**Terms of Service for ThoughtFarmer Cloud**

This Agreement creates a binding legal agreement between you (“Customer”) and ThoughtFarmer Inc. (“ThoughtFarmer”).

BY USING THE SERVICE, YOU IRREVOCABLY ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT ACCEPT THIS AGREEMENT, YOU MUST NOT USE THE SERVICE. You also agree to ensure that anyone who uses the Service using your password or login information abides by this Agreement.

IF YOU ARE ENTERING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE, THE TERM “CUSTOMER” WILL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICE.

By accepting this Agreement, you agree to be bound by the terms and conditions of this Agreement.

In order to enter into this Agreement, you must have reached the legal age of majority in your jurisdiction of residence, and be fully able and competent to enter into the terms, conditions, obligations, affirmations, representation and warranties set forth in this Agreement, and to abide by and comply with this Agreement. It is your responsibility to ensure that you are legally eligible to enter into this Agreement under any laws applicable to you. If you accept this Agreement, you represent that you have the capacity to be bound by it.

1. **Definitions. As used in this Agreement:**
	1. **“Confidential Information”** means all information regarding a party’s business, including, without limitation, technical, marketing, financial, employee, planning and other confidential or proprietary information, disclosed under this Agreement, that is clearly identified as confidential or proprietary at the time of disclosure or that the receiving party knew or should have known, under the circumstances, was considered confidential or proprietary. ThoughtFarmer’s Confidential Information includes information derived from or concerning the Service, the System or the Documentation and the terms of this Agreement. Customer’s Confidential Information includes the Customer Data.
	2. **“Customer Data”** means any data, information or information contained in any database, template or other similar document (a) submitted by Customer or a User through the Service, (b) provided by Customer or a User to ThoughtFarmer as part of the Service, or (c) supplied to ThoughtFarmer by or on behalf of Customer.
	3. **“Documentation”** means the designated final user manuals, handbooks, online materials, specifications or forms made available by ThoughtFarmer that describe the features, functionality or operation of the Service and the System.
	4. **“Force Majeure Event”** is defined in Section 12.3.
	5. “Order Form” means collectively the order documents representing Customer’s initial subscription to the Service, and any subsequent modifications to the subscription agreed to between the parties in writing from time to time, that, upon execution, are incorporated in and made a part of this Agreement from time to time.
	6. **“Personal Information”** means information about or relating to an identified or identifiable individual that is subject to any Privacy Laws.
	7. **“Privacy Laws”** means all applicable federal and provincial legislation and regulations governing the collection, use and disclosure of Personal Information in the jurisdictions where Customer has subscribed to use the Service, which may include the Personal Information and Protection of Electronic Documents Act (Canada) and equivalent provincial, state, federal and international legislation.
	8. **“Service”** means the on-line software as a service offerings delivered by ThoughtFarmer to Customer using the System, as made available by ThoughtFarmer from time-to-time as specified in the Order Form.
	9. **“System”** means the technology, including hardware, software and systems, used by ThoughtFarmer to deliver the Service to Customer in accordance with this Agreement.
	10. **“UserID”** is defined in Section 3.1.
	11. **“Users”** means Customer’s employees, representatives, consultants, contractors or agents who are authorized to use the Service on behalf of Customer and have been supplied user identifications and passwords for this purpose.
2. **The Service.**
	1. **Subscription to the Service**. Conditional on Customer: (a) complying with the provisions of this Agreement, including but not limited to paying the fees as required by this Agreement; and (b) cooperating with the reasonable requests of ThoughtFarmer, ThoughtFarmer hereby grants to Customer a non-sublicensable, non-transferable, non-exclusive subscription to access and use the Service in accordance with this Agreement solely for Customer’s internal business purposes and not for resale. Customer may order the Service under this Agreement by placing written, signed orders on an Order Form. Only the execution of an Order Form by Customer and by ThoughtFarmer constitutes a binding contract between those parties. Customer agrees that its purchase of the subscription is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by ThoughtFarmer with respect to future functionality or features.
	2. **Availability SLA**. ThoughtFarmer will use commercially reasonable efforts to achieve Service uptime equal to or better than 99.5% on an monthly basis, excluding outages due to scheduled maintenance, software customizations made by Customer, or outages beyond the control of ThoughtFarmer (the “**Target**”); provided however, that any failure to achieve the Target will not constitute a breach of this Agreement. When an outage causes a loss of service exceeding 30 continuous minutes in a calendar month, ThoughtFarmer will, as Customer’s sole remedy, provide a service credit consisting of 5% of the monthly recurring fee for each 30-minute block, up to a maximum of 100% of the monthly recurring fee for approved credit claims. All service credit claims must be submitted by Customer via email to helpdesk@thoughtfarmer.com. Customer will be assigned a ticket number and the claim will be reviewed within 10 business days. Claims for service credits must be received within 15 days following the end of the month in which the Target was not achieved. Upon application for a service credit, ThoughtFarmer will notify Customer following investigation of the application. If rejected, the notification will specify the basis for rejection. If approved, ThoughtFarmer will credit Customer’s account with the appropriate amount.
	3. **Support**. Subject to the terms of this Agreement, including, without limitation, the payment of fees as set forth in Section 4, ThoughtFarmer will provide the support services described in the attached Schedule A.
	4. **System Updates and Scheduled Downtime**. ThoughtFarmer may update any aspect of the Service or System at any time in its sole discretion. ThoughtFarmer may schedule downtime for maintenance and upgrades to the System without prior notice but will use commercially reasonable efforts to provide advance notice where practicable.
	5. **Privacy Policy**. To the extent any Customer Data contains Personal Information, it will be used, collected, stored and disclosed for the purposes contemplated under this Agreement and in accordance with the Privacy Policy as it may be amended from time to time in the future.ThoughtFarmer’s Privacy Policy is located at <https://www.thoughtfarmer.com/privacy-policy/>
	6. **Internet Security Disclaimer**. Customer acknowledges and agrees that ThoughtFarmer exercises no control over, and accepts no responsibility for, any content passing through the Internet or for Internet connectivity outside of ThoughtFarmer’s control. Customer acknowledges that the Internet is inherently risky despite reasonable measures being taken, and Customer assumes responsibility for its use of the Service over the Internet.
	7. **Limitation, Suspension or Termination of Access**. In addition to the other rights and remedies of ThoughtFarmer under this Agreement, ThoughtFarmer may suspend, terminate or limit, in ThoughtFarmer’s reasonable discretion, Customer’s access to or use of the Service, or any part of it, without notice in order to: (a) prevent damage to, or degradation of the integrity of the System or any of Customer’s systems; (b) comply with any law, regulation, court order or other governmental request or order; or (c) otherwise protect ThoughtFarmer from harm to its reputation or business. ThoughtFarmer will use commercially reasonable efforts to notify Customer of a limitation, suspension or termination action as soon as reasonably practicable. In the event of a limitation or suspension, ThoughtFarmer will restore Customer’s access to the Service when ThoughtFarmer determines the event has been resolved. Nothing in this Agreement will limit ThoughtFarmer’s right to take any action or invoke remedies, or will act as a waiver of ThoughtFarmer’s rights in any way with respect to any of the foregoing activities. ThoughtFarmer will not be responsible for any loss or damages of any kind incurred by Customer as a result of any limitation, termination or suspension of the Service under this Section 2.7.
	8. **Subcontractors**. Customer acknowledges and agrees that ThoughtFarmer may retain the services of independent contractors (“**Subcontractors**”) from time to time to provide, or to assist ThoughtFarmer in providing, the Service. Any Subcontractors used by ThoughtFarmer to provide the Service shall remain under the direction and control of ThoughtFarmer, and ThoughtFarmer shall be fully and personally liable for all acts or omissions of the Subcontractors.
3. **Customer’s Use Of The Service.**
	1. **Access and Security Guidelines**. Subject to any limitations associated with Customer’s subscription account, Customer may set up User accounts by supplying a unique user identification name and password (“**UserID**”) to ThoughtFarmer for each User. A User may only access and use the Service with his or her specific UserID. Customer is responsible to ensure UserIDs are not shared, and that Users retain the confidentiality of their UserIDs. Customer is responsible for any and all activity occurring under the UserIDs associated with Users. Customer will promptly notify ThoughtFarmer of any actual or suspected unauthorized use of the Service. ThoughtFarmer may require that a UserID be replaced at any time.
	2. **Customer Responsibilities and Restrictions**. Customer will, at all times, comply with all applicable local, state, provincial, federal and foreign laws in using the Service. Without limiting the generality of Section 3.1, Customer agrees that Customer will not, and will not permit any person, including without limitation the Users, to:
4. use the Service other than as permitted by this Agreement;
5. use the Service to violate, infringe or appropriate any person’s privacy rights, publicity rights, defamation rights, intellectual property rights, proprietary rights, contractual rights or any other legal right;
6. sublicense or transfer any of Customer’s rights under this Agreement, except as otherwise provided in this Agreement, or otherwise use the Service for the benefit of a third party or to operate a service bureau;
7. copy, modify, alter, change, translate, decrypt, obtain or extract the source code of, create derivative works from, reverse
8. engineer, reverse assemble, decompile, disassemble or reverse compile any part of the Service;
9. use or launch any automated system, including without limitation any “robot” or “spider” that accesses the Service; or
10. interfere with, or attempt to interfere with, the Service, the System or any other networks or services connected to the Service, whether through the use of viruses, bots, worms or any other computer code, file or program that interrupts, destroys or limits the functionality of any computer software or hardware.
	1. **Customer Data**. Customer is solely responsible for the Customer Data and will not provide or transmit any Customer Data or any other information, data or material that: (a) infringes or violates any intellectual property rights, publicity/privacy rights, law or regulation; or (b) contains any viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or personal information. ThoughtFarmer may take remedial action if Customer Data violates this Section 3.3, however, ThoughtFarmer is under no obligation to review Customer Data for accuracy or potential liability.
11. **Fees, Payment and Suspension.**

As consideration for the subscription to the Service, Customer will pay ThoughtFarmer the fees set forth in and in accordance with the Order Form. All fees will be billed in advance on an annual basis and are due within 30 days following the date of invoice, unless otherwise agreed to in the Order Form. Overdue amounts will accrue interest at the rate of 2% per month (24% per annum), or the highest legal interest rate, if less. Customer shall reimburse ThoughtFarmer for all expenses (including reasonable attorneys’ fees) incurred by ThoughtFarmer to collect any amount that is not paid when due. All fees owed by Customer in connection with this Agreement are exclusive of, and Customer shall pay, all sales, use, excise and other taxes that may be levied upon Customer in connection with this Agreement, except for employment taxes and taxes based on ThoughtFarmer’s net income. ThoughtFarmer reserves the right (in addition to any other rights or remedies ThoughtFarmer may have) to discontinue the Service and suspend all UserIDs and Customer’s access to the Service if any fees set forth in the Order Form are more than 30 days overdue until such amounts are paid in full. Customer shall maintain complete, accurate and up-to-date Customer billing and contact information at all times.

1. **Confidential Information.**
	1. Obligation. Each party agrees (a) to hold the other party’s Confidential Information in strict confidence, (b) to limit access to the other party’s Confidential Information to those of its employees or agents having a need to know and who are bound by confidentiality obligations at least as restrictive as those contained herein, and (c) not to use such Confidential Information for any purpose except as expressly permitted hereunder. Notwithstanding the foregoing, the receiving party will not be in violation of this Section 5.1 with regard to a disclosure that was in response to a valid order or requirement by a court or other governmental body, provided that the receiving party gives the other party prior written notice of such disclosure in order to permit the other party to seek confidential treatment of such information.
	2. Exceptions. The restrictions on use and disclosure of Confidential Information set forth above will not apply to any Confidential Information, or portion thereof, which (a) is or becomes a part of the public domain through no act or omission of the receiving party, (b) was in the receiving party’s lawful possession prior to the disclosure, as shown by the receiving party’s competent written records, (c) is independently developed by the receiving party without reference to the disclosing party’s Confidential Information, as shown by the receiving party’s competent written records, or (d) is lawfully disclosed to the receiving party by a third party without restriction on disclosure.
2. **Ownership.**
	1. **System and Technology**. Customer acknowledges that ThoughtFarmer retains all right, title and interest in and to the Service, the System and all software, materials, formats, interfaces, information, data, content and ThoughtFarmer proprietary information and technology used by ThoughtFarmer or provided to Customer in connection with the Service (collectively, the “**ThoughtFarmer Technology**”), and that the ThoughtFarmer Technology is protected by intellectual property rights owned by or licensed to ThoughtFarmer. Other than as expressly set forth in this Agreement, no license or other rights in the ThoughtFarmer Technology are granted to the Customer, and all such rights are hereby expressly reserved by ThoughtFarmer. Customer grants to ThoughtFarmer a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer or any User relating to the Service.
	2. **Customer Data**. Customer retains all right, title and interest in and to the Customer Data. Except as set out in Section 6.3, ThoughtFarmer will only use Customer Data to provide the Service under this Agreement. Customer will be solely responsible for providing all Customer Data required for the proper operation of the Service. Customer grants to ThoughtFarmer all necessary licenses in and to such Customer Data solely as necessary for ThoughtFarmer to provide the Service to Customer and the Users.
	3. **Aggregated Data**. Customer grants to ThoughtFarmer a perpetual, worldwide, royalty-free, non-exclusive, irrevocable license to use reproduce, process and display the Customer Data in an aggregated and anonymized format for ThoughtFarmer’s internal business purposes, including without limitation to develop and improve the Service, the System and ThoughtFarmer’s other current and future products and services.
3. **Term and Termination.**
	1. Term. Unless otherwise agreed to in the Order Form, the term of this Agreement will commence on the Effective Date and continue for one year (the “Initial Term”). Thereafter, this Agreement will be automatically renewed from year to year for additional one year renewal terms (each a “Renewal Term”, and together with the Initial Term, the “Term”), unless either party provides written notice to the other party no less than 30 days prior to the expiration of the then-current Initial Term or Renewal Term indicating that it does not wish to renew this Agreement.
	2. Termination for Default. Either party may terminate this Agreement immediately upon written notice if: (a) the other party materially breaches this Agreement and does not cure such breach (if curable) within 30 days after written notice of such breach; or (b) the other party becomes insolvent or files or has filed against it a petition in bankruptcy.
	3. Effect of Termination. Upon the termination of this Agreement for any reason: (a) any amounts owed to ThoughtFarmer under this Agreement before such termination will become immediately due and payable; (b) each party will return to the other party all property (including any Confidential Information) of the other party in its possession or control; and (c) Customer’s and each User’s access to and use of the System and the Service will be immediately suspended. ThoughtFarmer agrees that within 60 days following any termination of this Agreement, ThoughtFarmer will provide Customer with one electronic copy of the Customer Data in a usable format. Thereafter, ThoughtFarmer will remove all Customer Data from the System. The rights and duties of the parties under Sections 3.3, 4 through 6, 7.3 and 9 through 12 will survive the termination or expiration of this Agreement.
4. **Audit Obligations.**

During the Term, on an annual basis, ThoughtFarmer will engage a certified professional accounting firm to perform an annual audit of ThoughtFarmer’s data protection features and provide a SOC 2 Type I or SOC 2 Type II report, pursuant to the standards of American Institute of CPAs (“AICPA”), to Customer following receipt from the accounting firm. If AICPA revises its relevant reporting standards, ThoughtFarmer shall obtain and make available the report that then most closely resembles a SOC 2 report.

1. **Warranties; Disclaimer.**
	1. **ThoughtFarmer Warranty**. ThoughtFarmer represents, warrants and covenants to Customer that the Service will perform materially as described in the technical specifications set forth in the Documentation.
	2. **Customer Warranty**. Customer represents, warrants and covenants to Company that Customer will comply, and will ensure each User complies, with all Privacy Laws in its use of the Service, including without limitation Customer’s and each User’s provision, disclosure, use, retention and destruction of Personal Information.<.li>
	3. **Disclaimer**. EXCEPT AS EXPRESSLY SET OUT IN SECTION 9.1: (A) THE SERVICE AND ANY OTHER PRODUCTS AND SERVICES PROVIDED BY THOUGHTFARMER TO CUSTOMER ARE PROVIDED “AS IS”, “AS AVAILABLE”, WITH ALL FAULTS AND WITHOUT ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND; (B) THOUGHTFARMER HEREBY DISCLAIMS ALL EXPRESS, IMPLIED, COLLATERAL OR STATUTORY WARRANTIES, REPRESENTATIONS OR CONDITIONS, WHETHER WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, QUALITY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE; (C) THOUGHTFARMER DOES NOT WARRANT THAT THE SERVICE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE; AND (D) WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, THOUGHTFARMER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT ANY DATA OR INFORMATION PROVIDED TO CUSTOMER IN CONNECTION WITH CUSTOMER’S USE OF THE SERVICE (INCLUDING ALERTS AND RECOMMENDATIONS) IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY CUSTOMER FOR ANY PURPOSE WHATSOEVER.THOUGHTFARMER IS NOT RESPONSIBLE FOR THE ACTS OR OMISSIONS OF, OR FOR THE FAILINGS OF, ANY THIRD PARTY PROVIDER OF ANY SERVICE, NETWORK, SOFTWARE OR HARDWARE, INCLUDING BUT NOT LIMITED TO INTERNET SERVICE PROVIDERS, HOSTING SERVICES UTILIZED BY THOUGHTFARMER, TELECOMMUNICATIONS PROVIDERS, OR ANY SOFTWARE OR HARDWARE NOT PROVIDED BY THOUGHTFARMER.
2. **Indemnity.**
	1. **By ThoughtFarmer**. If any action is instituted by a third party against Customer based upon a claim that the Service or System, as delivered, infringes any third party intellectual property rights in Canada or the United States, ThoughtFarmer shall defend such action at its own expense on behalf of Customer and shall pay all damages attributable to such claim which are finally awarded against Customer or paid in settlement of such claim. ThoughtFarmer may, at its option and expense, and as Customer’s exclusive remedy hereunder, (a) procure for Customer the right to continue using the Service, (b) replace or modify the System or Service so that it is no longer infringing but continues to provide comparable functionality, or (c) terminate this Agreement and Customer’s access to the Service and refund any amounts previously paid for the Service attributable to the remainder of the then-current term of this Agreement. ThoughtFarmer shall have no liability to Customer for any infringement action which arises out of a breach of the terms and conditions of this Agreement by Customer or of the use of the Service or System (i) after it has been modified by Customer or a third party without ThoughtFarmer’s prior written consent, or (ii) in combination with any other service, equipment, software or process not provided by ThoughtFarmer. This Section 10.1 sets forth the entire obligation of ThoughtFarmer and the exclusive remedy of Customer against ThoughtFarmer or any of its suppliers for any alleged infringement or adjudicated infringement of any patent, copyright or other intellectual property right by the Service or System.
	2. **By Customer**. If any action is instituted by a third party against ThoughtFarmer arising out of or relating to: (a) Customer’s use of the Service or System (including claims by any customer or business partner of Customer); (b) Customer’s breach of any of Customer’s obligations, representations or warranties under this Agreement; or (c) an allegation that the Customer Data, or the use of Customer Data by ThoughtFarmer pursuant to this Agreement, infringes any third party intellectual property rights or other rights of a third party, or otherwise causes harm to a third party, Customer will defend such action at its own expense on behalf of ThoughtFarmer and shall pay all damages attributable to such claim which are finally awarded against ThoughtFarmer or paid in settlement of such claim. Customer shall have no obligation under this Section 10.2 for any claim or action that is described in Section 10.1 or arises out of a breach of this Agreement by ThoughtFarmer.
	3. **Conditions**. Any party that is seeking to be indemnified under the provisions of this Section 10 (an “Indemnified Party”) must (a) promptly notify the other party (the “Indemnifying Party”) of any third-party claim, suit, or action for which it is seeking an indemnity hereunder (a “Claim”), and (b) give the Indemnifying Party sole control over the defense of such Claim. However, if an Indemnified Party fails to notify the Indemnifying Party promptly, the Indemnifying Party will be relieved of its obligations under this Section 10 only if and to the extent that its ability to defend the Claim is materially prejudiced by such failure. The Indemnifying Party may settle or compromise a Claim without the Indemnified Party’s prior approval of any such settlement or compromise only if (i) such settlement involves no finding or admission of any breach by an Indemnified Party of any obligation to any third party, (ii) such settlement has no effect on any other claim that may be made against an Indemnified Party or any defense that an Indemnified Party may assert in any such claim, and (iii) the sole relief provided in connection with such settlement is monetary damages that are paid in full by the Indemnifying Party. Upon the Indemnifying Party’s assumption of the defense of such Claim, the Indemnified Party will cooperate with the Indemnifying Party in such defense, at the Indemnifying Party’s expense.
3. **Limitation Of Liability.**

The following provisions have been negotiated by each party, are a fair allocation of risk, are an essential basis of the bargain under this Agreement and shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy:

1. Amount. THOUGHTFARMER’S TOTAL AGGREGATE LIABILITY FROM ANY AND ALL CLAIMS IN CONNECTION WITH OR UNDER THIS AGREEMENT IS LIMITED TO THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO THOUGHTFARMER UNDER THIS AGREEMENT IN THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION FIRST AROSE. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THIS AGREEMENT WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT. IN NO EVENT SHALL THOUGHTFARMER’S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT.
2. Type. IN NO EVENT SHALL THOUGHTFARMER BE LIABLE TO CUSTOMER FOR ANY (A) SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (B) LOST SAVINGS, PROFIT, DATA, USE OR GOODWILL, (C) BUSINESS INTERRUPTION, EVEN IF NOTIFIED IN ADVANCE OF SUCH POSSIBILITY, OR (D) PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT, REGARDLESS OF CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, FUNDAMENTAL BREACH, BREACH OF A FUNDAMENTAL TERM) OR OTHERWISE. IN NO EVENT SHALL THOUGHTFARMER BE LIABLE FOR PROCUREMENT OR COSTS OF SUBSTITUTE PRODUCTS OR SERVICES.
3. No Jury Trial. CUSTOMER IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT CUSTOMER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT.
4. No Participating in Class Action. CUSTOMER AGREES THAT, WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, CUSTOMER HEREBY GIVES UP ITS RIGHT TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS IN ANY LAWSUIT INCLUDING BUT NOT LIMITED TO CLASS ACTION LAWSUITS INVOLVING ANY SUCH DISPUTE.
5. Limitation of Time. Customer agrees that it will not bring a claim under or related to this Agreement more than 12 months from when such claim first arose.
6. **General Provisions.**
	1. **Publicity**. Customer agrees to allow ThoughtFarmer to use Customer’s name in customer lists and other promotional materials describing Customer as a customer of ThoughtFarmer and user of the Service.
	2. **Assignment**. Customer may not assign this Agreement to a third party without ThoughtFarmer’s prior written consent, not to be unreasonably withheld, except to a third party that controls, is controlled by or is under common control with Customer. ThoughtFarmer may assign this Agreement or any rights hereunder to any third party without Customer’s consent. Any assignment in violation of this Section 12.2 shall be void. Any assignment is conditional upon the assignee agreeing in writing to be bound to the terms of this Agreement which shall be binding upon and inure to the benefit of the parties’ successors and permitted assignees.
	3. **Force Majeure**. If the performance of any obligation under this Agreement, except non-payment of amounts due hereunder, is interfered with by reason of any circumstances beyond a party’s reasonable control, including but not limited to acts of God, labor strikes and other labor disturbances, epidemics and pandemics, power surges or failures, Internet connectivity or the act or omission of any third party (each a “Force Majeure Event”), such party will be excused from such performance to the extent necessary. Each party will use reasonable efforts to implement industry standard procedures to minimize disruption of such Force Majeure Events and will use reasonable efforts to remove such causes of non-performance.
	4. **Arbitration**. Any dispute or claim arising out of or relating to this Agreement will be referred to and finally resolved by arbitration administered by the Vancouver International Arbitration Centre (VanIAC) pursuant to its applicable Rules. The place of arbitration shall be Vancouver, British Columbia, Canada and the language of the arbitration shall be English. The number of arbitrators shall be one. Notwithstanding the foregoing, ThoughtFarmer may seek and obtain injunctive relief in any jurisdiction in any court of competent jurisdiction and you agree that this Agreement is specifically enforceable by ThoughtFarmer through injunctive relief and other equitable remedies without proof of monetary damages.
	5. **Choice of Law**. This Agreement and any action related thereto shall be governed by and construed in accordance with the laws of the province of British Columbia and the federal laws of Canada applicable therein, without regard to conflicts of law principles. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
	6. **Notices**. Any notice or other communication required or permitted under this Agreement and intended to have legal effect must be given in writing: (i) to ThoughtFarmer, by email at contact@thoughtfarmer.com or by certified mail at #210 – 12 Water Street, Vancouver, BC V6B 1A5 Canada; or (ii) to Customer, by email or by certified mail at the addresses set forth in the Order Form. Notwithstanding the foregoing, each party may change its address from time to time upon written notice to the other party of the new address. Notices will be deemed to have been given upon receipt, or when delivery is refused.
	7. **Entire Agreement**. This Agreement, including the Order Form, is the entire understanding and agreement of the parties, and supersedes any and all previous and contemporaneous understandings, agreements, proposals or representations, written or oral, between the parties, as to the subject matter hereof. This Agreement may only be modified in writing signed by both parties.
	8. **Severability and Waiver**. In the event that any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All waivers must be in writing. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
	9. **Relationship of the Parties**. The parties to this Agreement are independent contractors, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by this Agreement.

**SCHEDULE A**

**SOFTWARE SUPPORT**

**A. Hours of coverage**

Core support hours are 8:00 a.m. to 4:00 p.m. Monday through Friday Pacific Time (excluding statutory holidays in British Columbia, Canada).

Emergency support is available 24×7 via our Telephone Support Line at 1 888 694 3999 or +1 604 566 8300 (extension 3) and our website <https://www.thoughtfarmer.com/support>.

**B. Subscriber incidents reporting**

Customer can report all incidents online to ThoughtFarmer’s help desk at: [http://helpdesk.thoughtfarmer.com](http://helpdesk.thoughtfarmer.com/).

Customer can report emergencies during regular office hours to ThoughtFarmer by phone at 1 888 694 3999 or +1 604 566 8300. For incidents reported by Customer via phone, Customer must also submit a ticket regarding such incidents online to ThoughtFarmer’s help desk at: [http://helpdesk.thoughtfarmer.com](http://helpdesk.thoughtfarmer.com/).

**C. Incident/request for service priority**

ThoughtFarmer will prioritize all support and maintenance incidents and requests for service on the following basis:

|  |  |  |
| --- | --- | --- |
| **Priority** | **Response** | **Targeted Resolution** |
| Emergency (A) | 4 business hours | 7 days |
| Critical (B) | 2 business days | 14 days |
| Non-critical (C) | As time permits, or inclusion in the next scheduled update to ThoughtFarmer. ThoughtFarmer will use reasonable efforts to inform Subscriber within 4 days of its intentions. | At ThoughtFarmer’s sole discretion |

Response and targeted resolution times are measured from the time of ThoughtFarmer’s receipt of written or electronic notice of the issue.

**D. Priority definition**

**Emergency (A):** Catastrophic product or module failures that do not have a viable detour or workaround available. Catastrophic failure shall be deemed to include failures that cause an interruption of service or seriously impair the functionality of ThoughtFarmer (e.g., loss of use of major features, file system corruption, data loss, security issue, system outage).

**Critical (B):** Problems that have been substantiated as a serious inconvenience to Customer due to issues or features of the product preventing normal operations. This includes any priority A failures for which a viable detour or workaround is available. Convenience and performance are materially impacted.

**Non-Critical (C):** All other non-critical problems which Customer can easily avoid or detour for which there is no urgency for a resolution. Slight inconvenience.

ThoughtFarmer acting reasonably will determine an issue’s priority classification. A resolution may not be available at the time ThoughtFarmer responds to Customer, in which case ThoughtFarmer will attempt to estimate the “time to resolution”.

ThoughtFarmer’s response consists of providing, as appropriate, one of the following to Customer: an existing correction; a new correction; a viable detour or work around; a request for more information to complete analysis of the problem, or a plan on how the problem will be corrected.

Closure consists of providing a final correction or work around of the problem including modifications of the Software and, to the extent reasonably possible, revised or new documentation as necessary, it being understood that documentation may be completed after the applicable closure date.

For non-critical requests, ThoughtFarmer may, in its sole discretion, choose to not resolve the request.