



## PROFESSIONAL SERVICES TERMS & CONDITIONS FOR THYNK

THESE PROFESSIONAL SERVICES TERMS & CONDITIONS, INCLUDING ITS SCHEDULE(S), STATEMENT(S) OF WORK, AND EXECUTED ORDER FORM(S) (COLLECTIVELY THE "AGREEMENT") ARE EFFECTIVE AS OF THE LATER DATE OF EXECUTION OF THE APPLICABLE STATEMENT OF WORK OR ORDER MAKING REFERENCE TO THIS AGREEMENT.

ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE TERMS "YOU" "YOUR" OR "CUSTOMER" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERM OF THIS AGREEMENT YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

THIS AGREEMENT SETS FORTH THE GENERAL TERMS AND CONDITIONS UNDER WHICH CUSTOMER MAY PERIODICALLY ENGAGE THYNK TO PROVIDE CERTAIN PROFESSIONAL, EDUCATIONAL, OPERATIONAL AND TECHNICAL SERVICES ("SERVICES") TO CUSTOMER ON A PROJECT BASIS PURSUANT TO A STATEMENT OF WORK OR ORDER THAT WILL BE ENTERED INTO BETWEEN THYNK AND CUSTOMER ("SOW") FOR EACH ENGAGEMENT.

This Agreement was last updated on August 8<sup>th</sup> 2020. It is effective between You and Us as of the date You accept this Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. DEFINITIONS.

**A.** "Deliverables" means any reports, analyses, scripts, code or other work results which have been delivered by THYNK to Customer within the framework of fulfilling obligations under the SOW.

**B.** "Proprietary Rights" means all patents, copyrights, trade secrets, methodologies, ideas, concept, inventions, know-how, techniques or other intellectual property rights of a party.

**C.** "We", "Us", "Our", "THYNK", and "THYNK.Cloud" means THYNK SAS, 25 rue de Ponthieu, 75008 Paris, France, incorporated in France RCS Paris 878879253.

**D.** "You" "Your" or "Customer" means the company or other legal entity for which You are accepting this Agreement for the purchase of the User Subscriptions to use the Purchased Services in accordance with the terms and conditions of this Agreement.

### 2. SERVICES.

THYNK shall provide the services described in a SOW that details the relationship of the parties with regard to a specific project. Each SOW shall (i) be signed by the parties; (ii) incorporate by reference this Agreement; and (iii) state the pertinent business parameters, including, but not limited to, pricing, payment, expense reimbursement, and a detailed description of the Services to be provided. In case of conflict between the SOW and the terms of this Agreement, the SOW shall normally take precedence. However, to the extent that the SOW contains terms that conflict with terms in the Agreement pertaining to intellectual property and/or proprietary rights, indemnification, warranty (including remedies and disclaimers), and/or limitation of liability, the conflicting terms in the SOW shall supersede those in the Agreement only if the SOW clearly indicates that the parties are intentionally overriding the terms in the Agreement solely for purposes of such SOW.

### 3. TERM AND TERMINATION.

**A. Term's Survival.** The term of this Agreement commences on the later date of execution of an applicable SOW and shall remain in effect unless terminated as provided below. Upon any termination of this Agreement, Sections 1, 2, 3, 4, 5, 6 7(B), and 8 through 13 hereof shall survive in accordance with their terms. Termination of this Agreement or any SOW shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer of its obligation to pay all fees and expenses for all Services performed, including any Deliverables associated with such Services, as of the date of termination.

**B. Termination for Convenience.** Either party may terminate this Agreement for convenience by providing the other



with written notice, which termination shall become effective upon the later of (i.) fourteen days after receipt of such notice by such other party or (ii.) completion and payment for the Services set forth in any SOW(s) effective on the date of receipt of such notice. A termination for convenience for any SOW shall only be permitted if expressly agreed in the SOW.

**C. Termination for Breach.** Either party may notify the other in writing in case of the other's alleged breach of a material provision of this Agreement and/or an applicable SOW. The recipient shall have thirty (30) days from the date of receipt of such notice to effect a cure. If the recipient of the notice fails to effect a cure within such period, then the sender of the notice shall have the option of sending a written notice of termination of the applicable SOW(s), or the Agreement if the breach affects multiple SOWs, which notice shall take effect upon receipt.

#### 4. PROPRIETARY RIGHTS.

**A. Grant of Copyright Rights in Deliverables.** Subject to Customer's payment of the applicable amounts due THYNK, Customer shall own all copyright rights to the portion of Deliverables that consists solely of written reports, analyses and other working papers prepared and delivered by THYNK to Customer in the performance of THYNK's obligations under the SOW.

**B. Grant of License Rights in Deliverables.** For the portion of Deliverables that consists of scripts and code, THYNK grants Customer a non-exclusive, non-transferable, irrevocable (except in case of breach of the Agreement or SOW) perpetual right to use, copy and create derivative works from such (without the right to sublicense) for Customer's internal business operations, as contemplated by the applicable SOW. The license granted in this section does not apply to (i) Customer furnished materials, and (ii) any other Products or items licensed, or otherwise provided, under a separate agreement.

**C. Reservation of Proprietary Rights.** Each party reserves for itself all Proprietary Rights that it has not expressly granted to the other. THYNK shall not be limited in developing, using or marketing services or products which are similar to the Deliverables or Professional Services provided hereunder, or, subject to THYNK's confidentiality obligations to Customer, in using the Deliverables or performing similar Professional Services for any other projects.

#### 5. CONFIDENTIALITY.

**A. Confidential Information.** "Confidential Information" means any information that is marked "confidential" or "proprietary" or any other similar term or in relation to which its confidentiality should by its nature be inferred or, if disclosed orally, is identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, is summarized, appropriately labeled and provided in tangible form. Confidential Information does not include information that is (i) rightfully in the receiving party's possession without prior obligation of confidentiality from the disclosing party; (ii) a matter of public knowledge; (iii) rightfully furnished to the receiving party by a third party without confidentiality restriction; or (iv) independently developed by the receiving party without reference to the disclosing party's Confidential Information. Each party shall (a) use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with this Agreement or any purchase order hereunder; and (b) protect from disclosure to any third parties, by use of a standard of care equivalent to that as used by recipient to protect its own information of a similar nature and importance, and, no less than the use of reasonable care, any Confidential Information disclosed by the other party for a period commencing upon the date of disclosure until three (3) years thereafter, except with respect to (1) Customer data to which THYNK may have access in connection with the provision of Services, which shall remain Confidential Information until one of the exceptions stated in the above definition of Confidential Information applies; and (2) Confidential Information that constitutes, contains or reveals, in whole or in part, THYNK proprietary rights, which shall not be disclosed by the receiving party at any time. Notwithstanding the foregoing, the receiving party may disclose Confidential Information (A) to its Affiliate for the purpose of fulfilling its obligations or exercising its rights hereunder as long as such Affiliate complies with the foregoing; and (B) to the extent required by law (provided the receiving party has given the disclosing party prompt notice).

**B. Publicity.** Each party shall not, and shall not authorize or assist another to, originate, produce, issue or release any written publicity, news release, marketing collateral or other publication or public announcement, relating in any way to this Agreement or any SOW entered into hereunder, without the prior written approval of the other, which approval shall not be unreasonably withheld; provided, however, that THYNK may identify Customer for reference purposes.

#### 6. PAYMENT TERMS.

THYNK shall submit invoices for fees and reimbursable costs and expenses and Customer shall pay each invoice in the manner specified in the applicable SOW. Customer will also pay all related sales taxes and withholdings, except for those based on THYNK's net income. If Customer is required to withhold taxes, then Customer will forward any withholding receipts to THYNK.



Subject to THYNK's credit approval, all amounts are due in the currency stated on the invoice and in full 30 days after the date of THYNK's invoice, with interest accruing thereafter at the lesser of 1.5% per month or the highest lawful rate, except if stated otherwise in the related Order.

## 7. WARRANTY.

**A. Warranty.** THYNK shall perform Services in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify THYNK of any failure to so perform within ten (10) days after the performance of the applicable portion of the Services. THYNK's entire liability, and Customer's sole remedy, for THYNK's failure to so perform shall be for THYNK to, at its option, (i) use reasonable efforts to correct such failure, and/or (ii) terminate the applicable SOW and refund that portion of any fees received that correspond to such failure to perform.

### **B. Disclaimer and Exclusions.**

EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO PRODUCTS, SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, THYNK (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. INsofar AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

## 8. LIMITATION OF LIABILITY.

**A. Limitation on Direct Damages.** THYNK'S TOTAL LIABILITY (INCLUDING THE LIABILITY OF ANY SUPPLIER, SUBCONTRACTOR, EMPLOYEE OR AGENT OF THYNK), AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH ANY SERVICES PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY THYNK'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) €500 000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO THYNK FOR THE SPECIFIC SERVICE FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE BUT NOT OTHERWISE EXCLUDED HEREUNDER.

**B. No Indirect Damages.** EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF THYNK PROPRIETARY RIGHTS (INCLUDING ANY LICENSE GRANTED THEREUNDER), THYNK (INCLUDING THYNK'S SUPPLIERS, SUBCONTRACTORS, EMPLOYEES AND AGENTS) SHALL (i) HAVE NO LIABILITY TO CUSTOMER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

**9. NOTICES.** Any notices permitted or required under this Agreement and/or any SOW entered into hereunder shall be in writing, and shall be deemed given when delivered (i) in person; (ii) by overnight courier, upon written confirmation of receipt; (iii) by certified or registered mail, with proof of delivery; (iv) by facsimile transmission with confirmation of receipt; or (v) by email, with confirmation of receipt. Notices shall be sent to the address, facsimile number or email address set forth above, or at such other address, facsimile number or email address as provided to the other party in writing.

**10. INDEPENDENT CONTRACTORS.** The parties shall act as independent contractors for all purposes under this Agreement. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other party, or both parties as joint venturers or partners for any purpose. Neither party shall be responsible for the acts or omissions of the other party, and neither party will have authority to speak for, represent or obligate the other party in any way without the prior written approval of the other party.

**11. MISCELLANEOUS.** This Agreement and any SOW(s) entered into hereunder (i) shall constitute the complete statement of the agreement of the parties with regard to the subject matter hereof and (ii) may be modified only by a writing signed by authorized representatives of both parties. Except for the payment of fees, neither party shall be liable under this Agreement or any SOW because of a failure or delay in performing its obligations hereunder on account of any force majeure event, such as strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party. THYNK shall not be liable under this Agreement or any SOW because of failure or delay in performing its obligations hereunder on account of Customer's failure to provide timely access to facilities, space, power, documentation, networks, files, software, and Customer personnel that are reasonably necessary for THYNK to perform its obligations. Neither party may assign this Agreement to a separate legal entity, without the other party's written consent. Neither party shall unreasonably withhold or delay such consent; provided, however, that such written consent shall not be required if (i) either party assigns this Agreement to a separate entity in connection with a merger, acquisition, or sale of all or substantially all of its assets with or to such other separate entity, unless the surviving entity of the merger, acquisition, or sale of assets is a direct competitor of the other party. Nothing herein shall limit THYNK's right to assign its right to receive and collect payments hereunder.



All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent, add to, or conflict with this Agreement and/or an SOW, shall be null and void and of no legal force or effect. No waiver shall be deemed a waiver of any prior or subsequent default hereunder. If any part of this Agreement and/or any SOW entered into hereunder is held unenforceable, the validity of the remaining provisions shall not be affected.

12. **GOVERNING LAW.** All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.