

## PLEASE READ CAREFULLY

This licence agreement (**Licence**) is a legal agreement between you (**Licensee** or **you**) and Thinking Focus Limited (company number: 10151972) of 20-22 Wenlock Road, London, N1 7GU (**Licensor, us** or **we**) for all content including printed materials, online or electronic documents, text, information, data, software, images, audio, video material in any medium or form provided by the Licensor to the Licensee associated with the What Would You Do OnLine (WWYD OnLine) (**Content**); and

We license use of the Content to you on the basis of this Licence. We do not sell the Content to you. We remain the owners of the Content at all times.

**OPERATING SYSTEM REQUIREMENTS:** please review the operating system requirements to use the Content by clicking on this link <https://bit.ly/WWYDTechRequirements>.

Please note, the Content is designed to be used in conjunction with Turning Point (which is included in the licence fee paid by you to us), a polling software which a Licenced User (as defined in clause 1.2 below) will need to download and install on their device. By downloading and installing Turning Point, you and/or a Licenced User agree to use Turning Point in accordance with Turning Technologies LLC's end user licence agreement from time to time in force. Please review the terms of Turning Technologies LLC's end user licence agreement which applies to the use of Turning Point by clicking on this link <https://www.turningtechnologies.com/end-user-license-agreement/>.

**PLEASE NOTE THE CONTENT IS NOT COMPATIBLE WITH APPLE DEVICES INCLUDING BUT NOT LIMITED TO MACBOOKS, IPHONES, IPADS ETC. AS SUCH, A LICENCED USER (AS DEFINED IN CLAUSE 1.2 BELOW) WILL BE UNABLE TO USE THE CONTENT ON APPLE DEVICES. HOWEVER, ANY PARTICIPANT TO A SESSION RUN BY A LICENCED USER WILL BE ABLE TO PARTICIPATE IN THAT SESSION USING ANY DEVICE THAT IS CONNECTED TO THE INTERNET USING THAT DEVICES WEB BROWSER.**

**You should print a copy of this Licence for future reference.**

### **1. GRANT AND SCOPE OF LICENCE**

- 1.1 In consideration of payment by you of the agreed licence fee (**Your Order**) and you agreeing to abide by the terms of this Licence, we grant to you a non-exclusive, non-transferable licence to use the Content on the terms of this Licence.
- 1.2 Only those users notified by you to us in writing may use the Content (each a **Licenced User** and together the **Licenced Users**).
- 1.3 You may:

- (a) download, install and use the Content for your internal business purposes only:
  - (i) on one central processing unit (CPU) of a Licenced User if the Licence is a single-user licence or the Content is for single use; or
  - (ii) if the Licence is a multi-user licence, by the number of concurrent Licenced Users agreed between us and you;
- (b) provided the Content is used to run a session on only one computer at any one time, transfer the Content from one computer to another;
- (c) transfer the Licence from a Licenced User to a new user on request, such request to be in writing;
- (d) provided you comply with the provisions in condition 2, make a single copy of the Content for back-up purposes only; and
- (e) make up to 10 copies of any Content that may be printed or such other number of copies as are reasonably necessary for its lawful use and agreed to in writing by the Licensor.

## **2. RESTRICTIONS**

Except as expressly set out in this Licence or as permitted by any local law, you undertake:

- (a) only Licenced Users within your organisation will:
  - (i) use the Content to run sessions with your employees;
  - (ii) make copies of the Content.
- (b) not to make the Content available on any shared network or user area within your organisation;
- (c) not to copy the Content except where such copying is incidental to normal use of the Content, or where it is necessary for the purpose of back-up or operational security;
- (d) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Content;
- (e) not to make alterations to, or modifications of, the whole or any part of the Content, nor permit the Content or any part of it to be combined with, or become incorporated in, any other Content;
- (f) to keep all copies of the Content secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Content;
- (g) to supervise and control use of the Content and ensure that the Content is used by Licenced Users within your organisation, your

employees and representatives in accordance with the terms of this Licence;

- (h) to include our copyright notice on all entire and partial copies you make of the Content on any medium;
- (i) not to provide or otherwise make available the Content in whole or in part, in any form to any person without prior written consent from us;
- (j) to comply with all applicable technology control or export laws and regulations; and

### 3. INTELLECTUAL PROPERTY RIGHTS

The following definition shall apply in this condition 3:

**Intellectual Property Rights:** means all patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- 3.1 You acknowledge that all Intellectual Property Rights in the Content anywhere in the world belong to us, that rights in the Content are licensed (not sold) to you, and that you have no rights in, or to, the Content other than the right to use them in accordance with the terms of this Licence.

### 4. LIMITATION OF LIABILITY

The following definitions shall apply in this condition 4:

**Cap:** means 50% of the total charges in the contract year in which the breaches occurred;

**Contract Year:** means a 12 month period commencing with the date of this agreement or any anniversary of it; and

**Total Licence Fee:** means the licence fee, as specified in Your Order, paid by you as consideration for licencing the Content from us, whether or not invoiced to you.

- 4.1 You acknowledge that the Content has not been developed to meet your individual requirements, including any particular cybersecurity requirements you might be subject to under law or otherwise, and that it is therefore your responsibility to ensure that the facilities and functions of the Content meet your requirements.
- 4.2 We only supply the Content for internal use by your business, and you agree not to use the Content for any re-sale purposes.
- 4.3 We shall not in any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Licence for:
- (a) how you use the Content and any misuse of the Content by you;
  - (b) the acts or omissions of a Licenced User, your employees and representatives who use or misuse the Content and/or deliver any sessions using the Content;
  - (c) any loss caused arising out of your use of Turning Point including, but not limited to, your ability to use the Content due to a software outage of Turning Point or Turning Point not working correctly on your device;
  - (d) loss of profits, sales, business, or revenue;
  - (e) business interruption;
  - (f) loss of anticipated savings;
  - (g) loss or corruption of data or information;
  - (h) loss of business opportunity, goodwill or reputation;
- where any of the losses set out in condition 4.3(a) to condition 4.3(h) are direct or indirect; or
- (i) any special, indirect or consequential loss, damage, charges or expenses.
- 4.4 Other than the losses set out in condition 4.3 (for which we are not liable) and 4.5, our maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to the Cap.
- 4.5 Nothing in this Licence shall limit or exclude our liability for:
- (a) death or personal injury resulting from our negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) any other liability that cannot be excluded or limited by English law.
- 4.6 This Licence sets out the full extent of our obligations and liabilities in respect of the supply of the Content. Except as expressly stated in this Licence, there

are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of the Content which might otherwise be implied into, or incorporated in, this Licence whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

## **5. TERMINATION**

5.1 Without affecting any other right or remedy available to it, the Licensor may terminate this agreement with immediate effect by giving notice to the Licensee if:

- (a) the Licensee fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified to make such payment; or
- (b) the Licensee commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so; or
- (c) the Licensee repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or
- (d) the Licensee challenges or disputes the Licensor's ownership of, or rights in, the Content, or the validity of those rights; or
- (e) the Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (i) (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act (IA)1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 (ii) (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (iii) (being a partnership) has any partner to whom any of the foregoing apply;
- (f) the Licensee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Licensee (being a company, limited liability partnership or partnership);

- (h) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Licensee (being a company);
- (i) the holder of a qualifying floating charge over the assets of the Licensee (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over all or any of the assets of the Licensee or a receiver is appointed over all or any of the assets of the Licensee;
- (k) the Licensee (being an individual) is the subject of a bankruptcy petition, application or order;
- (l) a creditor or encumbrancer of the Licensee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Licensee's assets and such attachment or process is not discharged within 14 days;
- (m) any event occurs, or proceeding is taken, with respect to the Licensee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 5.1(e) to condition 5.1(l) (inclusive);
- (n) the Licensee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (o) the Licensee (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation; or
- (p) there is a change in the Control of the Licensee (within the meaning of section 1124 of the Corporation Tax Act 2010).

5.2 For the purposes of condition 5.1(b), material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this agreement over the term of this Licence. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

5.3 On termination of this Licence for any reason:

- (a) all rights granted to you under this Licence shall cease;
- (b) you must immediately cease all activities authorised by this Licence; and

- (c) you must immediately and permanently delete or remove the Content from all computer equipment in your possession, including from back-up systems and any cached Content within the Licensee's control, and immediately destroy or return to us (at our option) all copies of the Content then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

## 6. COMMUNICATIONS BETWEEN US

- 6.1 If we have to contact you, we will do so by email or by pre-paid post to the address you provided in accordance with your order for the Content.
- 6.2 Note that any notice:
  - (a) given by us to you will be deemed received and properly served 24 hours after it is first posted on our website, 24 hours after an email is sent, or three days after the date of posting of any letter; and
  - (b) given by you to us will be deemed received and properly served 24 hours after an email is sent, or three days after the date of posting of any letter.
- 6.3 In proving the service of any notice, it will be sufficient to prove, in the case of posting on our website, that the website was generally accessible to the public for a period of 24 hours after the first posting of the notice; in the case of a letter, that such letter was properly addressed, stamped and placed in the post to the address of the recipient given for these purposes; and, in the case of an email, that such email was sent to the email address of the recipient given for these purposes.

## 7. EVENTS OUTSIDE OUR CONTROL

- 7.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Licence that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in condition 7.2.
- 7.2 An **Event Outside Our Control** means any act or event beyond our reasonable control, including without limitation failure of public or private telecommunications networks.
- 7.3 If an Event Outside Our Control takes place that affects the performance of our obligations under this Licence:
  - (a) our obligations under this Licence will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and

- (b) we will use our reasonable endeavours to find a solution by which our obligations under this Licence may be performed despite the Event Outside Our Control.

## **8. CONFIDENTIALITY**

- 8.1 The Licensor undertakes that it shall not either during or after termination or expiry of this Licence, disclose the Content or any confidential information concerning the business, affairs, customers, clients or suppliers of the Licensor to any other person except as permitted under the terms of this Licence.

## **9. HOW WE MAY USE YOUR PERSONAL INFORMATION**

Under data protection legislation, we are required to provide you with certain information about who we are, how we process the personal data of those individuals who use the Content and for what purposes and those individuals' rights in relation to their personal data and how to exercise them. This information is provided in our privacy available for you to view at <https://thinkingfocus.com/privacy-policy/> and it is important that you read that information.

## **10. OTHER IMPORTANT TERMS**

- 10.1 We may transfer our rights and obligations under this Licence to another organisation, but this will not affect your rights or our obligations under this Licence.
- 10.2 You may only transfer your rights or your obligations under this Licence to another person if we agree in writing.
- 10.3 This Licence and Your Order (including any emails from us to you relating to Your Order and any document expressly referred to or attached to any such emails from us to you relating to Your Order) constitutes the entire agreement between us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter. You agree that you shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Licence. You agree that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Licence.
- 10.4 If we fail to insist that you perform any of your obligations under this Licence, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by

you, we will only do so in writing signed by us, and that will not mean that we will automatically waive any later default by you.

- 10.5 Each of the conditions of this Licence operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 10.6 If any provision or part-provision of this Licence deleted under this condition 10.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 10.7 This Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both irrevocably agree to the exclusive jurisdiction of the courts of England and Wales.