shall be liable for the practicalities and consequences of its access of the Site through the Internet. This access may incur the payment of fees to some technical providers such as internet providers, such fees having to be borne by the Customer. The Customer shall provide and be the sole responsible for the equipment required to access the Site.
- 3.5 The Customer acknowledges having checked that its IT equipment is secured and up and running for the purpose of accessing the Service.
- 3.6 The Customer acknowledges having received all the necessary details required to assess Botmind's technical and commercial proposal.
- 3.7 The Customer shall particularly make sure that the Service is consistent with its own activity needs.

### 4 **Licence**

#### 4.1 **License Grant**

- 4.1.1 The Services are protected by trade secret, copyright, and intellectual property laws. Botmind grants Customer a limited, non-exclusive, non-

transferable right and license to use the Services and the Bot and to access to Botmind's platform during the Term set out in the Intent Order.

4.1.2 Furthermore, Botmind grants Customer a non-exclusive, non-transferable right and license to use Botmind's trademarks and logos during the Term for public and End Users information purposes within the framework of access to the Services, Bot and Botmind's platform.

4.1.3 You shall not use the Service in the absence of an agreed and executed Intent Order. Customer understands that only Botmind has the right to maintain, enhance or modify the Services unless specific permissions are granted to Customer in a separate agreement with Botmind.

## 4.2 **Services Restrictions**

4.2.1 Customer shall use the Services only as contemplated in this Terms of Use and in any Intent Order and shall not directly or indirectly license, sublicense, distribute, sell, lease, assign, or transfer, as expressly permitted by this Terms of Use, otherwise make the Services available to any third party including making the Services available through any file-sharing method or hosting service.

4.2.2 Customer shall not, except to the extent expressly agreed with Botmind:

a. Modify, reverse engineer, translate, decompile, disassemble, or create derivative works based on the Service; or

b. Remove any proprietary labels, notices, or marks from the Services; or

c. Access the Services in order to (i) build a competitive product or service; or (ii) copy features, ideas, functions or graphics of the Services; or

d. Use the Services in a way that:

- Violates the Intellectual Property Rights or any other rights of anyone else;
- Violates any law or regulation;
- Is harmful, deceptive, fraudulent, threatening, harassing, obscene, or otherwise objectionable;
- Attempts, in any manner, to obtain the password, account, or other security information from any other user;
- Violates the security of any computer network, or cracks any passwords or security encryption codes; or
- Runs any form of "spam" on the Services, or any processes that run while Customer are not logged into the Services, or that otherwise interfere with the proper working of the Services.

## 5 **Use**

### 5.1 **Services**

During the Term and following to the Intent Order statements between Customer and Botmind, Botmind shall provide the following services (the "**Services**") to Customer in accordance with the terms and conditions defined in this Terms of Use:

a. Automated responses to End-User queries using the Bot through the Channels in the language, as fully described in the Intent Order; and

b. Other services that may be expressly agreed between Customer and Botmind as set out in the Intent Order.

## 5.2 **Support Services**

During the Term Botmind shall provide the Support Services to Customer in accordance with and subject to the terms and conditions defined in these Terms of Use, as described in particular in Section 12.1.

## 5.3 **End User Data Terms**

5.3.1 Botmind may receive, stores, process or have access to some End User Data via the Services, as follows:

1/ Through the Software Service API, in which case Botmind shall be responsible for obtaining the permission from End Users to use of their data via the Services, it being specified that (i) once the chat through the Bot is initiated, Botmind will have access and store the content of the discussion and the identity of the End User, and (ii) before the chat is initiated, Botmind will not store any personal data of the End User; or

2/ Through social media, contact forms or emails: in such a case Botmind may only process personal data to the extent the consent of the End User had already been collected by the Customer, the Customer being the only responsible for obtaining the permission from End Users to use of their data via the Services.

The consent of the End User may be collected either through the cookies of the Customer's website, or at the latest immediately before a chat through the Software Service API begins.

5.3.2 Botmind undertakes not to extract or otherwise use such End User Data for any purpose other than the provision of the Services.

5.3.3 Botmind expressly acknowledges that the End User Data are the exclusive property of the Customer.

## 6 **Price & Payment**

### 6.1 **Services fees**

6.1.1 The conditions applicable to the remuneration and the invoicing of the Services are described in the Intent Order.

6.1.2 The price of the Services in force on the date of the order is indicated in euros taxes excluded and included.

6.1.3 The price is exclusively payable in euros (€).

6.1.4 The full amount of the price is due after confirmation of the order. The prices comprise the rebates that the Provider may apply.

### 6.2 **Invoices and payment**

Invoices will be sent, and payment will be due in accordance with the terms of the Agreement. If not stated otherwise in the Intent Order, invoicing and billing will be monthly.

## 7 **Proprietary Rights**

### 7.1 **Reservation of Rights**

7.1.1 All right, interest, and title in the Services, including all Intellectual Property Rights therein are and will remain property to Botmind. Botmind is the sole

owner of all the components of the Site, in particular, without limitation, of any text, file, picture, photography, video, logo, drawing, software, trademark, visual identity, database, structure of the Website and any other intellectual property item as well as any other data or information (the "**Elements**"), that are protected by French and international regulations applicable to intellectual property.

7.1.2 Customer acknowledges and agrees that it has no right or authorization over any of the Services except as expressly defined in this Terms of Use.

7.1.3 In particular, no Element of the Site may be amended, duplicated, copied, sold, transmitted, published, distributed, broadcasted, stored, used, leased or operated by any mean, for free or against consideration, by the Customer, and End User Data or by any third party, whatever the mean and support of use resorted to, known or unknown to date, without the prior approval of Botmind, the Customer being the sole responsible for the unauthorised use or exploitation.

## 7.2 **Feedback**

Botmind may use any suggestions, ideas, or feedback Customer may provide. By providing any suggestions to Botmind, Customer grants Botmind a worldwide, perpetual, transferable, non-revocable, sublicensable, royalty free, license to use the suggestion that Customer provides. Botmind may use this suggestion as it wishes that can include (but not limited) to modify and improve the Services.

## 7.3 **Customer Data**

7.3.1 Customer owns Customer content that Customer gathers, stores, provides or processes via the Service including End User Data (the "**Customer Data**").

7.3.2 Customer grants Botmind a worldwide, during the Term, a royalty-free license to access Customer Data to: (i) provide the Services; (ii) create Pattern Data and (iii) otherwise use anonymized Customer Data to improve the Service. This statement and Section 7.2 constitute the "Content License". Customer understands that Botmind, in order to provide the Services, may transmit or distribute Customer Data over various public or private networks and in various media; and make changes to Customer Data as are necessary to adapt that data to the technical requirements of connecting devices, networks, Services or media. Customer warrants Botmind that Customer has all the authority to grant the above Content License and that using the Content in the manner defined in these Terms of Service will not violate the rights of any third party.

7.3.3 This section is subject to the compliance of the GDPR requirements and of the undertakings set out in section 13 herein.

## 7.4 **Content Responsibilities**

Customer is responsible for all content provided to use the Services and for obtaining necessary consents and permissions to use all content provided to use the Services.

## 8 **Confidentiality**

### 8.1 **Definition of Confidential Information**

For the purpose of this Agreement, "**Confidential Information**" means all confidential and proprietary information of a party (the "**Disclosing Party**") disclosed to the other party (the "**Receiving Party**"), whether in writing or orally. This confidential information is defined such as (but not limited to) confidential given the nature of the information and the circumstances of disclosure, the Customer Data, including the terms and conditions of this

Agreement, the Service, the Bot, and technical, commercial, financial and/or strategic information, and designs and other information relating to the business of each party.

## 8.2 Use of Confidential Information

- 8.2.1 The Receiving Party shall not use or disclose any portion of Confidential Information from the Disclosing Party in any manner or for any purpose other than as necessary and/or appropriate in connection with the scope of this Agreement. for any intent outside the scope of this Agreement. The Confidential Information shall not be copied or reproduced without the prior express written permission of the Disclosing Party, except for such copies as may be absolutely necessary in order to perform the evaluation contemplated hereunder.
- 8.2.2 The Receiving Party shall not alter, modify, disassemble, decompile, reverse-engineer any Confidential Information, or otherwise attempt to discover the source code(s) or use any Confidential Information of the Disclosing Party in order to gain a competitive advantage.

## 8.3 Covenant of non-disclosure and Protection

- 8.3.1 Each party agrees to protect the Confidential Information of the other party in the same manner that it protects the confidentiality of its own confidential information.
- 8.3.2 At all times that the Receiving Party is in possession of Confidential Information, the Receiving Party shall (a) safeguard the Confidential Information from unauthorized use and disclosure; (b) disclose the Confidential Information to no one other than employees, Affiliates (and their employees) or independent contractors of Receiving Party with a need to know in order to perform the purpose of this Agreement; and (c) advise all such employees, Affiliates (and their employees) and independent contractors of their obligations with respect to the Confidential Information and be responsible for their breach of this Agreement.
- 8.3.3 For the purposes of this Agreement "Affiliate" shall mean any corporation, partnership, subsidiary, or other entity which, directly or indirectly, owns, is owned by, or is under common ownership with, such Party hereto, for so long as such ownership exists, and as long as at least fifty per cent (50%) of the outstanding shares, or securities, or other equity interests entitled to vote for the election of directors or other managing authority or governing body.
- 8.3.4 The Receiving Party shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Receiving Party uses to protect its own Confidential Information of a like nature.

## 8.4 Exclusions

- 8.4.1 The terms "**Confidential Information**" do not include information that (a) was lawfully in the Receiving Party's possession prior to its being provided by the Disclosing Party; (b) is or becomes a matter of public knowledge without a breach of this Agreement; (c) is rightfully received from a third party not having a duty or obligation to the Disclosing Party to maintain the confidentiality of said information; (d) is independently developed by the Receiving Party without use of or reliance upon the Confidential Information; (e) is disclosed under operation of law. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall (i) provide the Disclosing Party with prompt prior notice of an impending such

compelled disclosure pursuant to this sentence, (ii) provide reasonable assistance to the Disclosing Party in opposing or limiting the compelled or required disclosure and (iii) make only such disclosure as is compelled or required at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

8.4.2 The obligations of the Receiving Party under this Agreement will survive until all Confidential Information of the Disclosing Party becomes publicly known and made generally available through no action or inaction of the Receiving Party.

## 9 **Term and Termination**

### 9.1 **Term**

These Terms of Use in respect of use of the Service comes into effect on the commencement date set out in the Intent Order for an initial period ("**Initial Term**") set out in the Intent Order, unless terminated sooner in accordance with this Terms of Use.

### 9.2 **Renewal**

This Terms of Use will automatically renew for additional one (1) year terms (each a "**Renewal Term**") if Customer provides at least fifteen (15) calendar days written notice to Botmind, prior to a new term starting, stating its intention to renew the same.

### 9.3 **Suspension or Termination in Emergency**

Botmind shall have right to suspend or terminate this Terms of Use immediately in the event of an emergency infringing the operation of the Service, suspected fraud, enforcement by external authorities or regulatory requirement or on provision of at least ten (10) calendar days prior written notice to Customer of all other suspensions or terminations where practicable.

### 9.4 **Termination for convenience**

Botmind retains the right to terminate this Agreement at any time for convenience upon giving not less than sixty (60) calendar days advance written notice. On such termination Botmind shall refund all unused Fees that may have been prepaid by You.

If the Customer has elected, as set out in the Intent Order, an access to the Service for an indefinite duration, the Customer has the right to terminate this Agreement at any time for convenience upon giving not less than twenty four (24) hours advance written notice.

### 9.5 **Termination for cause**

Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party breaches any material obligation under this Agreement and fails to cure the breach within eight (8) calendar days after receipt of written notice of such breach.

### 9.6 **Effect of Termination**

9.6.1 Any termination of this Terms of Use (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

9.6.2 Upon termination of this Terms of Use, Customer shall, at Botmind's choice, return all Confidential Information of Botmind and any copies thereof or destroy or permanently delete all such Confidential Information and provide written certification that it has done so.

- 9.6.3 Upon termination of this Terms of Use, Botmind shall destroy or permanently delete all Confidential Information of Customer (including without limitation all End User Data and Customer Data) and any copies thereof and provide Customer a certificate of destruction or deletion, but excluding Pattern Data for which Botmind retains exclusive ownership. As a reminder, End User Data and Customer Data are the exclusive property of Customer.
- 9.6.4 Notwithstanding anything to the contrary herein, the obligation to return, destroy or permanently delete all copies of the Confidential Information of the other Party (including without limitation End User Data) does not extend to (i) automatically generated computer backups or archival copies on Parties' automatic backup systems, provided that such copies are held in accordance with the provisions of this Terms of Use for so long as they are retained, (ii) anonymized and aggregate Protected Information in each Party's possession and (iii) any backup required by any laws, judicial or administrative decisions or by any regulatory body or public administration.
- 9.6.5 The Customer acknowledges and agrees that, in the event that the termination of the Agreement would occur in the course of a given month, the amount paid to Botmind for this given month shall be retained in full by Botmind (without any prorata reimbursement being due by Botmind).

## 9.7 **Right of withdrawal**

The Customer acknowledges and agrees that, to the extent that it acts as a professional, it shall not benefit from any withdrawal period.

## 10 **Warranties and representations - Disclaimers, & Indemnification**

### 10.1 **Mutual Warranties**

Each Party represents, warrants to the other Party that: (i) it is a corporation, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; (ii) it has (and so has the signatory on its behalf) all requisite power and authority and approvals to execute, deliver and perform its obligations under this Terms of Use; (iii) the execution and delivery of this Terms of Use and the performance of its obligations hereunder have been duly authorized by it and any necessary third parties; and (iv) it will perform its duties and obligations hereunder in a careful, diligent, professional, proper, efficient and businesslike manner.

### 10.2 **Botmind Warranties**

- 10.2.1 Botmind represents and warrants to Customer that during the Term of this Terms of Use it will provide the Services in a manner consistent with any service levels or terms set out in this Terms of Use and consistent with commercially reasonable and customary industry standards. Botmind shall dedicate to the performance of this Agreement all the resources, capacities and competencies required to a satisfactory fulfilment of its obligations pursuant to this Agreement and shall do everything possible to ensure the effective operation and in a secure manner of Services and to the extent possible, provide Customer and End Users with the Services 24 hours a day, 7 days a week.
- 10.2.2 Notwithstanding the foregoing, Botmind does not warrant that use of the Services will be error-free, or uninterrupted or secure. In particular, the Customer acknowledges acknowledges that the Internet does not allow to warranty the absolute safety, availability and integrity of the data circulating through it. In particular, Botmind does not warranty that the Site and the Services will be running without any interruption nor malfunction. In particular, the operation of the Site may be interrupted for maintenance,



updated or technical improvement, or to amend the content or layout of the Site. Botmind shall do its best efforts to inform the Customer ahead of any planned interruption, the Customer acknowledging that some interruption may not be planned, in which case Botmind will not be in a position to inform the Customer in advance.

10.2.3 Botmind undertakes during the Term to comply with all laws and regulations applicable to its business activities.

10.2.4 Botmind warrants that (i) it holds all the Intellectual Property Rights that are necessary for the performance of the Agreement ; (ii) the use by Botmind of any material or elements protected by intellectual property laws does not infringe rights of third parties and (iii) the use of the Bot, Botmind's platform, trademarks and logos as well as the access to and use of Services by Customer and End Users do not infringe the rights of any third party in any way.

### 10.3 **Disclaimer**

Except as specifically set out herein the Services are provided "As is", without any representation and/or warranty of any kind. Botmind makes no other representations and give no other warranties, express, implied, statutory, or otherwise regarding the services provided under this Agreement and Botmind specifically disclaims any and all statutory representations and/or warranties against non-infringement and any and all implied representations and/or warranties of merchantability, durability, title and fitness for a particular purpose to the maximum extent permitted by applicable law.

### 10.4 **Mutual indemnification**

Each party agrees to indemnify, defend and hold the other party and its representatives harmless from all losses arising out of its gross negligence or willful misconduct (including, without limitation, fraud or any other unlawful act) in performing its obligations pursuant to this agreement or, in the case of customer, in its use of the services.

### 10.5 **Indemnity for end user claims**

Customer shall keep Botmind, both during the term and after expiration of this agreement, fully and effectively indemnified against all losses, claims, damages, liabilities, costs and expenses (in particular any legal fees) incurred by or imposed upon Botmind as a consequence of any award or judgment in favor of an end user of customer arising in connection with the Services (save where such claim would otherwise be indemnified under this Agreement).

### 10.6 **Indemnity for security breach claims**

Each party (the "**Indemnifying party**") shall keep the other party (the "**Indemnified party**") fully and effectively indemnified against all direct losses, claims, damages, liabilities, costs and expenses incurred by or imposed upon the indemnified party arising out of the disclosure to or access by an unauthorized third party of end user data (a "**Security breach**") as a result of a breach of the terms of this Agreement by the indemnifying party or otherwise due to the indemnifying party's willful misconduct or gross negligence.

### 10.7 **Indemnity by Botmind**

Botmind shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the Intellectual Property Rights of a third party, and shall indemnify Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by, Customer in connection with any such claim; provided that Customer(a) promptly gives Botmind written notice of the claim; (b) gives Botmind sole control of the defense and settlement of the claim; and (c) provides to Botmind all reasonable assistance, at Botmind's expense.

## **11 Limitation of Liability and Indemnification**

### **11.1 Indemnification**

11.1.1 Botmind's liability vis-à-vis the Customer may only be triggered on the basis of facts directly attributable to Botmind that would cause to the Customer a prejudice directly incurred by such facts. Such liability is strictly limited to the indemnification of the direct damages evidenced by the Customer and in any event capped to the amount provided in this Agreement.

11.1.2 The liability of the Provider shall in particular be excluded in the following circumstances:

- (i) indirect damages;
- (ii) force majeure;
- (iii) prejudice resulting of misuse of the Site by the Customer or from any breach of the Customer of its contractual undertakings;
- (iv) facts attributable to a third party and any End User.

### **11.2 Limitation on indirect and economic liability**

Neither party shall be responsible for any other person's or entity's errors, acts, omissions, failures to act, negligence or intentional conduct to the extent permitted by applicable law particularly in respect of vicarious liability, including without limitation entities such as either party's Affiliates, subsidiaries, agents or subcontractors. In no event shall either party be liable for any indirect and/or economic consequential, incidental, punitive or special damages (including but not limited to any financial or commercial loss, loss of profit, production loss, loss of data), which either party or end users, Affiliates, parent companies, associates, agents, officers, directors or employees may incur or suffer in connection with this agreement, resulting from either party's acts or omissions pursuant to this agreement. Notwithstanding the foregoing, Botmind is the only responsible for Botmind's platform and Bot. Botmind undertakes to assume all related claims as well as all disputes or disagreements that might arise with any administrative or judicial authorities or any third parties in connection or in relation with Botmind's platform and/or Bot.

### **11.3 Limitation on amount of liability**

To the maximum extent permitted by applicable law, each party's aggregate liability for all claims relating to this agreement shall not exceed the equivalent of the fees paid by customer to Botmind in the previous three (3) months preceding the claim.

### **11.4 Exceptions to Limitations**

No limitation of liability is applicable to breaches of confidentiality obligations set out herein or to any violation of a party's Intellectual Property Rights by the other party.

## **12 Miscellaneous**

### **12.1 Support**

Botmind will provide support to Customer in accordance with the terms in the Technical Support Agreement provided by Botmind to the Customer, that is deemed accepted by the Customer. Customer is solely responsible for providing all support and technical assistance to its End Users with respect to the Services. Customer acknowledges and agrees that Botmind has no obligation to provide support or technical assistance directly to the End Users of Services and Customer shall not represent to any such End Users that Botmind is available to provide such support. Customer agrees to use commercially reasonable efforts to provide reasonable support to End Users of the Services.

## 12.2 **Governing Law and Jurisdiction**

This Terms of Use shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of France without reference to its choice of law rules. Each of the Parties hereto hereby attorns to the non-exclusive jurisdiction of the courts of Paris, France.

## 12.3 **Assignment**

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, each party may assign this Agreement in its entirety, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its stock or assets. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

## 12.4 **References**

The Customer expressly authorises Botmind to indicate the name and logo of the Customer as a commercial reference on any communication support (publication, website, quotation, press release, internal communication, etc.).

## 12.5 **Binding Nature of Agreement**

This Terms of Use shall ensure to the benefit of and shall be binding upon the Parties hereto together with their successors and permitted assigns.

## 12.6 **Document hierarchy**

The Intent Order and the Technical Support Agreement form an integral part of the Agreement. The parties expressly acknowledge and agree that in the event of any conflict between the terms of this Agreement and the terms of an Intent Order, the terms of the latter shall prevail.

## 12.7 **Amendments, Waiver**

The terms of service applicable to the Customer for a given order are those available on such date. It is therefore specified that any amendment of the terms of service shall not apply to any order placed before such amendment, unless prior approval of the Customer.

## 12.8 **Validity - Entirety**

12.8.1 In the event that one of the provisions herein would be invalid or unenforceable under a law or a regulation or under an enforceable decision of a competent court or administrative authority, this provision shall be void and the other provisions herein shall remain in full force and effect.

12.8.2 The fact that one of the parties did not require the application of whole or part of the commitments herein, permanently or temporarily, shall not be construed as modification of these provisions and shall not establish some right over the other.

## 12.9 **Further Assurances**

The Parties covenant and agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Terms of Use in accordance with their true intent.

## **12.10 Claims processing**

In the event of any claim, please contact in priority:

Christophe Chevalier

Phone number: +(33) 6 23 23 25 06

Email: legal@botmind.io

## **12.11 Survival**

Provisions of this Agreement, which by their terms or nature are to survive expiration or termination of this Agreement will survive the expiration or earlier termination of this Agreement.

## **13 Personal data**

### **13.1 General provisions**

The purpose of this section is to define the conditions in which the processor (Botmind) undertakes to carry out, on the controller's behalf (the Customer), the personal data processing operations defined below.

As part of their contractual relations, the parties undertake to comply with the applicable regulations on personal data processing and, in particular, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 which is applicable from 25 May 2018 (hereinafter the "**General Data Protection Regulation**" or "**GDPR**").

### **13.2 Description of processing**

The details of the processing operations, in particular the categories of personal data and the purposes of processing for which the personal data is processed on behalf of the controller, are specified in Schedule A.

The processing operations shall not cover sensitive personal data as defined under article 9 of the GDPR, in particular: personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation, or data relating to criminal convictions and offences.

Consequently, Botmind is not allowed to collect and process such personal data.

### **13.3 Obligations of the Parties**

#### Instructions

The processor shall process personal data only on documented instructions from the controller, unless required to do so by Union or Member State law to which the processor is subject. In this case, the processor shall inform the controller of that legal requirement before processing, unless the law prohibits this on important grounds of public interest. Subsequent instructions may also be given by the controller throughout the duration of the processing of personal data. These instructions shall always be documented.

The processor shall immediately inform the controller if, in the processor's opinion, instructions given by the controller infringe Regulation (EU) 2016/679 / Regulation (EU) 2018/1725 or the applicable Union or Member State data protection provisions.

#### Purpose limitation

The processor shall process the personal data only for the specific purpose(s) of the processing, as set out in Schedule A, unless it receives further instructions from the controller.

#### Duration of the processing of personal data

Processing by the processor shall only take place for the duration specified in Schedule A.

#### Security of processing

The processor shall at least implement the technical and organisational measures specified in Schedule B to ensure the security of the personal data. This includes protecting the data against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to the data (personal data breach). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purposes of processing and the risks involved for the data subjects.

The processor shall grant access to the personal data undergoing processing to members of its personnel only to the extent strictly necessary for implementing, managing and monitoring of the contract. The processor shall ensure that persons authorised to process the personal data received have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

#### Documentation and compliance

The parties shall be able to demonstrate compliance with the data protection-relating requirements set forth herein.

The processor shall deal promptly and adequately with inquiries from the controller about the processing of data in accordance with this section.

The processor shall make available to the controller all information necessary to demonstrate compliance with the obligations that are set out in this section and stem directly from Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725. At the controller's request, the processor shall also permit and contribute to audits of the processing activities covered by this section, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or an audit, the controller may take into account relevant certifications held by the processor.

The controller may choose to conduct the audit by itself or mandate an independent auditor. Audits may also include inspections at the premises or physical facilities of the processor and shall, where appropriate, be carried out with reasonable notice.

The Parties shall make the information referred to in this section including the results of any audits, available to the competent supervisory authority/ies on request.

### Use of sub-processor

The processor has the controller's general authorisation for the engagement of sub-processors from an agreed list. The processor shall specifically inform in writing the controller of any intended changes of that list through the addition or replacement of sub-processors at least ten (10) calendar days in advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the concerned sub-processor(s). The processor shall provide the controller with the information necessary to enable the controller to exercise the right to object.

Where the processor engages a sub-processor for carrying out specific processing activities (on behalf of the controller), it shall do so by way of a contract which imposes on the sub-processor, in substance, the same data protection obligations as the ones imposed on the data processor in accordance with this section. The processor shall ensure that the sub-processor complies with the obligations to which the processor is subject pursuant to this section and to Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.

At the controller's request, the processor shall provide a copy of such a sub-processor agreement and any subsequent amendments to the controller. To the extent necessary to protect business secret or other confidential information, including personal data, the processor may redact the text of the agreement prior to sharing the copy.

The processor shall remain fully responsible to the controller for the performance of the sub-processor's obligations in accordance with its contract with the processor. The processor shall notify the controller of any failure by the sub-processor to fulfil its contractual obligations.

The processor shall agree a third-party beneficiary clause with the sub-processor whereby - in the event the processor has factually disappeared, ceased to exist in law or has become insolvent - the controller shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

### International transfers

Any transfer of data to a third country or an international organisation by the processor shall be done only on the basis of documented instructions from the controller or in order to fulfil a specific requirement under Union or Member State law to which the processor is subject and shall take place in compliance with Chapter V of Regulation (EU) 2016/679 or Regulation (EU) 2018/1725.

The controller agrees that where the processor engages a sub-processor in accordance with this section for carrying out specific processing activities (on behalf of the controller) and those processing activities involve a transfer of personal data within the meaning of Chapter V of Regulation (EU) 2016/679, the processor and the sub-processor can ensure compliance with Chapter V of Regulation (EU) 2016/679 by using standard contractual clauses adopted by the Commission in accordance with of Article 46(2) of Regulation (EU) 2016/679, provided the conditions for the use of those standard contractual clauses are met.

#### **13.4 Assistance to the controller**

(a) The processor shall promptly notify the controller of any request it has received from the data subject. It shall not respond to the request itself, unless authorised to do so by the controller.

(b) The processor shall assist the controller in fulfilling its obligations to respond to data subjects' requests to exercise their rights, taking into account the nature of the processing. In fulfilling its obligations in accordance with (a) and (b), the processor shall comply with the controller's instructions

(c) In addition to the processor's obligation to assist the controller pursuant to paragraph (b), the processor shall furthermore assist the controller in ensuring compliance with the following

obligations, taking into account the nature of the data processing and the information available to the processor:

(1) the obligation to carry out an assessment of the impact of the envisaged processing operations on the protection of personal data (a 'data protection impact assessment') where a type of processing is likely to result in a high risk to the rights and freedoms of natural persons;

(2) the obligation to consult the competent supervisory authority/ies prior to processing where a data protection impact assessment indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk;

(3) the obligation to ensure that personal data is accurate and up to date, by informing the controller without delay if the processor becomes aware that the personal data it is processing is inaccurate or has become outdated;

(4) the obligations in Articles 33 and 36 to 38 of Regulation (EU) 2018/1725.

(d) The Parties shall set out in Schedule B the appropriate technical and organisational measures by which the processor is required to assist the controller in the application of this Section as well as the scope and the extent of the assistance required.

### **13.5 Notification of personal data breach**

In the event of a personal data breach, the processor shall cooperate with and assist the controller for the controller to comply with its obligations under Articles 33 and 34 of Regulation (EU) 2016/679 or under Articles 34 and 35 of Regulation (EU) 2018/1725, where applicable, taking into account the nature of processing and the information available to the processor.

#### Data breach concerning data processed by the controller

In the event of a personal data breach concerning data processed by the controller, the processor shall assist the controller:

- in notifying the personal data breach to the competent supervisory authority/ies, without undue delay after the controller has become aware of it, where relevant/(unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons);
- in obtaining the following information which, pursuant to Article 33(3) of Regulation (EU) 2016/679 or Article 34(3) of Regulation (EU) 2018/1725, where applicable, shall be stated in the controller's notification, and must at least include: (i) the nature of the personal data including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned; (ii) the likely consequences of the personal data breach; (iii) the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects ;

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

- in complying, pursuant to Article 34 of Regulation (EU) 2016/679 or Article 35 of Regulation (EU) 2018/1725, where applicable, with the obligation to communicate without undue delay the personal data breach to the data subject, when the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons.

#### Data breach concerning data processed by the processor

In the event of a personal data breach concerning data processed by the processor, the processor shall notify the controller without undue delay after the processor having become aware of the breach. Such notification shall contain, at least:

- a description of the nature of the breach (including, where possible, the categories and approximate number of data subjects and data records concerned);
- the details of a contact point where more information concerning the personal data breach can be obtained;
- its likely consequences and the measures taken or proposed to be taken to address the breach, including to mitigate its possible adverse effects.

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

The Parties shall set out in Schedule B all other elements to be provided by the processor when assisting the controller in the compliance with the controller's obligations under Articles 33 and 34 of Regulation (EU) 2016/679 or Articles 34 and 35 of Regulation (EU) 2018/1725, where applicable.

### **13.6 Non-compliance with the data protection-related requirements and termination**

Without prejudice to any provisions of Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725, in the event that the processor is in breach of its obligations under this section, the controller may instruct the processor to suspend the processing of personal data until the latter complies with this section or the contract is terminated. The processor shall promptly inform the controller in case it is unable to comply with this section, for whatever reason.

The controller shall be entitled to terminate the contract insofar as it concerns processing of personal data in accordance with this section if:

- the processing of personal data by the processor has been suspended by the controller pursuant to point (a) and if compliance with this section is not restored within a reasonable time and in any event within one month following suspension;
- the processor is in substantial or persistent breach of this section or its obligations under Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725;
- the processor fails to comply with a binding decision of a competent court or the competent supervisory authority/ies regarding its obligations pursuant to this section or to Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.

The processor shall be entitled to terminate the contract insofar as it concerns processing of personal data under this section where, after having informed the controller that its instructions infringe applicable legal requirements in accordance with this section, the controller insists on compliance with the instructions.

Following termination of the contract, the processor shall, at the choice of the controller, delete all personal data processed on behalf of the controller and certify to the controller that it has done so, or, return all the personal data to the controller and delete existing copies unless Union or Member State law requires storage of the personal data. Until the data is deleted or returned, the processor shall continue to ensure compliance with this section.

### **13.7 Treatment of the personal data**

Upon termination of the personal data processing, each party undertakes to send back to the other party or destroy all the personal data relating to the given assignment. The given party will notify the completion of the destruction of the personal data.



### **13.8 Data protection officer**

- 13.8.1 Each party shall notify to the other party the name and contact details of its data protection officer, if it has appointed one.
- 13.8.2 The Customer shall notify to Botmind the list of its employees that are authorised to give instructions to Botmind in connection with personal data. Botmind shall then only take into account the requests of such employees and shall reject the requests made by any other person (and shall inform the Customer and its DPO of the same).

### **13.9 Data processing activities register**

The processor states that it maintains a written record of all categories of processing activities carried out on behalf of the controller, containing the information detailed in section 30 of the GDPR, and held in accordance with GDPR requirements.

### **13.10 Assistance undertakings**

- 13.10.1 Botmind undertakes to assist the Customer to comply with the legal requirements contained in the GDPR and any other data protection-related regulation. Botmind shall answer in a reasonable timeframe to any request from the Customer. Where the data subjects submit requests to the processor to exercise their rights, the processor must forward these requests within 7 days as from their receipt by email to the Customer.
- 13.10.2 Botmind undertakes to assist the Customer in assessing to which extent a data protection impact assessment in connection with data protection is necessary for the purpose of processing the Customer's personal data.
- 13.10.3 If the Customer considers that a data protection impact assessment is to be completed, Botmind shall assist the Customer upon this latter's request. Botmind shall be entitled to a fair and adequate financial compensation for such service.

### **13.11 Warranties**

- 13.11.1 Botmind shall be responsible for and shall hold the Customer harmless of any amount that may have to be paid by the Customer in connection with a violation from Botmind of its undertakings in connection with the GDPR.
- 13.11.2 The amount that may have to be paid by Botmind in connection with any breach shall be capped to the amount covered by the insurance policy.
- 13.11.3 Botmind shall subscribe an adequate insurance policy covering all the damages that may result from its breach of its undertakings under this Agreement, in particular any GDPR-related damages.

### **13.12 End users' rights**

Botmind shall provide to the end users the requisite information as to their personal data collection and processing upon the collection of their personal data, in particular through the privacy policies set out on their website(s).

### **13.13 Customer's obligations with respect to Botmind**

The controller undertakes to, in particular (i) document, in writing, any instruction bearing on the processing of data by the processor, (ii) ensure, before and throughout the processing, compliance with the obligations set out in the General Data Protection Regulation on the processor's part and (iii) supervise the processing, including by conducting audits and inspections with the processor.



## **Schedule A**

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### **Description of the processing**

1/ Categories of data subjects whose personal data is processed

Customer's website visitor and existing customers

2/ Categories of personal data processed

Navigation history, IP, civility, email, last orders, last ordered products, shipping and billing addresses, returns, favourites items, sent messages to Customer

3/ Nature of the processing

Storage, transfer to other Customer's sub processors

4/ Purpose(s) for which the personal data is processed on behalf of the controller

Processing this data allows the Services to understand Customer's visitors and existing customers request and to provide a specific answer based on the personal context of every requester

5/ Duration of the processing

The processing lasts for less than 24 hours and the duration of the storage depends on the nature of the data

## **Schedule B**

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### **Security of processing**

Botmind undertakes to in particular put in place the following organisational and technical safety measures:

- Means allowing to ensure the confidentiality (data pseudonymisation, encryption, etc.), the integrity, availability and permanent resiliency of the processing systems and services;
- Means allowing to restore the availability of the personal data and access to such data within an appropriate timeframe in the event of material or technical issue;
- Process allowing to regularly test, analyse and evaluate the efficiency of the technical and organizational safety in place to ensure the safety of the data processing.
- Only make the personal data available to its officers duly authorised on the basis of their functions and role, to the extent strictly necessary to the due performance of their functions (need to know basis).

Such measures shall comply with the GDPR provisions.