



Posted/Revised: February 1, 2017

## SUB USER TERMS OF SERVICE

**PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY CLICKING “ACCEPTED AND AGREED TO,” CUSTOMER AND SUB USER AGREE TO THESE TERMS AND CONDITIONS.**

This Sub User Terms of Service provisions constitute an agreement (this “Agreement”) by and between Business BrainScience, LLC, a Limited Liability Company and its members and shareholders as individuals, whose principal place of business is Fresno, California (“Vendor”) and the corporation, LLC, partnership, sole proprietorship, individual, or other entity who has previously executed the Terms of Service Agreement for the System (“Customer”) and the Clients, Employees or other individuals that use the Customers access to the System (“Sub User”). The Customer’s and Sub User’s use of and Vendor’s provision of the *ThruThink*<sup>SM</sup> website and the *ThruThink*<sup>SM</sup> business analysis model (Vendor’s System as defined below in Section 1.1 (*System*)) are governed by this Agreement.

The ability of the Customer to have Sub Users under their account will be subject to and under the restrictions of the Customer’s subscription (Order).

Provided the Customer Order allows Sub Users, the Customer desires and requests that the Sub User have access and use of the System under Customers master account. To facilitate this, the Customer will give the Sub User the access code to the Customers master account and the Sub User will register as a Sub User under that Master Account.

This Agreement is effective as of the date the Sub User clicks “Accepted and Agreed To” (the “Effective Date”). By providing the Sub User access to the Master Account, Customer agrees and is a party to this agreement. In this regard, the Customer accepts and assumes all responsibilities of the Sub User in this Agreement and indemnifies Vendor against all claims or actions stemming from Sub Users use of the System. Sub Users use of and Vendor’s provision of the System are governed by the Terms of Service previously accepted by the Customer and this Agreement. If there are any conflicts between the two agreements, the provisions of the Customer Terms of Service will prevail and for the purposes of this Sub Users Agreement, "Customer" and "User" in the Customers Terms of Service Agreement will be interchangeable and mean the same as the "Sub User" identified in this Agreement. [Terms of Service Agreement](#)

By reference, the following policies are included as part of this Agreement:

[Privacy Policy](#)

[Acceptable Use Policy \(AUP\)](#)

[Service Level Agreement \(SLA\)](#)

THE SUB USER ACKNOWLEDGES THAT IT HAS READ THIS SUB USERS AGREEMENT AS WELL AS THE CUSTOMERS TERMS OF SERVICE AGREEMENT, UNDERSTANDS BOTH AGREEMENTS, AND AGREES TO BE BOUND BY THE TERMS OF THE SUB USERS TERMS OF SERVICE AGREEMENT AND THE CUSTOMERS TERMS OF SERVICE AGREEMENT, AND THAT THE PERSON ACCEPTING ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO. THE PERSON ACCEPTING THIS AGREEMENT ON CUSTOMER’S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND CUSTOMER TO THESE TERMS AND CONDITIONS.

## **1. THE SYSTEM.**

- 1.1. **System.** The System means the website ThruThink.com and the *ThruThink*<sup>SM</sup> business analysis model including its Documentation, components, design, software code, user interface, architecture, methodology, features, functions, formulas, calculations, charts, schematics and methods of analysis, business logic and reports generated by the System.
- 1.2. **Use of the System.** During the Term, Sub User may access and use the System pursuant to: (a) the Customer's account being in good standing with the Vendor; (b) the Sub User continuing to have the Customer's permission to use account; (c) the terms of any outstanding Customer Order, including such features and functions as the Order requires; and (d) Vendor's policies posted on its Website at ThruThink.com, as such policies may be updated from time to time.
- 1.3. **Documentation.** The Documentation is solely for the use by the Customer and or the Sub User (Users) as necessary to support the User's use of the System. Any suggestions or advice contained in the Documentation is for the Users convenience and does not constitute advice or recommendations as to the outcome of the Users business.
- 1.4. **Chat Responses.** The system may provide a Chat response system. If such a feature is provided, all Chat dialog responses from *ThruThink*<sup>SM</sup> are for the Sub Users convenience and do not constitute advice or recommendations as to the outcome of the Customers or Sub Users business.
- 1.5. **System Revisions.** Vendor may revise System features and functions or the SLA at any time, including without limitation by removing such features and functions or reducing service levels. If any such revision to the System materially reduces features or functionality provided pursuant to an Order, Customer may within 30 days of notice of the revision terminate such Order, without cause, or terminate this Agreement without cause if such Order is the only one outstanding. If any such revision to the SLA materially reduces service levels provided pursuant to an outstanding Order, the revisions shall not go into effect with respect to such Order until the start of the Term beginning 45 or more days after Vendor posts the revision and so informs Customer.
- 1.6. **Data Deletion.** The System uses Sub User inputs and other Sub User data as defined in Section 4 (*Customer Data and Privacy*) of the Customer Terms of Service (Sub User Data). Vendor may permanently erase Sub Users Data if Customer's account is delinquent, suspended, or terminated for 30 days or more

## **2. WARRANTY DISCLAIMER.**

- 2.1 Except to the extent set forth in the SLA, SUB USER ACCEPTS THE SYSTEM "AS IS" AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR APPLICABILITY OF THE DOCUMENTATION, OUTCOME OF CUSTOMERS OR USERS BUSINESS OR DEAL, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) VENDOR HAS NO OBLIGATION TO INDEMNIFY OR DEFEND SUB USER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (c) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT SUB USER DATA WILL REMAIN PRIVATE OR SECURE.

**2.2 Forward Looking Projections.** The System uses the Sub User Data and presents calculations and results in a forward looking manner for up to a 20 year period (Forward Looking Projections). Forward Looking Projections are based on the Customer Data as entered by the Sub User and are neither historical facts nor assurances of future performance. The System makes calculations from the Customer Data and do not reflect the inherent uncertainties and risks of the future. Sub User accepts full responsibility for the Forward Looking Projections and Vendor makes no representation, warranties or guarantees about the outcome of Sub Users business.

**2.3 *ThruThink Evaluation*<sup>SM</sup> and *ThruThink Deal Score*<sup>SM</sup>.** The System incorporates a *ThruThink Evaluation*<sup>SM</sup> and *ThruThink Deal Score*<sup>SM</sup>. The evaluation and deal score involve proprietary formulas, algorithms and concepts. They are based on the Customer Data, incorporate the Forward Looking Projections described in Section 2.2 (*Forward Looking Projections*) and are expressed as opinion only and do not provide any representation, warranties or guarantees about the outcome of Users business.

**2.4 Calculation Errors and Glitches.** The System has over 8,000 potential User/Sub User Inputs. While the Vendor has performed thousands of tests, there is an infinite amount of combinations that could be made with the User/Sub User Inputs. Therefore there is a risk that the Sub User may input a set of data that will cause a calculation error or glitch. The Sub User acknowledges and assumes this risk by agreeing to this Agreement and the Vendors liability for any calculation error or glitch is limited by the provisions in Section 3.1 (*Dollar Cap*) below.

### **3. LIMITATION OF LIABILITY.**

- 3.1. **Dollar Cap.** VENDOR'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE REMAINING AMOUNT OF THE CURRENT SUBSCRIPTION FEE PAID BY THE CUSTOMER PRORATED BY THE REMAINING AMOUNT OF THE SUBSCRIPTION PERIOD. IF THERE IS NO REMAINING SUBSCRIPTION PERIOD OR IN THE CASE OF THE QUICK DEAL, THERE IS NO VENDOR LIABILITY AND THE DOLLAR CAP IS ZERO.
- 3.2. **Exclusion of Consequential Damages.** IN NO EVENT WILL VENDOR BE LIABLE TO SUB USER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 3.3. **Clarifications & Disclaimers.** THE LIABILITIES LIMITED BY THIS SECTION 3 (*Limitation of Liability*) APPLY: (a) TO LIABILITY FOR VENDORS NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF VENDOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF SUB USER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 3 (*Limitation of Liability*), Vendor's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Vendor's liability limits and other rights set forth in this Section 3 (*Limitation of Liability*) apply likewise to Vendor's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

**4. AMENDMENT.** Vendor may amend this Agreement from time to time by posting an amended version at its Website "Amendment Date". Such amendment will be deemed accepted upon the Customer or Sub Users continued use of the Service after the Amendment Date unless Customer first gives Vendor written notice of rejection of the amendment. In the event of such rejection, the Customer may terminate this Agreement pursuant to Section 11 (*Term and Termination*) of the Customers Terms of Service. Customer or Sub Users continued use of the Service following the Amendment Date of an amendment, will confirm Customer and Sub Users consent thereto. This

Agreement may not be amended in any other way except through a written agreement by authorized representatives of the Vendor and the Customer. Notwithstanding the foregoing provisions of this Section 4 (*Amendment*), Vendor may revise the Privacy Policy and Acceptable Use Policy at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted.