# General Terms and Conditions for the Supply of Services by thinkstep pty Ltd

## 1. Definitions

**1.1** In this Agreement, unless the context otherwise requires:

**Agreement** means this Agreement and all other documents annexed to this document or specifically incorporated by reference.

**Business Day** means any day of the year other than a Saturday, a Sunday or a day which is a public holiday in Australia.

**Charges** means the fees and other charges and expenses payable by you for the Services as detailed in clause 5.

**Confidential Information** means the terms of this Agreement and all information obtained by one party (**Recipient**) from the other party (**Discloser**) under this Agreement, whether oral or written, whether in tangible form or otherwise, whether before or after the Start Date and includes, but is not limited to, the terms of this Agreement, the Deliverables and all information and data (in any form) produced or acquired by the Parties or its Personnel in connection with this Agreement or the performance of the Services but does not include information which:

(a) at the time of disclosure is publicly known or becomes publicly known without breach by the Recipient of its obligations under this Agreement;

(b) is lawfully received by the Recipient from a third party not owing (directly or indirectly) any obligation of confidentiality to the Discloser;

(c) is already known to the Recipient at the time of disclosure; or

(d) is independently acquired or developed by the Recipient without the benefit or use of the Confidential Information of the Discloser, as established by the records of the Recipient.

**Client Materials** means all material in any form provided by you to us for the purposes of this Agreement and for clarity, includes any of your Confidential Information.

**Discloser** has the meaning given to it in the definition of Confidential Information.

**Completion Date** means the date by which we must complete the Services, as recorded in the formal project initiation meeting minutes, or, if no such date is specified, the date following a reasonable period of time from the date of the approved Proposal/Purchase Order, having regard to the nature of the Services.

**Deliverables** means the deliverables (if any) described in the Proposal and any other documents, reports or other materials produced by us in the course of providing the Services.

**Existing Intellectual Property** means all Intellectual Property which is owned by or proprietary to a party at the date of this Agreement or developed by (or on behalf of) a party other than pursuant to this Agreement, and includes any improvements to that Intellectual Property.

**Expiry** means the date on which all of the Services have been provided.

**Force Majeure Event** means an event caused by any one or a combination of the following circumstances beyond the party's reasonable control including acts of God, communication line failures, power failures, riots or other hostilities, strikes, lock-outs, fires, war, flood, cyclone, earthquake or other disaster, epidemics, or governmental action after the date of this Agreement.

**GST Law** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cth);*.

**Intellectual Property Rights** means all present and future intellectual property rights and interests (including common law rights and interests) of a party, including copyright, trademarks, designs, patents, confidential information or other proprietary rights of a party which are applied to any documentation or materials in relation to this Agreement, and includes application for registration of such trademarks.

**Modern Slavery Law** means all laws relating to the prevention of modern slavery in the jurisdiction where the Services are performed, and/or where we are incorporated.

**Project IP** means all Intellectual Property Rights created or coming into existence as a result of, for the purpose of, or in connection with, the provision of the Services or the Agreement, but for clarity, does not include any Client Materials or pre-existing or background intellectual property subsisting in the Deliverables.

**Proposal** means our formal written proposal addressed to you, describing the Services we will provide and the detailed Scope of Work we will deliver.

**Purchase Order** means an order issued to us by you for the supply of Services in accordance with the Agreement and includes any schedules attached to the relevant Purchase Order.

**Recipient** has the meaning given to it in the definition of Confidential Information.

**Services** means the services to be performed by us in accordance with the Agreement, including:

(a) all services set out in any applicable Proposal, Variation Proposal, and/or Purchase Order;

(b) responsibilities and functions not specifically described in the Agreement, but which are incidental to, or otherwise necessary for us to provide the Services under the Agreement;

**Scope of Work** means the scope of the Services to be performed as specified in the Proposal and/or Purchase Order.

**Start Date** means the date Service delivery commences as recorded in the formal project initiation meeting minutes.

**Subcontract** means any permitted contract or other arrangement between us and any Subcontractor in relation to the performance of our obligations under the Agreement.

**Subcontractor** means any person engaged by us to perform any portion of the Services and includes their employees, agents, consultants and invitees.

**Tax Invoice** has the same meaning as in the GST Law.

**Variation** means any addition, reduction or change to the Scope of Work.

**Variation Proposal** means a written proposal provided by us addressing the particulars of any Variation.

**1.2 Interpretation**: In this Agreement, unless the context otherwise requires:

(a) a reference to a clause, paragraph or schedule is a reference to a clause or paragraph of or schedule to this Agreement;

(b) a reference to any document or agreement includes reference to that document or agreement as amended, supplemented or notated from time to time;

(c) headings are for convenience only and do not affect the interpretation;

(d) references to the parties include (insofar as is consistent with the provisions of this Agreement) each party's personnel, agents, subcontractors, successors in title and permitted assignees;

(e) a reference to any legislation or any provision of any legislation includes any modification or re-enactment of the legislation or any legislative provision substituted for the legislation;

(f) References to "$" or "AUD" are to Australian currency, except where expressly stated otherwise;

(g) the singular includes the plural and vice versa and words importing a gender include the other genders;

(h) a reference to a person includes a company, any association of persons (whether incorporated or not), partnership, and local or governmental authority; and

(i) where a word or phrase is given a particular meaning, any other parts of speech and grammatical forms of that word or phrase have the same meaning; and

(j) wherever including, includes or any other form of that word is used, it will be read as if it were followed by (without limitation).

## 2. Services

**2.1. General:** On and from the Start Date we will:

2.1.1. provide the Services:

(a) in accordance with the terms of this Agreement;

(b) with such skill and care expected from a reasonably skilled and experienced service provider providing services similar to the Services;

(c) using properly qualified and suitable personnel;

2.1.2. use our reasonable endeavours to deliver the Services and any Deliverables by the Completion Date.

**2.2. Your obligations:** You will:

2.2.1. ensure all information and particulars you provide to us are accurate, complete and not misleading.

2.2.2. comply with the obligations placed on you under this Agreement including providing the Client Materials to us, in the timeframes we ask.

2.2.3. promptly answer reasonable queries made by us in relation to the Services, Scope of Work and Deliverables, including providing feedback in the agreed format.

2.2.4. take all reasonable steps to avoid doing anything that will delay us in providing the Services and Deliverables.

2.2.5. where we provide the Services at your site (or a site controlled by you), ensure that the site is safe and meets all legal requirements for a safe place of work.

**2.3. Variations:** We are happy to discuss providing additional services for you. If we agree to do so, we will only be obliged to provide those additional services if we agree the details of them in writing with you. Unless otherwise agreed in writing, any additional services will be performed in accordance with the provisions of this Agreement.

2.3.1. We will not be obliged to accept a request to decrease, delete or omit any part of the Services.

2.3.1. Where changes to the Scope of Works are requested, we will prepare a Variation Proposal addressing the effect of the changes on the Completion Date and the value of the proposed variation.

2.3.2. Where the Variation Proposal is accepted by you, we will perform the additional services and the value in the Variation Proposal will be added to the Charges.

**3. Suspension**

**3.1.** We may suspend performance of the Services at any time if you fail to comply with the obligations placed on you under this Agreement including promptly answering reasonable queries in relation to the Services and providing the Client Materials to us, in the timeframes we ask.

**3.2.** If you receive a notice of suspension from us, you will reimburse us for costs necessarily, reasonably and properly incurred by us as a direct consequence of the suspension (evidenced on an open book basis).

**4. Subcontracting and software**

**4.1.** We may engage a Subcontractor to perform any portion of the Services with your written consent, which shall not be unreasonably withheld.

**4.2.** We may implement third party software and configure it to perform the Services and otherwise fulfil our obligations under this Agreement.

**5. Charges and invoicing**

**5.1. Our Charges:** You must pay our Charges according to the Payment Terms.

**5.2. GST:** Our Charges are exclusive of GST. You will pay any applicable GST to us in addition to the Charges.

**5.3. Payment Terms:** Our invoices are due for payment within 30 calendar days of the invoice date.

**5.4. Default:** Without taking away from any other right or remedy we may have, if any amount payable is not paid by the relevant due date for payment, we may charge default interest on the overdue amount from the due date for payment until the date on which payment of the overdue amount is made in full. The default interest rate will be 10% per annum. Default interest shall be calculated daily and shall be compounded monthly.

**5.5. Reimbursable Expenses:** Each party will pay its own expenses in connection with this Agreement. However, you will pay us for any reasonable travel and accommodation expenses incurred in connection with the Services. We will not incur any Reimbursable Expenses without your prior written approval.

**5.6. Fixed Pricing:** At any time after the 1st anniversary of the date of this Agreement, we may (at our discretion) vary our Charges by giving you prior written notice. The varied pricing will take effect on the date set out in the notice.

**5.7. Title:** Title in the Deliverables will pass to you upon full payment by you.

**5.8. Acceptance:** The act of payment for the Deliverables will not of itself signify acceptance. However, you will be deemed to have accepted a Deliverable unless you have written to us within 15 working days of receipt of that Deliverable, to refuse acceptance.

**6. Intellectual Property**

**6.1. Existing Intellectual Property:** Each party will remain the sole and exclusive owner of that party's Existing Intellectual Property, including background intellectual property subsisting in the Deliverables.

**6.2. Client Material:** We acknowledge and agree that any Client Materials (and all Intellectual Property in them) remain your sole and exclusive property at all times.

**6.3. Project IP:** We agree that all Project IP will become your property as and when created and hereby assign all rights, title and interest in the Project IP to you.

**6.4. Your licence to us**: You grant us a non-exclusive licence to use your Existing Intellectual Property (including the Client Materials) to the extent needed by us to perform the Services and otherwise fulfil our obligations under this Agreement.

**6.5. Our licence to you:** Provide you pay the Charges, we grant you a non-exclusive, non-transferable licence to use and copy any of our Existing Intellectual Property to the extent necessary to exercise your rights with respect to the Project IP.

**6.6. No other rights**: Other than as set out in this clause 6, no party acquires any right or interest in, or licence to use, any intellectual property of the other party.

**7. Confidentiality**

**7.1. Obligation:** Subject to clause 7.2, each party agrees to keep confidential and not make any disclosure of any Confidential Information.

**7.2. Exceptions**: A party may only disclose Confidential Information if:

(a) disclosure is required by law, but where this relates to you, you agree to only disclose the minimum amount required by law and consult with us in this regard;

(b) disclosure is necessary to obtain the benefits of and/or fulfil obligations under, this Agreement;

(c) the relevant Confidential Information is already, or becomes, public knowledge other than as a result of a breach of clause 7.1 by a party or by a person entitled to make it publicly known; or

(d) the Recipient has obtained the prior written consent of the Discloser in respect of such disclosure.

**7.3. Security:** Each Recipient shall ensure that reasonable security arrangements or procedures are maintained in relation to all Confidential Information of the Discloser, which arrangements and procedures are no less rigorous than those maintained by that party for its own information of a similar nature.

**7.4. Destruction and return:** Nothing in the Agreement requires a party to return, delete, alter, or destroy:

(a) any Confidential Information that must be retained in accordance with Law or pursuant to the corporate governance requirements of the Recipient; or

(b) any Confidential Information which is inaccessible to the Recipient due to standard electronic back-up or off-site storage procedures provided the Recipient does not access or restore the Confidential Information without the prior written consent of the Discloser.

## 8. Aggregated data

**8.1.** During and after the term of the Agreement we may use aggregated anonymised data created from data produced under this Agreement for the purposes of analysis, research, and providing new and different services.

## 9. Warranties

**9.1.** **Warranties**: We warrant that we will provide the Services to the standard set out in clause 2.1.1.

**9.2.** **No other warranties:** Except as set out in clause 9.1, any warranties or promises relating to the Services, whether express or implied, or that arise because of applicable legislation or otherwise, including those relating to merchantability or fitness for purpose, are excluded to the fullest extent permitted by law.

## 10. Liability

**10.1.** **Cap on liability:** It is agreed our total aggregate liability arising out of or in connection with this Agreement, whether arising in negligence, breach of contract or otherwise, will be limited to the three times the Charges paid by you to us under this Agreement.

**10.2.** **Third Party Software:** We won't be liable to you for any loss arising from the use of third-party software to perform the Services and otherwise fulfil our obligations under this Agreement.

**10.3.** **Indirect loss:** We also exclude all liability we may have to you for any indirect, special, incidental, exemplary, punitive or consequential loss relating to this Agreement (including loss of profit, loss of revenue, loss of use, loss of business, loss of opportunity, loss of goodwill, damage to credit rating, loss of production, business interruption) whether or not such damages were foreseeable or contemplated and whether arising under contract, negligence, strict liability or any other legal or equitable basis.

**10.4.** **Contributory actions:** We won't be liable (and will not be in breach of this Agreement) in respect of any failure on our part to comply with any of its obligations under this Agreement to the extent:

(a) it was caused or contributed to by any act or omission of you (or any of your personnel); or

(b) it would not have occurred if a defect or failure identified by us and notified to you in the provision of the Services had been remedied by you.

## 11. Extension of time

**11.1.** We will notify you of any incidents, circumstances or events of any nature affecting or likely to affect our ability to perform the Services by the Delivery Date.

**11.2.** We may extend the time to the Delivery Date or any Deliverable if we have been delayed by:

(a) a Force Majeure Event; or

(b) any act or omission by you, but excluding acts or omissions authorised or permitted under the Agreement and which are done or omitted in accordance with the Agreement.

## 12. Termination

**12.1.** **Termination for reason:** Despite anything else in this Agreement, this Agreement may be terminated immediately:

(a) by us, giving written notice to you, where you fail to pay any tax invoice after we have given you 10 Business Days written notice to remedy the non-payment;

(b) by either party, on giving written notice to the other party if the other party has failed to comply with any material term of this Agreement, and (as applicable):

i. such failure cannot be remedied; or

ii. such failure has not been remedied within 10 Business Days after written notice by the non-defaulting party of such breach; or

(c) by either party, on giving written notice to the other party, if an order is made for the winding up or dissolution of the other party or the other party ceases business, becomes insolvent, has a receiver, liquidator or similar official appointed in relation to any of its assets, or makes an arrangement with its creditors (other than for the purposes of a solvent restructure approved by the other party (acting reasonably) in writing).

**12.2.** **Consequences:** If this Agreement is terminated in accordance with this clause 12:

(a) you must pay us all Charges incurred under this Agreement on or before the date of termination;

(b) where this has been terminated by us under clause 12.1 all rights and licences granted by us under clause 6 shall also terminate;

(c) except as expressly provided otherwise, we will be discharged from the performance of any future obligations under this Agreement from the effective date of termination; and

(d) each party will immediately return to the other party all property and Confidential Information owned or controlled by the other party.

**12.3.** **Preservation of rights:** Termination of this Agreement, in whole or in part, shall not affect the accrued rights or remedies of either party.

## 13. Dispute Resolution

**13.1.** If an issue or dispute arises in connection with the Agreement, the Parties agree, prior to initiation of any legal proceedings or arbitration, to use reasonable endeavours to reach a resolution of the dispute.

**13.2.** The Parties shall (acting in good faith) use their reasonable endeavours to resolve a dispute within 20 Business Days of a Notice being given in respect of that dispute.

**13.3.** **Arbitration:** If the dispute is unable to be resolved within the time specified in clause 13.2, then either party may elect by notice in writing to the other party to refer the dispute to arbitration:

(a) the arbitration shall be conducted in Sydney, New South Wales, in accordance with the Australian Disputes Centre (ADC) Rules for Domestic Arbitration operating at the time the dispute is referred to ADC (the Rules);

(c) each party will bear half of the arbitrator's fees, unless determined otherwise by the arbitrator.

**13.4.** The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.

**13.5.** Nothing in this clause prevents either party from applying to a court for urgent injunctive relief.

## 14. Advertising and Media

**14.1.** The Parties will not advertise or issue anything relating to the Services for publication in any media without the prior written approval of the other party.

## 15. No Poaching

**15.1.** **Obligation:** Each party agrees it will not (and will ensure that none of its Personnel) solicit, procure or induce, or endeavour to solicit, procure or induce (either solely or jointly with any other person, firm or company) any employee or contractor of the other party (or any of the other party's associated companies) to leave the other party (or any of the other party's associated companies).

**15.2.** **Duration:** The restrictions in clause 15.2 apply during the Term and will survive for a further 12 months after it comes to an end.

## 16. Notices

**16.1.** Any notice, approval, consent or other communication in relation to the Agreement must:

(a) be in writing and signed by the party sending it (or on that party's behalf)

(b) be left at or sent by prepaid ordinary post to the last notified address of the party, or sent by email to the last notified address of the party.

**16.2.** A notice, approval, consent or other communication is taken to be received by the party:

(a) upon actual receipt when had delivered;

(b) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email; or

(c) in the case of posting, there business days after posting to an address within Australia and on the fifth business day after the date of posting by airmail to an address outside of Australia.

**17. Force Majeure**

**17.1.** If a party is prevented from carrying out the whole or any part of its material obligations under the Agreement by reason of a Force Majeure Event, that party must immediately give written notice to the other party. The affected party must keep the other party informed of any changes in the circumstances causing the Force Majeure.

**17.2.** If by reason of a Force Majeure Event a party has been unable to perform any material obligation under this Agreement for a period of 60 calendar days, the other party may, after consulting with the affected party, immediately terminate this Agreement by giving notice to that party.

**18. Modern Slavery**

**18.1.** We work to comply with the requirements of Modern Slavery Law and expect the same of the parties we interact with. The parties agree that in performing their obligations under this Agreement, they will:

(a) comply with Modern Slavery Law; and

(b) not engage in human trafficking, slavery-like practices including servitude, forced labour and deceptive recruiting for labour or services or any other activity.

**19. General Provisions**

**19.1. Governing laws:** This Agreement is governed by Australia law and the parties submit to the exclusive jurisdiction of the Australian courts.

**19.2. Delay:** If one party fails to exercise or delays exercising any power or right it has under this Agreement, that failure or delay does not operate a waiver of that power or right, and any subsequent exercise of any such power or right.

**19.3. Assignment:** You may not assign your rights or transfer your obligations under this Agreement without our prior written consent, which we won't unreasonably withhold. Any change in control of you will constitute an assignment for the purposes of this clause 19.3.

**19.4. Validity:** If any part of this Agreement is held to be invalid, void or unenforceable, it shall be severed and the remaining provisions of this Agreement will remain in full force and effect and will not be affected.

**19.5.** Any terms and conditions created or supplied by any other party, in respect of the Services, will be of no legal effect and will not constitute part of this Agreement.

**19.6. Variation**: No variation or amendment to this Agreement shall be effective unless in writing and signed by each party.

**19.7. Waiver:** Any waiver of, or consent by a party to any departure from, any provision of this Agreement must be in writing and signed by or on behalf of that party and is effective only to the extent for which it is given.

**19.8. Entire agreement:** This Agreement shall equal the entire agreement between the parties in relation to its subject matter and no earlier agreement in relation to the subject matter of this Agreement, whether oral or written, shall have any effect from the date of this Agreement.

**19.9. Survival:** The terms of this Agreement which are capable of having effect after termination (including clauses 6,7,10,12,13,15,16,19) survive the expiry or earlier termination of this Agreement.

**19.10. Relationship between the Parties:** The Parties are independent contracting parties and nothing in the Agreement will make either party an agent or legal representative of the other for any purpose whatsoever. Nor does the Agreement grant either party any authority to assume or create an obligation on behalf or in the name of the other party.