

1. APPLICATION

- (a) These Terms and Conditions (**Terms**) will apply to the provisions of consultancy services by ThinkSmart Health Pty Ltd, ABN 55 149 802 228, of 3 Riley Street, Mollymook, New South Wales, 2539, Australia (**ThinkSmart**).
- (b) These Terms, information provided on ThinkSmart's website (**Website**), and any sales quote, order, and/or invoice (including in electronic form) issued by ThinkSmart to you (the **Documentation**) will form the **Agreement** between you and ThinkSmart.
- (c) **You**, the **Client**, acknowledge and agree that the provision of the consultancy services by ThinkSmart will be subject to these Terms. Further, you warrant that your employees, personnel, agents, and/or any person you authorise to receive the benefit of the services on your behalf will comply with these Terms.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these Terms, unless the context indicates otherwise, the following words have the following meanings:

Agreement means these Terms and the Documentation.

APPs are the Australian Privacy Principles contained in the *Privacy Act 1988* (Cth).

Business Day is a day (not Saturday or Sunday) that trading banks are open for business in Sydney, New South Wales, Australia.

Claim is any action, claim, suit, demand, loss, damage, liability, cost, expense, tax, outgoing or payment whatsoever (whether foreseeable or not).

Client's IP is all IP owned by the Client and includes all IP in the Data.

Client Resources means all equipment, facilities, materials, information and Data (including any Client IP) to be supplied by the Client to ThinkSmart as necessary for ThinkSmart to be able to provide the Services.

Confidential Information of a Party is all technical, financial, commercial and other information (in whatever medium) of or relating to it or its business affairs, which is disclosed or available to, or observed or accessible by, the other Party in connection with the Agreement which:

- (a) is marked as 'confidential', 'sensitive', 'private' or any other similar description; or
- (b) a reasonable person would (given its nature) consider confidential,

but excluding information that:

- (c) is readily available in the public domain without breach of confidentiality; or
- (d) the receiving Party can establish by written records is or has been legally known to, developed by, or acquired by, that receiving Party, independently of the Agreement.

Data is all information provided by the Client so ThinkSmart can supply the Services and/or the Deliverables, and all information that is transmitted, received, stored, processed, generated, compiled or modified through use, or in connection with the provision of the Services and/or the Deliverables.

Deliverable is any materials, Services, equipment or other items supplied or to be supplied by ThinkSmart to the Client under the Agreement.

Developed IP is all IP created, written or otherwise brought into existence by or on behalf of ThinkSmart in connection with or for the purposes of providing the Services or meeting its other

obligations under the Agreement, and all IP in the Deliverables (but excluding ThinkSmart's IP), and includes any further IP existing prior to the Commencement Date which the parties expressly agree will be assigned to the Client under the Agreement.

Documentation is any document in whatever form (including electronic) outlining the Services to be provided by ThinkSmart, and/or the Fees payable by the Client, subject to these Terms, including (but not limited to): information provided on the Website, any sales quote, order, and/or invoice.

Fees are the fees and/or charges payable by the Client under the Agreement.

Force Majeure Event is an act of war, revolution or terrorism; an act of God; or any other incident beyond the control of a Party - in each case which could not have been prevented or foreseen through the exercise of reasonable skill and care.

GST Law means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property or **IP** means statutory and other proprietary rights in respect of copyright and neighbouring rights, all rights in relation to inventions, patents, plant varieties, registered and unregistered trademarks, registered and unregistered designs, circuit layouts, trade secrets, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Insolvent is an entity being insolvent (under section 95A of the Corporations Act (Cth)); having an administrator, controller (per section 9 of the Corporations Act) or similar officer appointed to all or any of its property; having taken (or had taken against it) any step for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors; or suffering any event or similar event to those set out in this definition which would restrict its business operations or cause those operations to be placed under the control of a person other than its directors under the laws of its place of incorporation.

Moral Right is a right:

- (a) of attribution of authorship;
- (b) not to have authorship falsely attributed;
- (c) of integrity of authorship; or
- (d) any similar right,

in each case conferred by statute, and which exists or comes to exist anywhere in the world.

Party means the Client or ThinkSmart; and **Parties** mean both the Client and ThinkSmart.

Permitted Purpose is collection, use, disclosure, storage or handling of Personal Information in order for ThinkSmart to comply with its obligations under the Agreement.

Personal Information is information or an opinion about an identified or reasonable identifiable natural person (whether true or not), including personal information as defined in the *Privacy Act 1988* (Cth), collected or generated by, disclosed to, or accessed by ThinkSmart in connection with the Agreement.

Personnel are directors, officers, employees, professional advisers, agents or subcontractors of a Party (but the Personnel of the Client do not include ThinkSmart).

Privacy Code is a privacy code approved under the *Privacy Act 1988* (Cth).

Services means the services to be provided by ThinkSmart under the Agreement, as set out in the Documentation.

ThinkSmart's IP is all present and future IP created, written or otherwise brought into existence by or on behalf of ThinkSmart, whether independent of the performance of ThinkSmart's obligations under the Agreement, or in connection with or for the purpose of providing the Services or meeting its other obligations under the Agreement.

Tax includes:

- (a) any tax, levy, impost, deduction, charge, rate, withholding or duty by whatever name called levied, imposed or assessed (including, without limitation, withholding tax, employment taxes, land tax, property tax, excise duties, customs duties, goods and services tax, value added tax, sales tax, consumption tax, stamp duty and transaction duties or any similar impost imposed or levied); and
- (b) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

Tax Invoice has the meaning given to that term by the GST Act.

Website means www.thinksmarthealth.com.

2.2 Interpretations

In the Agreement, unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to the Agreement;
- (e) reference in any schedule to the Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (f) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (g) the headings to the clauses and schedules of the Agreement are not to affect the interpretation;
- (h) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment;
- (i) the word "including" (and related forms including "includes") means "including without limitation"; and
- (j) a reference to \$ or dollars is to Australian dollars.

2.3 Business Day

Something due to be done on or by a non-Business Day must be done on or by the next Business Day.

2.4 Notice in writing

Where an action of a Party is required to be evidenced in writing under the Agreement (for example, the provision of a Party's consent or approval, etc), the parties acknowledge and agree that email communication will satisfy such requirement for the action to be in writing.

3. TERM AND TERMINATION

3.1 Term of the Agreement

The Agreement commences on the date specified in the Documentation or the date when the Services are provided (whichever is earlier) and continues unless terminated earlier in accordance with the Agreement.

3.2 Termination for convenience

Either Party may terminate the provision of Services under the Agreement at any time with immediate effect.

3.3 Termination for cause

A Party may terminate the Agreement with immediate effect by written notice to the other Party if the other Party:

- (a) commits a material breach of the Agreement which is not remediable,
- (b) commits a material breach of the Agreement which is capable of remedy, but is not remedied within 14 days after being required by notice to do so; or
- (c) becomes Insolvent.

3.4 Consequences of termination

If the Agreement is terminated:

- (a) termination does not affect any accrued rights or liabilities of the parties;
- (b) the Client must pay the Fees for any Deliverables or Services provided up to the date of termination; and
- (c) any Fees paid in advance by the Client for Deliverables or Services not provided to the Client at the date of termination, must promptly be repaid to the Client.

3.5 Survivability

The following provisions survive termination or expiry of the Agreement: 2 – (Definitions and Interpretation); 3.4 – (Consequences of termination); 3.5 – (Survivability); 5 – (Fees); 8 – (Intellectual Property and Moral Rights); 9 – (Confidentiality); 10 – (Privacy); 11 – (Disclaimer); 12 – (Indemnities); 13 (Liability); 15 – (Taxes); 17 – (Dispute resolution); 18 – (Notice); 19 – (Miscellaneous), and any other contractual provisions that by their nature are intended to survive termination or expiration of the Agreement.

4. PROVISION OF SERVICES

4.1 Performance of Services

- (a) ThinkSmart must provide all Services and/or Deliverables, and all resources, technology and consumables necessary for the provision of those Services and/or Deliverables.
- (b) ThinkSmart must perform the Services using appropriate methods and practices, with the skill, prudence and foresight reasonably to be expected of skilled, experienced suppliers of services similar to the Services.
- (c) The Client acknowledges and agrees that any timeframes relating to the provision of Services outlined in the Documentation (or otherwise discussed) are estimates only. ThinkSmart will use reasonable endeavours to provide the Services in a timely manner, however, the Client acknowledges and agrees that failure by ThinkSmart to meet any timeframes (whether specified in the Documentation, or otherwise) will not be a breach of the Agreement.

5. FEES

5.1 Fees

- (a) The Fees for the Services are stated in the Documentation.
- (b) Fees are exclusive of GST unless otherwise stated.
- (c) The Client must pay ThinkSmart the Fees in accordance with the payment schedule (if any) set out in the Documentation.

5.2 Cost and disbursements

ThinkSmart is permitted to charge for all costs and expenses incurred in performing the Services, including (but not limited to) travelling, photocopying, courier services, postage or as otherwise listed in the Documentation.

5.3 Pro-rated payment

In the event that part or all of Services is not completed for whatever reason, ThinkSmart will be entitled to charge pro rata for so much of the Services that is completed.

5.4 Invoicing

ThinkSmart will submit a correctly rendered Tax Invoice for such Fees in accordance with the requirements set out in the Documentation.

5.5 Payment of invoices

- (a) The Client will pay undisputed, correctly rendered Tax Invoices in Australian dollars by electronic funds transfer to ThinkSmart's bank account as detailed to the Client in writing, within 14 days from the date of receipt by the Client of those invoices.
- (b) Payment is on account, and is not an admission of liability, acceptance or approval of ThinkSmart's performance, the value of the Services or that Services have been provided in accordance with the Agreement.

5.6 Failure to pay

If the Client does not make payment of the Fees in accordance with the payment terms specified in the Agreement, ThinkSmart is entitled to do any or all of the following:

- (a) charge interest on the outstanding amount at the rate of 10% per year above the cash rate of the Reserve Bank of Australia, accruing daily.
- (b) in the event where an outstanding amount is referred to a collection agency and/or law firm, charge the Client for all costs incurred from the collection agency and/or law firm (on a full indemnity basis);
- (c) require the Client to pay, in advance, for any Services (of any part of the Services) which have not been performed; and
- (d) not perform any further Services (or any part of the Services).

6. CLIENT OBLIGATIONS

6.1 General

During the Agreement, the Client must:

- (a) comply with all laws, regulations, codes, ordinances, industry standards relevant to the provision of the Services;
- (b) co-operate with ThinkSmart as ThinkSmart reasonably requires;
- (c) provide the information (in whatever form) that ThinkSmart reasonably requires;
- (d) make available to ThinkSmart such Client Resources as ThinkSmart reasonably requires to complete the provision of Services without charge; and
- (e) provide adequate and safe access to premises and facilities and provide any utilities and labour that may be reasonably required for effective receipt of the Services;
- (f) ensure that the Client's staff and agents cooperate with and assist ThinkSmart.

6.2 Additional costs and expenses

If the Client does not provide the Client Resources that ThinkSmart reasonably requires (and within a reasonable time period) to perform the Services, then any additional costs and expenses which are reasonably incurred by ThinkSmart will be paid by the Client.

7. SUBCONTRACTING

ThinkSmart may subcontract its obligations under the Agreement without the Client's prior written consent, provided that ThinkSmart remains principally liable for the performance of any

subcontracted obligations under the Agreement and is responsible for the acts, omissions, defaults and/or negligence of its subcontractors.

8. INTELLECTUAL PROPERTY AND MORAL RIGHTS

8.1 Assignment of IP

Nothing in this Agreement shall constitute an assignment or transfer of any Intellectual Property rights from ThinkSmart to the Client.

8.2 ThinkSmart's IP

- (a) The Client acknowledges and agrees that ThinkSmart's IP remains the property of ThinkSmart.
- (b) Unless stated otherwise in the Documentation, ThinkSmart grants to the Client a perpetual, non-exclusive, worldwide licence to exercise all rights in ThinkSmart's IP as is necessary for the Client to receive the benefit of the Services.

8.3 Client's IP

- (a) Subject to clause 8.3(b), ThinkSmart acknowledges and agrees that:
 - (i) the Client's IP remains the property of the Client; and
 - (ii) the Agreement does not confer on ThinkSmart any proprietary right or title to any of the Client's IP.
- (b) Subject to clause 8.3(c), the Client grants ThinkSmart a non-exclusive, royalty-free licence during the term of the Agreement to use and reproduce the Client's IP for the sole purpose of performing its obligations under the Agreement.
- (c) On termination or expiry of the Agreement, and upon the Client's request, ThinkSmart must deliver or render faithful account to the Client for all the Client's IP and other things containing the Client's IP that came into ThinkSmart's possession or under its control in the course of providing the Services.

8.4 Moral Rights

Upon request by the Client, ThinkSmart must obtain from each of its Personnel and individuals who are involved in the performance of the Services, an express agreement not to enforce any Moral Rights they may have presently or in the future, in any Deliverables, work or material produced in the performance of the Services, including by executing any Moral Rights consents reasonably required by the Client.

9. CONFIDENTIALITY

9.1 Ownership of Confidential Information

Each Party (a **Recipient**) acknowledges that the other's (**Discloser's**) Confidential Information is, and remains, the property of the Discloser. The Agreement does not convey any proprietary or other interest in one Party's Confidential Information to the other (except to the extent expressly indicated in clause 8). The Recipient must keep the Discloser's Confidential Information strictly confidential and not disclose it or allow it to become available to any third party, except as provided for in the Agreement. This obligation survives the termination of the Agreement and will continue until the information no longer constitutes Confidential Information of the Discloser.

9.2 Authorised use and disclosure of Confidential Information

The Recipient may only access and use the Discloser's Confidential Information to perform its obligations or exercise its rights under the Agreement (including, in the case of the Client, exploiting Deliverables), or with the Discloser's prior consent. The Recipient must comply with any reasonable restraint on such use stipulated by the Discloser. The Recipient may only disclose the Discloser's Confidential Information to:

- (a) its Personnel and third parties in accordance with clause 9.3 (each an **Authorised Disclosee**); and
- (b) the extent required to comply with any law, regulatory requirement or stock exchange rule, provided that the Recipient must (to the extent possible) minimise the extent of disclosure and give the Discloser prior notice with reasonable details of the proposed disclosure and the relevant Confidential Information to be disclosed.

9.3 Reasonable precautions to maintain confidentiality

The Recipient must take, and ensure its third party disclosees of the Discloser's Confidential Information take, all reasonable precautions to maintain confidentiality of that information and protect it from unauthorised access, use and disclosure, including:

- (a) restricting access to, and use of, that information to a strictly need to know basis for any specific purpose for which that information was disclosed by the Discloser and complying with any reasonable security and safety procedures notified to the Recipient by Discloser;
- (b) notifying each of its Personnel and Authorised Disclosees that has access to the Confidential Information, of the Recipient's obligations under the Agreement;
- (c) immediately notifying the Discloser of any actual or potential breach of confidentiality or any unauthorised access, disclosure or use of the Confidential Information; and
- (d) making every effort to cooperate with the Discloser in any investigation, prosecution or remedial action taken by the Discloser for protection of that Confidential Information.

9.4 Return of Confidential Information

On termination of the Agreement and upon the request of the Discloser, the Recipient must, subject to clause 9.5:

- (a) deliver to the Discloser any of the Discloser's Confidential Information in the Recipient's possession or control that is reasonably capable of being delivered; and
- (b) irretrievably delete, erase or destroy all Discloser Confidential Information in the Recipient's possession or control that is not capable of delivery to the Discloser,

and confirm in writing to the Discloser that it has done so, but these obligations will not apply in relation to any Deliverables supplied by ThinkSmart to the Client under the Agreement.

9.5 Retention of certain Confidential Information

Provided the Recipient continues to comply with this clause 9, the Recipient may retain any Confidential Information that:

- (a) is included in any board papers of the Recipient, or in back up tapes made in the ordinary course of its business which are not capable of ready search and deletion;
- (b) the Recipient is required by law or any regulatory requirement to retain, or needs to retain to defend itself in any proceeding being brought or threatened against it at the time the Confidential Information must be returned or destroyed;
- (c) the Recipient is required to retain for its own reasonable internal credit, risk, insurance, taxation or record-keeping purposes; or
- (d) is contained in any electronic record made in the ordinary course of the Recipient's business which is captured by automated document retention procedures designed to allow the Recipient to comply with document retention laws.

9.6 Effects of breach

Each Party acknowledges that due to the proprietary and competitively-sensitive nature of the Confidential Information of the other Party, the other Party would be irreparably harmed by any actual or threatened breach of this clause 9, and that monetary damages would be insufficient to remedy such actual or threatened breach and each Party may seek injunctive relief.

10. PRIVACY

10.1 Privacy Laws

Each Party must comply (and ensure that its Personnel are aware of and comply) with the APPs, any applicable Privacy Code and other applicable laws or codes governing Personal Information (together **Privacy Laws**) in doing any act or engaging in any practice pursuant to the Agreement.

11. DISCLAIMER

11.1 No reliance

Each of the Parties acknowledges that, in entering into the Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in the Agreement.

11.2 Consumer guarantees

Nothing in the Agreement excludes, restricts or modifies any terms, conditions, warranties or liabilities which are imposed or implied by any statute, including but not limited to the *Competition and Consumer Act 2010* (Cth), and which by statute cannot be excluded, restricted or modified. Limitations and exclusions in the Agreement are made only to the maximum extent permitted by law.

11.3 Exclusions

- (a) To the maximum extent permitted by law, other than the warranties expressly stated in the Agreement, ThinkSmart gives no warranties regarding the provision of the Services and all implied or imposed conditions, warranties and rights are hereby excluded, including (without limitation) warranties in relation to fitness for purpose or merchantability.
- (b) Where any condition, warranty or right is implied or imposed by law and cannot be excluded, the sole liability of ThinkSmart for loss or damage incurred in respect of goods and/or services supplied (or agreed to be supplied) shall be limited to:
 - (i) in the case of goods, at ThinkSmart's option:
 - (A) the repayment of any Fees paid for the supply of the goods;
 - (B) the replacement of the goods or the supply of equivalent goods;
 - (C) the repair of the goods;
 - (D) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (E) the payment of the cost of having the goods repaired; and
 - (ii) in the case of services, at ThinkSmart's option:
 - (A) the repayment of any Fees paid for the provision of the services;
 - (B) supplying the services again; or
 - (C) paying the cost of having the services supplied again.

11.4 No guarantee of security

Notwithstanding any other provision in the Agreement, where the Services provided to the Client by ThinkSmart under this Agreement relate to online security and/or protection against vulnerabilities (including, without limitation, malware, viruses, cybercrime, denial-of-service (DOS) attacks, etc):

- (a) the Client acknowledges that the nature of the internet means that the Client's computer systems may never be completely secure and protected from any such threats and vulnerabilities; and
- (b) ThinkSmart expressly excludes and disclaims any guarantees, representations and/or warranties (whether express or implied) that the Client's computer systems (and any data on those computer systems) will be free and protected from any such threats and vulnerabilities.

12. INDEMNITIES

12.1 Indemnity by ThinkSmart

- (a) ThinkSmart must reimburse the Client for, and indemnify and hold them harmless against, all Claims suffered or incurred by the Client arising in connection with fraud, or fraudulent misrepresentation, gross negligence, or wilful misconduct of the Agreement by ThinkSmart or its Personnel.
- (b) ThinkSmart will not be liable to the Client (including under this clause 12.1) to the extent that the Client's acts or omissions have contributed to the Claim and/or liability. For the avoidance of doubt, the Client has a duty to mitigate any losses arising from an act or omission of ThinkSmart.

12.2 Indemnity by the Client

- (a) The Client must reimburse ThinkSmart for, and indemnify and hold them harmless against, all Claims suffered or incurred by ThinkSmart in connection with or arising out of:
 - (i) fraud, or fraudulent misrepresentation, gross negligence or wilful misconduct of the Agreement by the Client or its Personnel;
 - (ii) infringement of a third party's intellectual property rights arising out of any act or omission of the Client or its Personnel; and/or
 - (iii) any information supplied by the Client to ThinkSmart, its employees or suppliers, within or outside the scope of the Agreement.
- (b) The Client will not be liable to ThinkSmart (including under this clause 12.2) to the extent that ThinkSmart's acts or omissions have contributed to the Claim and/or liability. For the avoidance of doubt, ThinkSmart has a duty to mitigate any losses arising from an act or omission of the Client.

13. LIABILITY

13.1 Indirect or consequential loss

Neither Party is liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature (including any loss of business opportunity, loss of revenue, income, profits or anticipated savings, loss of contracts or business relationships, loss of reputation or goodwill, or loss or corruption of information or data).

13.2 Liability limit

Notwithstanding any other provision of the Agreement, the liability of ThinkSmart with respect to Services and/or Deliverable provided under the Agreement, whether arising in contract, tort, negligence, breach of statutory duty or otherwise, will not exceed the Fees paid by the Client to ThinkSmart with respect to the Services and/or Deliverables giving rise to the liability.

14. INSURANCES

ThinkSmart must take out and maintain during the term of the Agreement the following insurances:

- (a) worker's compensation insurance as prescribed by law;
- (b) product liability insurance that is adequate to cover all risks usually covered for the supply of the Products and as required by law;
- (c) public liability insurance that is adequate to cover all risks usually covered for the Services and as required by law; and
- (d) professional indemnity insurance that is adequate to cover all risks usually covered for the Services and as required by law.

TAXES

- (e) For the avoidance of doubt, each Party is responsible for taxes imposed in respect of its income in connection with the Agreement.
- (f) Terms used in this clause 15 have the same meaning as those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (g) If the supply of Services under the Agreement is subject to GST, the Client must pay ThinkSmart the Fee plus an amount equal to the GST payable on the supply (unless the price is expressly stated as being inclusive of GST).
- (h) The Client must pay the additional amount payable under clause 15(c) on the same date as the Fee is payable.
- (i) ThinkSmart must issue to the Client a Tax Invoice in the format required by law for the supply. The Tax Invoice must set out the amount of the GST payable by the Client.
- (j) ThinkSmart warrants that it is registered with an Australian Business Number and for GST purposes at each time a taxable supply is made.

15. FORCE MAJEURE

If a Force Majeure Event occurs and prevents a Party (**Affected Party**) performing its obligations, under the Agreement, that Party must promptly notify the other Party of the event, the time it started and likely duration, the extent that its obligations are affected and the measures proposed to remedy or mitigate its consequences. The Affected Party's obligations are then suspended solely to the extent it is prevented from performing them by the Force Majeure Event. The Affected Party must:

- (a) promptly take all necessary steps to remedy or mitigate the Force Majeure Event's effects, so as to resume full performance of its obligations as soon as reasonably possible; and
- (b) take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations.

If the delay or failure exceeds 30 days, the other Party may immediately terminate the Agreement on notice to the Affected Party and clause 3.4 will apply.

16. DISPUTE RESOLUTION

16.1 Handling of Disputes

Any dispute, difference or disagreement under the Agreement (**Dispute**) must be handled under this clause. However, nothing in this clause prevents a Party seeking urgent interim or interlocutory relief from a court of law to preserve property or prevent irreparable harm. Further, if a Party fails to comply with this clause, the other Party need not comply with it before commencing proceedings in any court or tribunal of competent jurisdiction in New South Wales, Australia. The parties will continue to perform the Agreement despite any Dispute, provided that either Party may exercise any of its rights under the Agreement at any time.

16.2 Initial negotiations between parties

A Party wishing to resolve a Dispute must notify the other Party describing the Dispute in sufficient detail for the other Party to adequately evaluate it (the **Dispute Notice**). The parties must attempt to resolve any Dispute by agreement through the Client's authorised representative and ThinkSmart's authorised representative.

Those discussions (and documentation tendered in connection with them) will be solely to resolve the Dispute on a "without prejudice" basis (whether or not expressly designated).

16.3 Mediation

If those discussions fail to resolve the Dispute, a mediator will be selected by agreement of the parties, or failing agreement within 10 Business Days, by The Australian Disputes Centre (**ADC**) under its "Guidelines for Commercial Mediation" (on the request of either Party). The parties will then use their reasonable efforts to resolve the dispute by mediation under ADC's "Guidelines for Commercial Mediation".

16.4 Termination of mediation

Either Party may terminate the mediation at any time on notice to the other Party and the mediator.

16.5 Further proceedings

If the Dispute is not resolved by mediation, either Party may commence proceedings in any court or tribunal of competent jurisdiction in New South Wales, Australia.

17. NOTICE

A notice, request, demand, consent or approval (**Notice**) from a Party to another (**Recipient**) must be in writing, addressed to the Recipient and delivered by one of the following means (deemed delivery and receipt being as specified below for each method):

- (a) delivered to Recipient's address – deemed delivered/received at date and time of delivery;
- (b) sent by registered mail to Recipient's address - deemed delivered/received on the third Business Day after posting (within Australia) or on the tenth Business Day after posting (outside Australia);
- (c) emailed to Recipient's email address (deemed delivered/received when the sender gets a confirmation message from Recipient's mail server indicating that the message was received by Recipient without error),

provided that if any Notice is delivered / received on a non-Business Day or after 4pm on a Business Day, then the notice will be deemed to have been delivered / received on the next Business Day.

The address and email address of each Party is specified in the Documentation and is subject to any updates notified by either Party in writing.

18. GENERAL

18.1 Governing law and jurisdiction

The Agreement is governed by the Laws in force in the State of New South Wales, Australia. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts in New South Wales and waives any objection to proceedings in any such court on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum.

18.2 Entire agreement

The Agreement supersedes all previous agreements in respect of its subject matter and is the entire agreement of the parties with respect to that subject matter.

18.3 Relationship of parties

Nothing in the Agreement is to be construed as constituting one Party as employer, agent or partner of the other Party or in joint venture with the other Party. No Party has authority to bind or purport to bind the other Party. For the avoidance of doubt, ThinkSmart is an independent contractor of the Client.

1.2 Assignment

No Party may assign, novate or create an interest in its rights under the Agreement without the prior written consent of the other Party.

18.4 Waivers

A waiver of any right, power, authority, discretion or remedy must be in writing, signed by the Party granting the waiver. A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy does not result in a waiver of that right, power, authority, discretion or remedy.

18.5 Severability

All or part of any provision of the Agreement that is illegal, invalid or unenforceable will be severed from the Agreement and the remaining provisions (and parts of provisions) will continue in force.

18.6 Counterparts

ThinkSmart may amend these Terms from time to time by providing the Client with written notice. For the avoidance of doubt, written notice can be in the form of new Terms uploaded on ThinkSmart's Website. ThinkSmart recommends that the Client reviews the latest version of the Terms on ThinkSmart's Website from time to time.

Last updated – April 2021

