

TERMS & CONDITIONS

The parties covenant and agree as follows:

1. Definitions & Interpretation

In this document:

"Agreement" means any agreement signed by both the Customer and Consultant setting out the basis of engagement, excluding specifically documents described under clause 12.3

"Claim Period" means the period commencing on the Commencement Date and ending 60 days after the date of Final Completion or earlier termination (as the case may be).

"Claim Requirements" has the meaning ascribed by clause 10.6.

"Customer" means the **Person** (with special regard to clause 1.2) engaging the Consultant to provide the Services.

"Commencement Date" means the date set out in the Governing Document and noted as such.

"Completed Order" means an order completed and fully paid online or via a telecommunications device (using the broadest possible definition) with the Consultant, or through a website or app controlled by the Consultant. This excludes any scenario where another the order is through another entity or acts as an agent for the Consultant.

"Components" has the meaning given in clause 5.2.

"Consultant" means 2THINKNOW® of Level 18, 175 Eagle St, BRISBANE, QLD 4000 (or as at 2thinknow® current registered office with the Australian Securities and Investment Commission) and reachable via registered mail at same.

"Consultant's Liability" means any and all liability for damage, loss, cost or expense (of whatsoever nature and including without limitation liability in contract, tort and under statute) that the Consultant, its officers, employees, agents or any of them may have to the Customer arising out or relating to this document, the Project or the provision of the Services.

"End-Client" is defined as a single Person (with special regard to clause 1.2) who is a client or prospective client of the Customer, where the Customer is engaged in the field of research and/or consulting as their primary line of business.

"Final Completion" means completion of the Project.

"Force Majeure" means any circumstance not within the reasonable control of the party affected by it which results in the party not being able to observe or perform on time one of its obligations pursuant to this document and includes an act of God, an industrial dispute, war declared or undeclared, civil disturbance, act or omission of government or other competent authority, fire, lightning, explosion or flood.

"Governing Document" means an Agreement, and in the absence of the Agreement a Proposal; and in the absence of a Proposal an online Completed Order.

"GST" means the goods and services tax as imposed by the GST Law, however this is relevant only to Customers purchasing goods or services for utilization and/or consumption within Australia.

"GST Law" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* and includes all regulations and associated legislation and delegated legislation.

"License Agreement" refers to any text attached to the Works provided to the Customer with this label (or a similar label), when the Works are provided to the Customer

"Notification Period" means the period commencing on the Commencement Date and ending 60 days after the date of Final Completion or earlier termination (as the case may be).

"Notification Requirements" has the meaning ascribed by clause 10.5.

"Pricing" means remuneration paid or required to be paid by the Customer to the Consultant as set out in the pricing table or 'Schedule of Invoices' section in the Governing Document.

"Project" means the project which is defined in the Governing Document, the result of which includes the Works.

"Proposal" means the most current scope, project plan, fees schedule and other documents (whether in paper, electronic or other format) entitled as "Proposal" and provided with this document (the duration or effort involved shall not modify this definition).

"Schedule of Invoices" refers to any such titled section (or reasonable facsimile thereof) in the Government Document; or failing such a section, the total remuneration paid (or to be paid) to the Consultant for the provision of the Works.

"Special Conditions" mean changes to these terms within the Governing Document or attached to the Governing Document as another document signed by both the Customer and Consultant representatives.

"Services" means the services to be performed by the Consultant which are described in the Governing Document and all other services which the Consultant may at any time reasonably deem necessary or desirable to be performed for the purposes of achieving the Project (the duration or effort involved shall not modify this definition).

"Works" has the meaning given in clause 6.1.

- 1.1. References to the singular shall include the plural and vice versa and references to any gender shall include the other genders.
- 1.2. References to a person includes a firm, body corporate, body politic, unincorporated association or authority.
- 1.3. References to a statutory enactment or law shall mean and be construed as references to that enactment or law as amended or modified or re-enacted from time to time or at any time and any such reference shall also include any rules, by-laws, regulations, ordinances and orders made pursuant to any such statutory enactment or law.
- 1.4. References to a party include that party's successors, legal personal representatives, nominees, administrators, substitutes and permitted assigns.
- 1.5. Headings, formatting and marginal notes are included for convenience and shall not be construed as affecting the interpretation of this document.
- 1.6. If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day or of the day of that act or event.
- 1.7. A reference to "at any time" includes from time to time and vice versa.
- 1.8. A reference to a clause, schedule, annexure, appendix or exhibit is a reference to a clause of or schedule, annexure, appendix or exhibit to, this document.
- 1.9. A reference to payments to any party to this document include payments to another person upon the direction of such party.
- 1.10. A reference to time is to local time in Melbourne, Australia, unless otherwise noted in the context of the reference.
- 1.11. References to any document or agreement (including this document) includes references to that document or agreement as amended, varied, supplemented or replaced at any time.
- 1.12. A reference to a "month" means a calendar month.
- 1.13. No rules of construction shall apply to the disadvantage of one party on the basis that that party put forward this document.
- 1.14. Any expression used that is defined in the GST Law has that defined meaning unless provided otherwise.

2. Consultant's appointment

- 2.1. The Customer engages the Consultant to provide the Services as an independent Consultant to the Customer. The Consultant accepts the engagement and agrees to provide the Services in accordance with this document.
- 2.2. The Consultant may engage subcontractors to perform the whole or any part of the Services.

3. Period of Engagement and Termination

- 3.1. The Consultant may, after the Commencement Date but prior to commencing to provide the Services, and without ascribing any reason, notify the Customer that the Consultant declines the engagement, whereupon this document shall terminate with immediate effect. In this case, any prior payments made by the

Customer shall be refunded by the Consultant within 14-30 days after notification.

- 3.2. The period of engagement of the Consultant under this document is from the Commencement Date (notwithstanding that this document may have been executed on a later date) until Final Completion or earlier termination as provided for in this document.
- 3.3. The Consultant may terminate this document with immediate effect on written notice:
 - 3.3.1. if the Customer fails to pay the fees & charges (specified in clause 4 or any other amounts due under this document) to the Consultant by the due date for payment, or if the Customer commits any breach of **clause 5.1**.
 - 3.3.2. if the Customer ceases or threatens to cease to carry on its business or a material part of its business, goes into liquidation, or enters into any arrangement, or compromise with, or assignment for, the benefit of its creditors including a personal insolvency agreement;
 - 3.3.3. if a receiver, liquidator or similar officer is appointed over any material part of the assets or undertaking of the Customer;
 - 3.3.4. if the Consultant forms a reasonable view that the Customer may not pay bills as and when they fall due.
- 3.4. The Customer may terminate the Project via written notice with effect within one (1) business days after receipt of such notice by the Consultant:
 - 3.4.1. if the Consultant commits a breach of any of its obligations hereunder and fails to remedy the same (if remediable) within 14 days following clearly verified receipt in writing (including via email) of a request to do so by the Customer;
 - 3.4.2. if any of the Consultant's representations or warranties are found by a court of competent jurisdiction to be knowingly false;
 - 3.4.3. if the Consultant ceases or threatens to cease to carry on its business or a material part of its business, goes into liquidation, or enters into any arrangement, or compromise with, or assignment for, the benefit of its creditors including a personal insolvency agreement;
 - 3.4.4. if a receiver, liquidator or similar officer is appointed over any material part of the assets or undertaking of the Consultant;

paying any current and future reasonable costs incurred by the Consultant as a result of such termination.
- 3.5. In the event of termination under **clauses 3.4.1 or 3.4.2**, the Customer shall receive a pro-rata refund of any work paid but not done to a professional standard, and any travel costs not yet incurred by the Consultant.
- 3.6. The Customer may terminate the Project via written notice with effect within five (5) business days after receipt of such notice by the Consultant:
 - 3.6.1. if at the conclusion of a Phase (as defined in the Proposal) the Customer has changed requirements they could not reasonably foresee;
 - 3.6.2. if the Customer is dissatisfied in any way with any non-remediable part of the provided Deliverables.
- 3.7. In the event of termination under **clauses 3.6.1. and 3.6.2** the Consultant may make reasonable requests to ensure that their business is not negatively impacted (including recovering any travel costs if applicable), and after this, the Consultant will waive any obligation to a future Phase and future pre-payments under the Proposal.
- 3.8. Termination of this document will not affect any rights of the parties accrued to them up to the date of termination.

4. Fees & charges

- 4.1. The Customer shall pay the Consultant the remuneration set out in the "Pricing" which typically will include all foreseeable costs and charges to the Customer.
- 4.2. For any Services priced in the Governing Document at a unit price (e.g. per data point or indicator), such price contains consideration for license of those units for a specific Use Case defined in the Governing Document (with specific regard to clause **6.2.1.**). Any additional Use Case(s) by the Customer may require additional payment, at the Consultant's direction.
- 4.3. For any other exceptional services or provisions required by the Customer additional to the "Scope" set out in the Governing Document, the Customer shall be charged all time necessarily or reasonably spent by the Consultant and its employees, agents and subcontractors in relation to the Project, regardless of whether the activity engaged in is specifically noted in the Governing Document and including (but not limited to) all reasonable planning, administration and travel time.
- 4.4. For travel requested in writing by the Customer (but not explicitly described as included in the Governing Document) the Customer shall reimburse the Consultant. Reasonable travel charges shall apply to each occasion where attendance is required or requested at locations other than the Consultant's premises.
- 4.5. Any and all references in the Governing Document to:
 - 4.5.1. the overall cost of the Project or of the Services;
 - 4.5.2. the cost of any part of either of them; and
 - 4.5.3. any timetable or schedule for the delivery of the Project or the Services or any part of them;

are based on the information provided by the Customer to the Consultant at the time of preparing the Governing Document.
- 4.6. The Customer shall pay the Consultant's invoices according to the Schedule of Invoices.
- 4.7. The Customer shall pay each of the Consultant "Invoice" within 7 days of the date of the Consultant issuing the invoice, except as otherwise mutually agreed in writing. In addition to any other rights of the Consultant, remuneration remaining unpaid for 40 or more days after the date of invoice shall attract interest at the rate from time to time fixed under the *Penalty Interest Rates Act 1983* (Vic). The Consultant will charge labor costs at hourly rates for the collection of overdue invoices.
- 4.8. The Consultant's remuneration shall be paid in full without deduction and are not subject to any set-off.
- 4.9. Any document bearing the word 'Invoice' or 'Order Form' (or reasonable facsimile thereof) issued by the Consultant, and attached to these terms forms an "Invoice" for the purposes of **clause 4.7**
- 4.10. Notwithstanding the foregoing **clauses 4.2, 4.3 and 4.4** the Governing Document sets out the price for the "Scope" described. The Consultant will inform the Customer via email as soon as is reasonably practicable of variations to Pricing.
- 4.11. The Customer may be charged currency conversion fees.
- 4.12. Without limiting the generality of **clause 4.5**, the Customer acknowledges that the Consultant may need to cancel or delay and reschedule milestones or the delivery of the Services or of particular services due to a multitude of unanticipated events including (but not limited to):
 - 4.12.1. illness or other unavailability of key staff;
 - 4.12.2. under-estimation of Project hours (if applicable);
 - 4.12.3. computer viruses and/or computer security issues;
 - 4.12.4. technical or computer networking issues; and
 - 4.12.5. failure of back-up devices or electronic media;

and the Customer agrees that the Consultant may so cancel or delay and reschedule without incurring any liability to the Customer in respect of same.

5. Customer's data and testing obligations

5.1. The Customer must:

- 5.1.1. disclose to the Consultant any and all information which a reasonable person would consider necessary to be disclosed to the Consultant in order for the Consultant to properly provide the Services;
- 5.1.2. as and when requested by the Consultant, provide any information reasonably required by the Consultant for the purposes of the Project;
- 5.1.3. provide to the Consultant all assistance commercially reasonably necessary in order for the Consultant to properly provide the Services;

and warrants that all files, documentation, information or the like provided or disclosed pursuant to this **clause 5.1** (and the sub-clauses) shall be true and accurate.

- 5.2. The Customer is responsible to review and check thoroughly (both at the time of delivery and in an ongoing fashion) the explicit result of all Services provided by the Consultant to the Customer, including but not limited to data, documents, costs, models, theorems, designs, concepts, logical or conceptual constructs, methodologies, consulting advice, business processes, knowhow, recommendations, spreadsheets, databases, forms, programming, technical works, computing advice, reports, outputs, calculations, formulas or functions, documentation and any other component of the Project or part thereof (collectively "**Components**") and regardless of the evaluation, testing, internal reviews &/or data cross-checks which may have been completed by the Consultant as part of the Services or for the purposes of the Project.
- 5.3. The Customer acknowledges that the Consultant relies on thorough and realistic review or checks by the Customer of any component or combination thereof provided and on honest and complete feedback from the Consultant in determining the ability of any component or combination to meet the needs of the Customer, and for the Project to satisfy the needs of the Customer.
- 5.4. The Customer shall ensure that, other than is necessary to fulfill its obligations under **clauses 5.2 and 5.3**, neither the Customer nor any person other than the Consultant shall modify, change or adapt any Works of the Consultant until after Final Completion. This includes, but is not limited to, benchmark scores or any statistical data.
- 5.5. The Customer warrants that they will not materially alter, change, edit and/or distort (or in any way otherwise intentionally misrepresent) the meaning of the Consultant's work in any way.
- 5.6. The Consultant shall not (to the extent permissible by law) be liable for any loss or damage suffered by the Customer in connection with the Project where and to the extent that such loss or damage could have been avoided or reduced had the Customer complied with its obligations under **clauses 5.2, 5.3, 5.4 and 5.5**.

6. Intellectual property & license

- 6.1. The Consultant shall retain title to all intellectual property in all data, inventions, processes, concepts, ideas, methodologies, structures, constructs, diagrams, terminology, processes, materials, documents, files, software and other items prepared, created or otherwise developed by the Consultant pursuant to this document (the "Works").
- 6.2. In consideration of the Customer's agreement to pay the fees and charges set out in **clause 4** of this document (and for no additional consideration), the Customer is granted a perpetual, paid-up, non-exclusive license to use such of the Works:
 - 6.2.1. as are provided to the Customer for the purposes of the Use Case of the Customer for the Works specifically described in the Governing Document;
 - 6.2.2. and sharing with a single End-Client of the Customer, provided that:

- 6.2.2.1. the Customer is engaged in a widely recognized field of research and/or consulting;
- 6.2.2.2. The Customer ensures any attribution and/or supplied license remains affixed to data supplied to the End-Client.

- 6.2.3. Strategic use for the Customers primary line of business within the company, with otherwise no intellectual or other rights in relation to the Works;
- 6.2.4. Also, the Customer may distribute portions of the Works internally within it and its wholly-owned subsidiaries in a similar line of business (where such subsidiaries are not in competition with the Consultant), who may incorporate insubstantial portions, extracts, abstracts or summaries thereof into presentations internally, so long as the Consultant is always identified as a source of information, and this is preserved on all digital or printed variations;
- 6.2.5. Otherwise, to share the Works only subject to specific licensing guidance explicitly written and issued from the Consultant, made available to the Customer from time to time, either as a License Agreement or explicitly approved in writing via email from a Director of the Consultant for which consideration must be negotiated.
- 6.2.6. Notwithstanding the meaning of the foregoing, for the avoidance of doubt **clauses 6.2.2 - 6.2.5** inclusive are subordinate to clause 6.2.1, the Use Case. In describing the Use Case of the Customer (which may include sharing the Services to the End Client), this will always take precedent over the subordinate clauses.
- 6.2.7. For the further avoidance of doubt, the Customer may pursuant to **clauses 6.2.2 - 6.2.5** inclusive use any data points disguised in a published single study or a report, so long as the Consultant is always identified as a source of information, and this is preserved on all digital or printed variations. Any further clarification will be provided in writing via email by a Director of the Consultant.

- 6.3. **Clause 6.2** may be only varied by mutual agreement in writing under Special Conditions section within the Governing Document, or otherwise attached to the Governing Document and signed by both Consultant and Customer.
- 6.4. Any data provided by the Consultant to the Customer is available in at least one recognized jurisdiction &/or commercially licensed data &/or created as directed by 2thinknow. It is not the Consultant's intent to use any private or commercially sensitive data, however secrecy laws vary by jurisdiction, and the Customer is responsible for the laws of their own jurisdiction.
- 6.5. Each of the obligations set out in **clauses 6.1., 6.2. and 6.3.** (and their sub-clauses) constitutes an independent and separate obligation. If any such obligation is determined to be invalid or unenforceable for any reason, this shall not affect the validity or enforceability of the other obligations.

7. Non-solicit obligation

- 7.1. Neither party shall on its own behalf (including jointly) or on behalf of any other person during the whole of the term created by this document (being the period created by this document and commencing on the Commencement Date) and for a period of:
 - 7.1.1. 12 months;
 - 7.1.2. 6 months;
 - 7.1.3. 3 months;
 after the day of Final Completion or earlier termination of this document (as the case may be) directly or indirectly seek to solicit away from the Consultant any person who is at any time during the term of this document an employee, contractor or supplier of the Consultant and is a person with whom the Customer had dealings for the purposes of the Project.

- 7.2. after the day of Final Completion or earlier termination of this document (as the case may be) directly or indirectly seek to solicit away from the other party any person who is at any time during the term of this document an employee, contractor or supplier of the other party and is a person with whom the first party had dealings for the purposes of the Project.
- 7.3. Each of the obligations set out in **clauses 7.1.1 to 7.1.3** inclusive constitutes an independent and separate obligation. If any such obligation is determined to be invalid or unenforceable for any reason, this shall not affect the validity or enforceability of the other obligations.
- 7.4. If either party wishes to hire any person as defined in **clause 7.1** it shall contact the other party via email, and such hiring is subject to approval and payment of USD \$105,000 or 3 months payment (defined as 13 times 38 hour weeks priced at the market charge out rate of a similarly experienced contractor in the San Francisco market) whichever is greater, or as counter-proposed and mutually agreed in writing. However, such agreement may be withheld by the Consultant with regards to the reasons in **clause 7.4**.
- 7.5. Either party understands that each employee, contractor or supplier of the other party is bound by confidentiality agreements which are strictly enforced protecting the proprietary non-public methodologies, files, data and knowhow of the relevant party. And that hiring any person as defined in clause 7.1 shall not allow the person to share, gift, sell or make available in any way whatsoever this proprietary information or any other information proprietary to the relevant party regarding their business.
- 7.6. The Consultant and the Customer each covenant and agree that the restraint obligations imposed by this clause are reasonable and extend no further than is reasonably necessary and is solely to protect each party's goodwill and its business.
- 7.7. Either party shall procure due compliance by its officers, employees and former officers and employees with clause 7 and enter into whatever agreements or deeds that are reasonably necessary to secure such compliance and either party shall indemnify (as a continuing and irrevocable indemnity) the other party and hold it harmless in respect of all losses and liabilities of whatsoever nature which the other party may suffer, pay or otherwise incur by reason of an officer, employee, or former officer or employee (as the case may be) not complying with the provisions of **clause 7**.
- 7.8. For the avoidance of doubt, in the case of large global corporate structures for the Customer, the **clauses 7.1 to 7.7** inclusive shall be read to avoid any penalty for unintentional errors in hiring from other divisions within the Customer not associated with the Consultant. Further, all obligations set forth in this Section 7 shall only apply to those employees of the Consultant and the Customer who had dealings for the purposes of the Project.
- 7.9. The Customer shall not be restricted in any general solicitation (including through the use of general advertisements or employment agencies) not specifically targeted at any such persons outlined in **clauses 7.1 to 7.7**, and the Customer shall not be restricted in hiring or employing any such person who responds to any such general non-targeted solicitation. For the avoidance of doubt, general solicitation specifically excludes 'headhunting' or any similar practice.

8. GST pass on (Australian customers only)

- 8.1. If GST is or will be imposed on a supply made under or in connection with this document, the supplier may, to the extent that the consideration otherwise provided for that supply under this document is not expressly stated to already include an amount in respect of GST on the supply:
 - 8.1.1. increase the consideration otherwise provided for that supply under this document by the amount of that GST; or
 - 8.1.2. otherwise recover from the recipient (in cash) the amount of that GST.

- 8.2. The recovery by the supplier of any amount in respect of GST under this document on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient.
- 8.3. If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST recovered by the supplier, as appropriate, the supplier:
 - 8.3.1. may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; or
 - 8.3.2. must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.
- 8.4. Subject to **clause 8.1** costs required to be reimbursed or indemnified under this document must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.
- 8.5. The above clauses **8.1 to 8.4** inclusive do not apply to customers not domiciled in Australia for taxation purposes. At this stage, there is ZERO GST (sales tax) payable by such customers.

9. Force Majeure

- 9.1. Neither party shall be liable for any delay in performing or failure to perform any of its obligations under this document caused by Force Majeure, for up to 21 days, provided that the party so prevented from performing uses commercially reasonable and diligent efforts to avoid or mitigate such causes of non-performance and it resumes performance immediately upon diligent efforts to avoid or mitigate such causes, or immediately upon the cessation of the force majeure event.
- 9.2. The eligibility of Force Majeure shall be based on Australian legal definitions of such an event.

10. Limitation of Liability

- 10.1. The liability of the Consultant and its officers, employees and agents in respect of Consultant's Liability shall (to the extent permitted by law) be limited to the supplying of the Services again.
- 10.2. The total liability of the Contractor and its officers, employees and agents in respect of Consultant's Liability shall (to the extent permitted by law) be limited to a maximum aggregate amount equaling the total amount of remuneration paid to the Consultant under this document at Final Completion or earlier termination.
- 10.3. The Consultant and its officers, employees and agents shall not be liable to the Customer for:
 - 10.3.1. Any indirect, consequential or special loss or damage arising out or relating to this document, the Project or the provision of the Services;
 - 10.3.2. any loss or damage arising from limitations or defects in third party methodologies, data, algorithms, computer applications or processes used by the Consultant to provide the Services or for the purposes of the Project, where an average person could not reasonably have been expected to be contemporarily be aware of such limitation or defect at the time of creation by the Consultant;
 - 10.3.3. any loss or damage arising from the failure of the Customer to instigate appropriate back-up or securitization of files resident on the Customer's computer(s);
 - 10.3.4. any loss or damage arising from the failure by the Customer to document or adequately note down any information conveyed to them by the Consultant;
 - 10.3.5. any loss or damage arising from the failure by the Customer to heed or distribute any applicable warnings, disclaimers, notices, licenses or documentation (including

- but not limited to printed or electronic materials including emails);
- 10.3.6. any loss or damage arising from the Consultants' compliance with applicable laws, regulations, court orders or other legal requirements imposed upon the Consultant; and
- 10.3.7. any loss of or damage to data supplied to the Consultant unless the importance of such data to the Customer has at the time of supply been notified to the Consultant and the Consultant has accepted liability in writing for such loss or damage, the acceptance or non-acceptance of which shall be at the Consultant's absolute discretion.
- 10.4. The Consultant, its officers, employees, agents and each of them shall to the extent permitted by law be released and discharged from any and all Consultant's Liability if the Customer fails to fulfil both:
- 10.4.1. The Notification Requirements; or
- 10.4.2. the Claim Requirements.
- 10.5. The Notification Requirements are that the Customer within the Notification Period satisfy the notification requirements of **clause 11.1.1**.
- 10.6. The Claim Requirements are that the Customer within the Claim Period:
- 10.6.1. institute a proceeding in respect of a liability or liabilities that fall within the ambit of Consultant's Liability in a Court of competent jurisdiction; and
- 10.6.2. notify the Consultant of the proceeding in writing.
- 10.7. Where the Customer fulfils the Notification Requirements, the Consultant and its officers, employees and agents shall nevertheless be released and discharged from any and all Consultant's Liability except for the particular liability or liabilities notified.
- 10.8. Where the Customer fulfils the Claim Requirements, the Consultant and its officers, employees and agents shall nevertheless be released and discharged from any and all Consultant's Liability except for the particular liability or liabilities alleged by the Customer in its pleadings in the proceeding as such pleadings stand on the day the Consultant receives written notification of the proceeding.
- 10.9. 2thinknow 'Data Guarantee' is for resupply of corrected data or explanatory notes for any errors or omissions in data identified and mutually agreed between Customer and Consultant, and notified to the Consultant via email within 30 days (or period as specified in the Governing Document) of delivery of the last batch data in question, and where the Customer has made all reasonable efforts by other means to ensure the Consultant has received the email, if the Consultant has not acknowledged the email.
- 10.10. For the avoidance of doubt, **clauses 10.1, 10.2, 10.3, 10.4, 10.7, 10.8 and 10.9** (and their sub-clauses) operate as independent limitations so that if any of those clauses is for any reason void, invalid or unenforceable, the provisions of the other clause or clauses shall continue to be of full force and effect.
- 10.11. The Customer and its officers, employees and agents shall not be liable to the Consultant for any unforeseeable loss (including indirect, consequential or special loss) or unforeseeable damage arising out or relating to this document, the Project or the provision of the Services.
- 10.12. Any Customer liability shall be capped at the same level as the Consultant's Liability under **clause 10.2**.

11. Dispute Resolution

- 11.1. It shall be a condition precedent to the bringing by the Customer of any legal proceedings in respect of Consultant's Liability in any Court having jurisdiction in respect of same that the Customer shall have first:

- 11.1.1. Notified the Consultant of its claim or claims in writing (providing all details and particulars thereof sufficient to allow the Consultant to identify the issues involved and if appropriate to address them);
- 11.1.2. Allowed the Consultant the period of days noted at the Notification Period to make good any default or to seek to resolve such claim or claims; and
- 11.1.3. Where any default has not been made good or the claim or claims have not otherwise been resolved after the elapse of the Notification Period, adopted and completed the mediation procedure provided for in **clause 11.2**.
- 11.2. The mediation procedure to be adopted under **clause 11.1.3** is as follows:
- 11.2.1. The Customer shall notify the Consultant in writing that it wishes to refer the claim or claims to mediation.
- 11.2.2. The mediator shall be a mediator agreed upon by the parties and, failing agreement within 14 days of request to do so, as shall be nominated by the President for the time being of the Law Institute of Victoria.
- 11.2.3. The parties shall be jointly responsible for the fees of the mediation and each party must pay its own costs in respect of it.
- 11.2.4. The mediation shall be conducted in accordance with the Mediation Code of Practice of the Law Institute of Victoria (as updated).
- 11.2.5. The parties may be legally represented.
- 11.2.6. The place of mediation shall be in Melbourne, Australia.
- 11.3. The provisions of **clause 11.1** do not apply to legal proceedings brought or to be brought by the Consultant.
- 11.4. Despite the Customer taking steps to comply with this **clause 11**, the Customer must continue to perform its obligations under this document in a timely manner (including those pre-existing obligations the subject of the claim or claims) to the extent possible.

12. Confidentiality

- 12.1. Any business or organizational data, files or knowledge provided to the Consultant in respect of the Project shall be treated by the Consultant as confidential.
- 12.2. The Customer warrants that it will act in good faith with regards to confidentiality and advise the Consultant in writing of any special requirements for confidentiality on this Project.
- 12.3. Any additional Non-Disclosure or Confidentiality Agreement required by the Customer shall form a Schedule to the Governing Document.
- 12.4. The Consultant maintains a number of encryption and security options for Customer confidentiality and details of these are available to the Customer upon request.
- 12.5. Unless otherwise noted in the Governing Document the Consultant may disclose publicly that they are providing services for the Customer but will not disclose any details of work identifiable to any Customer (not already in the public domain in some way).
- 12.6. The Customer (or any other Customer) may not request any data or knowhow from any other Customer, as part of the Project.
- 12.7. The Consultant provides business, firm-level, governmental and aggregate data and case studies as part of its remit – the business will not be directly involved in gathering personal or private data on individuals as part of the Services and does not consider such individual data (except in aggregate) part of its remit.
- 12.8. Details of the Customer will be stored in a number of cloud-based services using encryption and other security measures, which will be listed online and updated from time-to-time at 2thinknow.com under Privacy Policy page (for compliance with GDPR).

13. Assignment

- 13.1. Neither party shall assign or purport to assign or otherwise deal with or encumber this document or the rights it has pursuant to this

document without first obtaining the written consent of the other party, which consent may be withheld for any reason whatsoever.

14. No partnership

- 14.1. Nothing in this document or the Governing Document will operate or be deemed to create a partnership between any of the parties.

15. Precedence

- 15.1. In the event of any conflict or inconsistency between the following documents, the order of precedence (but only to the extent of such conflict or inconsistency) between them shall be as follows:
- 15.1.1. the Governing Document;
 - 15.1.2. this document;
 - 15.1.3. Schedules to the Governing Document;
 - 15.1.4. The most recent License Agreement attached to the Works;
 - 15.1.5. the Proposal (if this not the Governing Document);
 - 15.1.6. Invoices issued by the Consultant;
 - 15.1.7. Other attachments to any of clauses **15.1.1** to **15.1.6** inclusive signed by both the Consultant and the Customer
 - 15.1.8. Other attachments to any of clauses **15.1.1** to **15.1.6** not otherwise listed.
- 15.2. The parties shall do all things necessary on their respective parts to amend the document or documents (as the case requires) the subject of the conflict or inconsistency to ensure that there is no inconsistency between them.

16. Notices

- 16.1. Any notice or other communication to be given to the Consultant under this document or the Governing Document must be typed in a legible format and mailed via registered post clearly labelled to 2THINKNOW®, at our current registered address with ASIC.

17. Severance

- 17.1. If any of the provisions of this document or the application of any term is invalid or unenforceable to any extent, then the remainder of the terms shall not be affected, and each term or provision of this document shall be valid and enforceable to the extent permitted by law.

18. Governing law

- 18.1. This document shall be governed by and construed in accordance with the laws for the time being in force in the State of NSW, Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the State of NSW, Australia including any Courts having appellate jurisdiction.
- 18.2. For any significant matter, and should it be mutually agreed in writing between the Customer and the Consultant, the matter could also be heard in the Courts of Dallas, Texas, U.S.

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