



## MASTER SUBSCRIPTION SERVICE TERMS AND CONDITIONS

BY EXECUTING A SALES ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER (AS IDENTIFIED ON THE SALES ORDER FORM) AGREES TO THE TERMS OF THIS MASTER SUBSCRIPTION SERVICE TERMS AND CONDITIONS (THE "AGREEMENT").

Capitalized terms not defined elsewhere in this Agreement shall have the meaning given to them in Section 1 or the Sales Order Form).

**ThinkTank and Customer hereby agree as follows:**

**Terms and Conditions.** Customer agrees to the following terms and conditions.

### 1. Definitions.

**"Affiliate"** means any entity, whether incorporated or not, which directly or indirectly, through one or more intermediaries, is controlled by, under control of, or under common control with "Customer". The term "control", including the terms "control of", "controlled by" and "under common control with", means the possession of a party, directly or indirectly, of the power to direct or cause the direction of management and policies of an entity, whether by reason of the ownership of voting shares or by contract.

**"Confidential Information"** is defined as confidential information disclosed by a party that should reasonably have been understood by the receiving party, because of (i) markings, or (ii) the circumstance of disclosure or the nature of the information itself, to be proprietary and confidential to the disclosing party or to a third party, including information be disclosed in written or other tangible form (including digital or other electronic media) or by oral, visual or other means. Confidential Information specifically includes Personal Data, information relating to ThinkTank unreleased products; the Services, and this Agreement and related Sales Order Forms.

**"Customer Data"** means all electronic data and any other content or information, including any of the foregoing obtained from third party sources, submitted to the Service by Customer, its Affiliates and their respective Users, including Personal Data.

**"Customer Support"** means access to Documentation, Updates, technical support and telephone and/or on-line assistance to assist Customer in the use of the Service in accordance with its Customer Support terms at [www.thinktank.net/legal](http://www.thinktank.net/legal) and as updated from time to time

**"Effective Date"** is the date specified on the Sales Order Form that indicates the date upon which the parties agree that the rights and obligations of the parties under this Agreement will commence.

**"Fees"** means all amounts to be paid by Customer as specified on the Sales Order Forms associated with this Agreement.

**"Documentation"** means the online help center documentation accessible via [success.thinktank.net](http://success.thinktank.net) describing the Service features, including user guides which may be updated from time to time.

**"Initial Term"** is defined in Section 14.1 below.

**"Participant Users"** are a User Type that are authorized by Customer to use the Service, for whom Subscriptions Fees have been paid, and which are clients of Customer or its Affiliates.

**“Personal Data”** is any Customer Data relating to an individual or legal entity that is subject to protection under applicable data protection laws or regulations.

**“Renewal Term”** is defined in Section 14.1 below.

**“Sales Order Form”** means an order form in the name of and executed by Customer or its Affiliate and accepted by ThinkTank which specifies the Service and Professional Services (defined below) to be provided by ThinkTank subject to the terms of this Agreement.

**“Service”** means ThinkTank’s on-line business application suite and modules (as described in the applicable Help Documentation) that is procured by Customer from ThinkTank in the initial Sales Order Form and any subsequent Sales Order Form from time to time, but excluding Professional Services.

**“Subscription Fees”** means the Fees specified on the Sales Order Form(s) for use of the Service, including User based fees.

**“Term”** is defined in Section 14.1 below.

**“Updates”** means maintenance releases, patches, fixes, extensions or enhancements of the Service which ThinkTank generally makes available in its sole discretion.

**“Users”** means individuals who are authorized by Customer to use the Service, for whom Subscriptions Fees have been paid, and who have been supplied user identifications and passwords by Customer (or by ThinkTank at Customer’s request). Users include Customer’s and Customer’s Affiliates’ employees, consultants, contractors, agents, and clients.

**“User Types”** means Users listed on the Customer Order Form that have different or limited rights of access to and use of the Service.

**2. Service.** In consideration for the payment by Customer to ThinkTank of the Subscription Fees contained in the applicable Sales Order Form(s), Think Tank grants to Customer and its Affiliates and their respective Users a non-exclusive, non-transferable limited right to access and use the Service pursuant to the terms set out in this Agreement. Customer’s and its Affiliate’s right to access the Services shall commence upon the Effective Date specified on the Sales Order Form. Customer understands that the maximum number of Users at all times shall not exceed the number of Users and User Types purchased by Customer and, except for Participant Users whose access is governed by the Terms of Use referenced upon their initial sign on to the Service, Customer shall be, separately but fully liable for any acts or omissions of their Affiliates and Users related to the use of the Services.

**3. Access to Services.** ThinkTank will (i) make the Service available to Customer pursuant to this Agreement, the Sales Order Form(s) and applicable Documentation; (ii) provide Documentation, Updates, technical support and telephone and/or on line assistance to assist Customer in the use of the Service in accordance with its Customer Support terms at [www.thinktank.net/legal](http://www.thinktank.net/legal), as updated from time to time; (iii) provide disaster recovery and backup services for stored Customer Data for a period of time consistent with ThinkTank standard business processes; (iv) use commercially reasonable efforts to make the Service available for twenty-four (24) hours a day, seven (7) days a week except for reasons beyond the control of ThinkTank, including periodic planned and unscheduled maintenance procedures or repairs, or any unavailability caused by circumstances beyond ThinkTank’s control such as, for example, interruption or failure of telecommunication or digital transmission links, internet service provider failure, hostile network attacks including denial of service attacks, network congestion or other similar failures not attributable to the ThinkTank network; and (v) provide the Service in accordance with any laws and regulations applicable to ThinkTank’s Service to its customers in general. Customer shall not be entitled to any setoff, discount, refund or other credit as a result of unavailability of the Service. ThinkTank is not responsible for information transmitted by Customer which is delayed, lost, altered, intercepted or stored during its transmission across networks not owned and/or operated by ThinkTank and neither ThinkTank nor its third party suppliers shall be responsible for any delays, errors, failures to perform, or disruptions in the Service caused by or resulting from any act, omission or condition beyond ThinkTank’s or its third party suppliers’ reasonable control.

**4. Sales Order Forms; Affiliates.** The Service is provided under the terms of this Agreement by the execution of one or more Sales Order Forms. Each Sales Order Form shall include, at a minimum, a listing of the Service and any Professional Services ordered and the Fees therefore. Customer hereby agrees that its Affiliates are authorized to execute a Sales Order Form for the Service under the terms of this Agreement and such Sales Order Form shall be binding on the parties as if executed by Customer. For any Sales Order Form executed by its Affiliate, the term "Customer" as used in this Agreement shall refer to such Affiliate.

**5. Professional Services.** ThinkTank offers optional consulting, implementation and training services ("Professional Services") to be provided to Customer pursuant to the Professional Services Addendum. If the Customer or its Affiliates executes a Sales Order Form that includes any of the foregoing consulting, implementation and training services, the Professional Services Addendum, as incorporated by reference into this Agreement, shall apply to those services. Customer acknowledges that ThinkTank has extensive experience helping Customers improve utilization and realization of benefits of the Service, and not engaging ThinkTank in the provision of Professional Services may substantially limit Customer's ability to utilize the Service to its full potential.

**6. Security; Privacy.** ThinkTank shall use commercially reasonable efforts to prevent unauthorized access to restricted areas of the Services and any Customer Data, including utilizing administrative, physical and technical safeguards for the protection, confidentiality and integrity of the Service. However, ThinkTank cannot and does not guarantee the privacy, security, authenticity and non-corruption of any information transmitted through, or stored in any system connected to, the Internet.

**7. Customer Responsibilities.** Customer agrees to (i) use reasonable efforts to prevent unauthorized access to or use of the Service and notify ThinkTank promptly upon becoming aware of any such unauthorized access or use (ii) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Service and the interoperation of any third party applications with which Customer uses the Service; (iii) use the Service only in accordance with the Documentation, any other written instructions and all applicable laws and government regulations; and (iii) use the Service and Documentation only as expressly allowed under this Agreement. Customer is solely responsible for any required notices, consents and/or authorizations related to use and disclosure of the Customer Data (including any Personal Data) as part of the Services. If the use of the Service by Customer, its Affiliates or Users breaches any of the foregoing and, in ThinkTank's judgement, threatens the availability, legality, security, or integrity of ThinkTank's services, ThinkTank may immediately suspend the Customer's, Affiliate's, and/or User's access to the Service. ThinkTank will use commercially reasonable efforts under the circumstances to provide notice to Customer and opportunity to remedy the breach or threat prior to such suspension.

**8. Users: Passwords, Access and Notification.** Customer shall authorize access to and assign unique passwords and user names to Users. User logins are for designated Users and cannot be shared or used by more than one User. Except for Participant Users, User logins may not be reassigned to other Users except upon termination or resignation of the former User. Upon termination of his/her participation in a project, a Participant User's login credentials may be reassigned to another Participant User. Customer will be solely responsible for the confidentiality and use of User's passwords, user names and the information (including Personal Data) transmitted by Users via emails or otherwise entered electronically through the Service under the Customer's account. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Service and shall promptly notify ThinkTank of any unauthorized access or use of the Service and any loss or theft or unauthorized use of any User's password or name and/or Service account numbers.

**9. Restrictions.** Customer shall not, nor permit any third party to, do any of the following acts: (i) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Service or any part thereof or otherwise attempt to discover the source code, underlying ideas or algorithms of the Service; (ii) wilfully tamper with the security of the Service; (iii) access data on Service not intended for Customer; (iv) attempt to probe, scan or test the vulnerability of the Service or to breach the security or authentication measures without proper authorization from ThinkTank; (v) rent, lease, distribute, license, sublicense, sell, resell, assign, or otherwise commercially exploit the Services or make the Services available to a third party other than as contemplated in this Agreement; (vi) use the Service for timesharing or service bureau purposes or otherwise for the benefit of a third party; (vii) publish or disclose to third parties any evaluation of the Service without ThinkTank's prior written consent;

(viii) remove, modify, obscure any copyright, trademark, patent or other proprietary notice that appears in the Service; (ix) create any link to the Service or frame or mirror any content contained or accessible from the Service other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation; (x) use the Service in a manner that is contrary to applicable local, state, federal and foreign laws, including but not limited to violation of any third party rights of privacy or intellectual property rights or engage in harassing, libelous, defamatory or threatening actions; or (xi) publish, post, upload or otherwise transmit Customer Data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another. ThinkTank may make modifications to the Service or particular components of the Service, including Customer Support, from time to time and will use commercially reasonable efforts to notify Customer of any material modifications. ThinkTank reserves the right to discontinue offering the Service at the conclusion of Customer's then current Term upon sixty (60) days notice.

## **10. Fees, Payment & Taxes.**

**10.1 Fees and Payment.** Customer shall pay the Fees as specified in each Sales Order Form executed by the parties in accordance with the payment terms on the Sales Order Form. Additional Users and other Service items procured during the Term will co-terminate with and be prorated through the then current Initial or Renewal Term. Fees for the Service on all subsequent Sales Order Forms and renewals shall be set at then current ThinkTank pricing, unless otherwise agreed to by the parties.

**10.2 Suspension for Delinquent Account.** ThinkTank reserves the right to suspend Customer's and any of Customer Affiliates' access to and/or use of the Service (i) for which any payment is due but unpaid but only after ThinkTank has provided Customer two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice. Customer agrees that ThinkTank shall not be liable to Customer or to any Customer Affiliate or other third party for any suspension of the Service pursuant to this Section 10.2.

**10.3 Taxes.** ThinkTank fees do not include any local, state, federal, VAT, or foreign taxes, levies or duties of any nature, including sales, use, property, excise, value added, gross receipts or withholding taxes. Customer is responsible for paying all such taxes, excluding only taxes based on ThinkTank's net income. If ThinkTank has the legal obligation to pay or collect taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides ThinkTank with a valid tax exemption certificate authorized by the appropriate taxing authority.

**10.4 Late Payments.** Any late payments shall be subject to a service charge equal to 1.5% of the amount due (calculated on a monthly basis) or the maximum amount allowed by law, whichever is less.

## **11. Warranties.**

**11.1 Service Warranty.** ThinkTank warrants that: (i) the Service will achieve in all material respects the functionality described in the Documentation applicable to the Service procured by Customer, and (ii) such functionality of the Service will not be materially decreased during the Term. Customer's sole and exclusive remedy for ThinkTank's breach of this warranty shall be that ThinkTank shall use commercially reasonable efforts to modify the Service to correct the deficiency causing the breach in the foregoing warranty. If ThinkTank is unable to correct the deficiency, Customer shall be entitled to terminate the Agreement and receive a pro-rata refund of the Subscription Fees paid by Customer for the terminated portion of the Term. ThinkTank shall have no obligation with respect to a warranty claim unless notified of such claim within thirty (30) days of the first instance of either (i) or (ii) above, and such notice must be sent to [contracts@thinktank.net](mailto:contracts@thinktank.net). The warranties set forth in this Section 11.1 are made to and for the benefit of Customer and its Affiliates only. Such warranties shall only apply if the applicable Service has been utilized in accordance with the Documentation, this Agreement and applicable law.

**11.2 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED HEREIN, THINKTANK DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET ALL OF CUSTOMER'S REQUIREMENTS. THE WARRANTY STATED IN SECTION 11.1 ABOVE IS THE SOLE AND EXCLUSIVE WARRANTY OFFERED BY THINKTANK. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS

OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, COURSE OF DEALING, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRDPARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

## **12. Confidentiality.**

**12.1 Nondisclosure.** It is agreed that, after receipt of Confidential Information of the other party, the receiving party shall: (i) treat the disclosing party's Confidential Information as confidential; (ii) not use such Confidential Information other than for the purposes of this Agreement; and (iii) use no less than a reasonable standard of care in safeguarding against unauthorized disclosure of such Confidential Information. The receiving party may disclose Confidential Information of the disclosing party to its employees, directors, officers, agents, affiliates and representatives who have a need to know the information and who the receiving party shall cause to comply with all of the terms set forth in this Section.

**12.2 Exceptions from Confidential Information.** Confidential Information shall not include information that: (i) is or becomes part of the public domain without violation of this Agreement by the receiving party, (ii) is already in the receiving party's possession free of any restriction on use or disclosure, (iii) becomes available to the receiving party from a third party provided that such party was free from restriction on disclosure of the information or (iv) has been independently developed by the receiving party without the use of such Confidential Information.

**12.3 Required Disclosures.** If the receiving party is required by legal proceeding discovery request, "open records" or equivalent request, investigative demand, subpoena, court or government order to disclose Confidential Information, the receiving party may disclose such Confidential Information provided that: (i) the disclosure is limited to the extent and purpose legally required; and (ii) to the extent permitted by law, prior to any disclosure, the receiving party shall immediately notify the disclosing party in writing of the existence, terms and conditions of the required disclosure and, at the disclosing party's request and expense, cooperate in obtaining a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

## **13. Proprietary Rights.**

**13.1 Ownership of Customer Data and Templates/Forms.** As between ThinkTank and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Any templates or forms developed by Customer for its use with the Service using a toolkit provided as a part of the Service (and created without utilizing the Professional Services of ThinkTank) shall remain the exclusive property of Customer. However, such property rights shall not be construed to grant Customer any intellectual property rights in the Service other than the right of access granted herein for the Term.

**13.2 ThinkTank Intellectual Property Rights.** Customer agrees that all rights, title and interest in and to all intellectual property rights in the Service are owned exclusively by ThinkTank or its third party licensors. Except as expressly provided in this Agreement, the license granted to Customer does not convey any other rights in the Service, whether express or implied, and any rights not expressly granted herein are reserved by ThinkTank. In addition, Customer grants to ThinkTank a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including its Users, relating to the operation of the Service, including, without limitation, the integration of such features and functionality, in whole or in part, into ThinkTank's proprietary products and services without the need to account for the same to Customer. Customer acknowledges that any and all products and services incorporating such new features, functionality, or performance shall be the sole and exclusive property of ThinkTank and all such recommendations shall be free from any confidentiality restrictions that might otherwise be imposed upon ThinkTank pursuant to this Agreement or other agreement between the parties. Customer may not remove, add to, or alter, any of the trademarks, trade names, logos, patent or copyright notices or proprietary markings displayed in connection with the Service. Customer may not adopt, use or register any trademark, trade name or other marketing name of ThinkTank or its Affiliates and third party suppliers, nor use any confusingly similar trademark, trade name or other marketing name.

## **14. Term; Suspension; Termination.**

**14.1 Term of Agreement.** This Agreement shall commence from the Effective Date and shall continue for the period specified on the initial Sales Order Form (the “Initial Term”) unless earlier terminated in accordance with the provisions of this Agreement. After the Initial Term expires, this Agreement will automatically renew for additional one (1) year terms (each a “Renewal Term”) unless either party provides the other with a written notice of termination thirty (30) days prior to the end of the Term. The Initial Term, together with any Renewal Term, is referred to as the “Term”. Customer’s and its Affiliates’ right to access and use the Service shall cease upon termination or expiration of this Agreement. Notwithstanding anything to the contrary in this Agreement, ThinkTank may terminate this Agreement and any underlying Sales Order Form(s) upon thirty (30) day prior written notice and shall provide Customer a pro rata refund of Subscription Fees paid calculated from the termination date to the end of the then current Subscription Term specified on the Sales Order Form(s).

**14.2 Termination for Breach.** Either party may terminate this Agreement and all Sales Order Forms issued hereunder in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty (30) days of written notice from the non-breaching party. Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach. If this Agreement is terminated by Customer for any reason other than a material breach by ThinkTank, then ThinkTank shall be entitled to all of the Fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of ThinkTank’s material breach of this Agreement, Customer shall be entitled to a refund of the pro rata portion of any Fees paid by Customer to ThinkTank under this Agreement for the terminated portion of the Term. In no event will termination relieve Customer of its obligation to pay any Fees payable to ThinkTank for the period prior to the effective date of termination.

**14.3 Handling of Customer Data Upon Termination.** For thirty (30) days after termination, ThinkTank will grant Customer limited access to the Service for a reasonable number of days for the sole purpose of permitting Customer to retrieve Customer Data, provided that Customer has paid in full all good faith undisputed amounts owed to ThinkTank. Customer further agrees that ThinkTank shall not be liable to Customer nor to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that ThinkTank is in compliance with the terms of this Section 14.3.

## **15. Limitations of Liability.**

IN NO EVENT WILL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EXCEED THE TOTAL FEES PAID BY CUSTOMER AND ITS AFFILIATES FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT OUT OF WHICH THE LIABILITY AROSE. HOWEVER, THE FOREGOING WILL NOT LIMIT CUSTOMER’S AND ITS AFFILIATES’ PAYMENT OBLIGATIONS UNDER SECTION 10.1 ABOVE.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER SUCH ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY’S OR ITS AFFILIATES’ REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE.

BOTH PARTIES ACKNOWLEDGE THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON THEIR LIABILITY.

## **16. Indemnification.**

### **16.1 Infringement.**

**16.1.1** Subject to the terms and conditions set forth in this Section 16, ThinkTank shall, at its own expense, defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively “Claims”) alleging that the Service, as used in accordance with this Agreement, infringes third party

patents, copyrights, trade secrets or trademarks and shall hold Customer harmless from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") to the extent based upon such a Claim.

**16.1.2** Excluded from the above indemnification obligations are Claims to the extent arising from (i) use of the Service in violation of this Agreement or applicable law; (ii) use of the Service after ThinkTank notifies Customer to discontinue use because of an infringement claim; (iii) modifications to the Service not made by ThinkTank; or (iv) use of the Service in combination with any software, application or service not provided by ThinkTank.

**16.1.3** If a Claim of infringement as set forth above, is brought or threatened, ThinkTank shall, at its sole option and expense, use commercially reasonable efforts either (i) to procure a license that will protect Customer against such Claim without cost to Customer; (ii) to modify or replace all or portions of the Service as needed to avoid infringement, such Update or replacement having substantially similar or better capabilities; or (iii) if (i) and (ii) are not commercially feasible, terminate the Agreement and refund to the Customer a pro-rata refund of the Subscription Fees paid for the terminated portion of the Term. The rights and remedies granted Customer under this Section 16.1 state ThinkTank's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.

**16.2 Customer's Indemnity.** Subject to the terms and conditions set forth in this Section 16, Customer shall defend ThinkTank from and against any and all Claims alleging that the Customer Data or its use with the Service, (i) infringes the patent, copyright or trademark, or misappropriates the trade secrets of, a third party, or (ii) violates applicable law, including any requirements related to the use of Personal Data as a part of the Service, and shall hold ThinkTank harmless from and against liability for any Losses to the extent based upon such Claims.

**16.3 Indemnification Procedures and Survival.** In the event of a potential indemnity obligation under this Section 16, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section 16 are expressly conditioned upon the indemnified party's compliance with this Section 16.3 except that failure to notify the indemnifying party of such Claim shall not relieve that party of its obligations under this Section 16 but such Claim shall be reduced to the extent of any damages attributable to such failure. The indemnification obligations contained in this Section 16 shall survive termination of this Agreement.

**17. Notices.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (i) receipt by personal, certified mail or overnight delivery or (ii) except for notices of breach, termination for breach or an indemnifiable claim, the day of sending by email. Notices under (ii) to Customer will be addressed to the email designated by Customer on the Sales Order Form and to [contracts@thinktank.net](mailto:contracts@thinktank.net) for ThinkTank. Notices under (i) will be addressed to the Legal Department at the party's address on the initial Sales Order Form unless written notice of an address change is provided by the party.

**18. Export Compliance.** Customer agrees that Customer's use of the Service will comply with applicable export control and trade sanctions laws, rules and regulations, including without limitation the regulations promulgated by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") (collectively, "Export Laws"). Customer represents and warrants that Customer is not (i) located, organized, or resident in a country or territory that is subject to comprehensive U.S. trade sanctions (currently, Crimea, Cuba, Iran, North Korea, and Syria); or (ii) identified on, or owned or controlled by any party identified on, any applicable sanctions or restricted party list, including the Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, and Sectoral Sanctions Identifications List, administered by OFAC. Customer agrees that Customer will not use the Service to disclose, transfer, download, export or re-export, directly or indirectly, any Customer Data to any country, entity or other party which is ineligible to receive such items under the Export Laws. Customer acknowledges that the Service may not be available in all jurisdictions and that Customer is solely responsible for complying with the Export Laws. Customer acknowledges that ThinkTank may cease to provide the Service if ThinkTank determines that Customer has violated any of the representations in this Section 18 and Customer agrees to notify ThinkTank immediately in writing if Customer status under any of these

representations changes.

**19. Anti-Corruption Compliance.** Both parties warrant that neither it, nor any of its respective officers, employees, agents, representatives, contractors, intermediaries or any other person or entity acting on their behalf, in connection with this Agreement, has taken or will take any action, directly or indirectly, in violation of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any other applicable anti-corruption or anti-bribery laws.

**20. U.S. Government Rights.** The Service is a “commercial item” as that term is defined at FAR 2.101. If the Service, including the software and related technology, are contracted for by the federal government or are otherwise accessed for federal government end use, the government’s rights to the Service, including the software, Documentation and technical data furnished with the Service, shall be as provided in this Agreement in accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, and DFARS 252.227-7015 as applicable to technical data. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this Agreement specifically granting those rights. This Section 20 is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses federal government rights in computer software or technical data under this Agreement.

**21. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its rules of conflict of laws. The parties hereto hereby irrevocably and unconditionally consent to and submit to the exclusive jurisdiction of the courts of the State of Delaware and of the United States of America located in such state (the “Delaware Courts”) for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating thereto except in such courts), waive any objection to the laying of venue of any such litigation in the Delaware Courts and agree not to plead or claim in any Delaware Court that such litigation brought therein has been brought in any inconvenient forum. In any litigation in which the parties are adverse, the parties agree to waive their respective rights to a trial by jury.

**22. Assignment.** Except as expressing permitted herein, neither party may (by operation of law or otherwise) transfer or assign this Agreement, in whole or in part, without the prior written consent of the other party and any such attempt at transfer or assignment shall be void. However, the foregoing shall not preclude ThinkTank from employing such agents and subcontractors as it deems appropriate to carry out the obligations set forth hereunder provided, however, that ThinkTank shall remain responsible for all acts and omissions of its subcontractors and agents (and their employees) as if they were its own. Further, ThinkTank may transfer or assign this Agreement to an entity that is an Affiliate of ThinkTank or, in the event of a merger, acquisition, reorganization, or sale of all or substantially all of its assets or equity, each without the consent of Customer.

**23. Independent Contractor.** This Agreement does not constitute and shall not be construed as constituting a partnership, agency, distributorship or joint venture between the parties and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way and ThinkTank is to be and shall remain an independent contractor with respect to software and/or services provided under this Agreement. Each party is solely responsible for all of its employees and agents and its labor cost and expenses and for any and all claims, liabilities or damages or debts of any type whatsoever that may arise on account of each party’s activities or those of its employees or agents in the performance of this Agreement.

**24. Third Party Rights.** No one other than a party to this Agreement (and their permitted assignees) shall have any right to enforce any of its terms. For the avoidance of doubt, no Users or other third parties shall have the right to enforce any terms of this Agreement against ThinkTank. The rights of the parties to enter into, rescind or vary this Agreement are not subject to the consent of any other person.

**25. Force Majeure.** Except for the obligation to make payments as provided herein, neither party shall be liable to the other party for a default under this Agreement if it is prevented or delayed in performing its obligations or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes or other industrial disputes, failure of a utility service or transport or communications network, wars, act of God, fire, flood, storm, natural disaster, riot or civil commotion, malicious damage, acts of the public enemy, compliance with any law or government order, rule, regulation or direction, government restrictions or acts of terrorism. Such party shall promptly notify the other party and use reasonable efforts to remove the cause and continue its performance under this Agreement whenever the cause is removed.



**26. Waiver.** Any waiver of any default or breach of this Agreement shall be effective only if in writing and signed by an authorized representative of the party providing the waiver. No such waiver shall be deemed to be a waiver of any other or subsequent breach or default.

**27. Severability.** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted and such modification or deletion shall not affect the validity and enforceability of the rest of this Agreement.

**28. Variation.** This Agreement may not be modified or amended except in writing and signed by both parties (or their authorized representatives).

**29. Headings.** Headings used in this Agreement are for convenience of reference only and shall not be construed as altering the meaning of this Agreement or any of its parts.

**30. Entire Agreement.** This Agreement and the Sales Order Form(s) executed by the parties constitute the entire understanding of the parties, and supersede and extinguish all prior promises, assurances, warranties, representations, understandings between them, whether written or oral relating to its subject matter hereof. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

*[END OF DOCUMENT]*