

## Information Leadership Design Services Limited Terms and Conditions (Terms)

Information Leadership Design Services Limited (ILDS, we or us) agrees to supply Software and Services to you, the Customer, in accordance with and subject to these terms and conditions (Terms). Acceptance of delivery, installation or use of any Software or the iWorkplace™ IPx Dashboard or receipt of any Services will (notwithstanding any statement to the contrary by you or your employees or agents) constitute acceptance of these Terms. If there is more than one of you, your liability is joint and several.

### 1. APPLICATION

1.1 All Services and Software we supply are supplied subject to these Terms as follows:

- (a) The provisions of Part 1 apply to the provision of all and any Services and Software;
- (b) The provisions of Part 2 apply to the supply of Software;
- (c) The provisions of Part 3 apply to the provision of SaaS Services;
- (d) The provisions of Part 4 apply to the provision of SLA Support Services;
- (e) The provisions of Part 5 apply to the provision of Professional Consulting Services; and
- (f) The provisions of Part 6 apply to the provision of our Dashboard.

1.2 Any reference to “Services” or “Software” in Parts 2 to 6 is a reference to the specific Services or Software provided pursuant to that Part as specified in the relevant Schedule.

## PART 1 – GENERAL

### 2. INTERPRETATION

2.1 In these Terms:

- (a) **Agreement** means the terms set out in any written agreement between us and you for the supply of Services and Software, including any Schedule, and these Terms. For the avoidance of doubt a separate Agreement is formed for each Software or Service to be supplied or provided by us to you.
- (b) **Business Day** means a day other than a Saturday, Sunday, or public holiday in New Zealand and/or Canterbury when banks in Christchurch are open for business.
- (c) **Confidential Information** means all information (however recorded or preserved) disclosed by a party or its employees, consultants, officers, representatives, advisers, agents or sub-contractors involved in the provision or receipt of the Services or Software to the other party or that party's representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

- (d) **Dashboard** means our iWorkplace™ IPx Dashboard provided to you by us as specified in the relevant Schedule.
- (e) **Effective Date** means the date set out in the relevant Schedule for the commencement of the Services to be provided by us to you.
- (f) **Microsoft 365 Tenant** means the set of Microsoft cloud services assigned to your organisation and associated Azure subscriptions.
- (g) **Professional Consulting Services** means those professional consulting services to be provided by us to you as specified in the relevant Schedule.
- (h) **SaaS Services** means the licensing and delivery of software as a service to be provided by us to you on a subscription basis as specified in the relevant Schedule.
- (i) **Schedule** means a schedule, proposal, estimate, or quote that has been accepted in writing by you.
- (j) **Services** means the services to be provided by us to you as specified in the Schedule, including SaaS Services, SLA Support Services and Professional Consulting Services.
- (k) **SLA Support Services** means those support and reporting services to be provided by us to you as specified in the relevant Schedule.
- (l) **Software** means the software to be purchased from you by us as specified in the relevant Schedule.

## 2.2 Interpretation:

- (a) **Headings:** clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (b) **Parties:** references to any party include that party's executors, administrators, successors and permitted assigns;
- (c) **Persons:** references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (d) **Plural and Singular:** references to the singular include the plural and vice versa;
- (e) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (f) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (g) **Inclusive Expressions:** the term includes or including (or any similar expression) is deemed to be followed by the words without limitation; and

- (h) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

### 3. SERVICES AND SOFTWARE

- 3.1 We will supply the Services and Software to you in accordance with these Terms and the relevant Schedule.

### 4. PROVISION OF SERVICES

- 4.1 We are not liable to you in respect of any defective software or services provided by any third party or contractor in respect of the Services. You will contract directly with each such contractor or other third party and may be entitled to make a claim against them in respect of defective software or services supplied by them.
- 4.2 We do not automatically accept customer generated purchase orders for any Services or Software. All such purchase orders submitted by you will be subject to acceptance by us (in our absolute discretion) by confirming acceptance in writing, and will not become binding on us until such acceptance. You acknowledge and agree that we are not under any duty to accept purchase orders from you.

### 5. PARTIES' OBLIGATIONS

- 5.1 You must:
- (a) provide us with:
    - (i) *all necessary co-operation in relation to this Agreement; and*
    - (ii) *all necessary access to such information as we may reasonably require, in order to provide the Services, including your data, security access information, and (subject to providing any confidentiality undertakings reasonably required by you) software interfaces to your other business applications;*
  - (b) provide such personnel assistance as we may reasonably request from time to time;
  - (c) appoint a representative, who will have the authority to contractually bind you on all matters relating to this Agreement. You must use reasonable endeavours to ensure continuity of appointment of your representative, but may replace them from time to time where reasonably necessary in the interests of your business;
  - (d) obtain and will maintain all necessary licences, user accounts, consents, and permissions necessary for us, our contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

- (e) without affecting your other obligations under this Agreement, comply with all applicable regulations with respect to your activities under this Agreement; and
  - (f) carry out all your other responsibilities and obligations set out in this Agreement in a timely and efficient manner. In the event of any delays as a result of your failure to carry out your responsibilities or obligations, we may adjust any agreed timetable or delivery schedule as reasonably necessary and may invoice you for any additional expenses reasonably incurred by us as a result of such delays.
- 5.2 You agree that, during the term of this Agreement (including after the acceptance of a Schedule), we may perform a credit check on you (including through a third party) for the purpose of assessing your credit worthiness and you consent to our conducting such credit check. You further authorise any person to provide us with such information as we may require in connection with such credit check. If you refuse to consent to a credit check or the results of your credit check is deemed to be unsatisfactory to us (at our sole discretion), then we may terminate this Agreement immediately by notice to you.
- 5.3 The parties will operate in a professional, fair, reasonable and respectful manner at all times.
- 5.4 Unless we otherwise agree in writing, all of our Services will be provided during our normal business hours which are 8:30 AM to 5:00 PM (New Zealand Standard Time) on each Business Day.
- 5.5 You warrant and represent to us that:
- (a) You have all rights and licenses necessary or desirable to allow us to use your data, and to share with, input or transmit your data to us in the manner anticipated by this Agreement:
  - (b) Use of your data by us in connection with the provision of the Services or the Dashboard will not break any laws or infringe the intellectual property rights of any person.

## **6. SUSPENSION, POSTPONEMENT AND ADDITIONAL WORK**

- 6.1 If we consider that any particular project is prematurely at an end, including without limitation because you have failed to provide sufficient information to allow the Services to be undertaken properly, we may terminate our engagement and invoice you for all outstanding work completed by us up to the date of termination.
- 6.2 Where any project is modified or extended at any time from the confirmation of the scope of the project through to completion of the project you will pay us any and all additional fees, costs and expenses arising from or related to that modification or variation, and any stated completion date for the relevant Services will be varied by

such reasonable time as is necessary to take account of any such modification or variation.

- 6.3 You must give us written notice of any intention to suspend, postpone or terminate any project. Immediately upon giving that written notice you must pay us for all accounts rendered and for our fees and expenses up to the date of the suspension, postponement or termination calculated on the basis of the Services completed by us with fees on incomplete work based on our relevant hourly rate. We will not have any obligation to refund to you any amount you have paid to us prior to any decision by you to suspend or terminate any project.
- 6.4 If at any time you are in breach of any obligation to us, then without prejudice to any other remedies we may have, we may suspend the supply of Services to you until the breach is remedied and any date for completion will be delayed for the same time the Services are suspended. Where the suspended period exceeds seven (7) days we may give notice reasonably delaying any stated completion date until we are reasonably able to reschedule the completion of the project in accordance with our on-going commitments.
- 6.5 If, at any time and for any reason, we are required to carry out any additional work to complete the Services, we will inform you of the scope of the additional work (and any additional fees). You can elect whether to accept or refuse any additional work we suggest. If you accept, you will be liable for any additional fees. If you refuse the additional work required, you acknowledge that as a result we may not be able to complete the Services to the original specification and both parties will either agree to a service variation in writing or the Agreement for the provision of those Services will be terminated and neither party will be liable to the other party in any way for that termination, provided that we may recover any reasonable costs incurred in relation to the Agreement for the provision of those Services up until such termination.

## **7. SUBCONTRACTING**

- 7.1 We may assign, license or sub-contract all or any part of the Services or any of our other rights or obligations under this Agreement without your consent and we will inform you if we do so.

## **8. PRICE AND PAYMENT**

- 8.1 All prices are in New Zealand Dollars and exclude goods and services tax (**GST**), any other applicable taxes and duties and insurance/freight/delivery/handling charges not expressly included in the price. You agree to pay these items (as applicable) in addition to the price, whether they are imposed before or after your order.
- 8.2 We will invoice you and you will make payment in clear funds by the 20th of the month following the date of the invoice directly into the ILDS New Zealand bank account, in

New Zealand dollars. We will invoice you in advance for the supply of Software, SaaS Services and the SLA Support Services.

8.3 If you dispute an invoice, you may withhold any disputed sum until the dispute is resolved but must pay the undisputed portion in accordance with the above. We will not be excused from performing our obligations under this Agreement while an invoice is disputed by you.

8.4 Where an invoice is three (3) Business Days overdue, we will contact you by phone or email. We may cease providing Services where invoices are more than 30 days overdue and will not recommence these Services until all outstanding invoices are paid. If invoices remain unpaid, we may commence legal proceedings.

## **9. PRIVACY POLICY**

9.1 You hereby acknowledge and agree that our Privacy Policy (available here: [www.informationleadership.co.nz](http://www.informationleadership.co.nz)) will apply to our provision of the Services, the Dashboard or the Software.

## **10. NO RELIANCE**

10.1 You warrant that you have not relied on any statement or representation made by us (or by any person on our behalf) which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document.

## **11. CONFIDENTIALITY**

11.1 Each of the parties recognises that in the course of negotiating and/or performing this Agreement it may receive Confidential Information belonging or relating to the other party.

11.2 The provisions of this clause 11 will not apply to any Confidential Information that:

- (a) is or becomes generally freely available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of this clause 11);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (d) was known to the receiving party before the information was disclosed to it by the disclosing party;
- (e) the parties agree in writing is not confidential or may be disclosed; or

- (f) is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 11.3 Each party must keep the other party's Confidential Information confidential and must not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement (**Permitted Purpose**); or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 11.
- 11.4 Each party must take all reasonable steps to ensure that the other party's Confidential Information to which it has access is not disclosed or distributed by its representatives in violation of the terms of this Agreement.
- 11.5 A party may disclose the other party's Confidential Information to those of its representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) at all times, it is responsible for such representatives' compliance with the confidentiality obligations set out in this clause 11.
- 11.6 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including any relevant securities exchange) or by a court, arbitral or administrative tribunal or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.6, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party or to be implied from this Agreement. You acknowledge and agree that we retain ownership of the Confidential Information made available to you.
- 11.8 Each Party agrees:
- (a) to take reasonable steps to protect the other Party's Confidential Information against unauthorised access, use or disclosure;

- (b) to promptly notify the other Party upon becoming aware of any unauthorised access to, use or disclosure of Confidential Information, and to co-operate with the other Party in seeking to address the situation and protect Confidential Information against further unauthorised access to, use or disclosure; and
- (c) if requested by the other Party, to return or destroy the other Party's Confidential Information (and confirm that it has done so), except to the extent:
  - (i) *included in automatic electronic back-ups of such Party's IT systems;*
  - (ii) *included in board minutes or retained to comply with internal governance and document retention policies; or*
  - (iii) *retention is required by any applicable law or regulation or by any competent judicial, regulatory or governmental body.*

11.9 Each Party acknowledges that damages may not be an adequate remedy if it breaches any term of the provisions of this Clause and that the other Party is entitled to seek injunctive relief to prevent any breach or continued breach, or specific performance to compel it to perform its obligations under this Clause, as a remedy for any breach, in addition to any other available remedies.

11.10 The provisions of this clause 11 will continue to apply after expiry or termination of this Agreement for any reason.

## 12. EXCLUSION OF WARRANTIES

12.1 **Consumer Guarantees Act:** You agree that you are acquiring the Software or Services for the purposes of a business and that the guarantees provided under the Consumer Guarantees Act 1993 shall not apply.

12.2 **Fair Trading Act:** You confirm that you are in trade and acquiring the Software or Services for business purposes and agree that sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply.

12.3 **Exclusion of warranties:** We make no other warranties or representations express or implied, including warranties of fitness for a particular purpose, merchantability or otherwise, except to the extent that it is unlawful to exclude such warranties. You assume sole responsibility for results obtained from the use of the Software or Services and for conclusions drawn from such use.

## 13. FORCE MAJEURE

13.1 Neither party will have any liability to the other under this Agreement if it is prevented from, or delayed in, performing its obligations under this Agreement, arising from any Force Majeure Event, provided that:

- (a) the other party is notified of such an event and its expected duration; and



- (b) it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned, and that if the period of delay or non-performance continues for eight (8) weeks or more, the party not affected may terminate this Agreement by giving not less than fourteen (14) days' written notice to the other party.

13.2 In these Terms, **Force Majeure Event**: means an event which is beyond the reasonable control of the party seeking to rely on such event (except to the extent such party could reasonably have avoided such event or its consequences by implementing such business continuity and/or disaster recovery measures and otherwise exercising such level of care in each case as could reasonably be expected of a party in its position), including:

- (a) riot, civil unrest, military action, terrorism or war (whether declared or not) or threat of or preparation for war;
- (b) damage to or destruction of premises or equipment, or breakdown of equipment, in each case not attributable to the party seeking to rely on such event;
- (c) imposition of sanctions, embargo, blockade, or breaking off of diplomatic relations;
- (d) epidemic (including any Public Health Emergency of International Concern or pandemic declared by the World Health Organization) or pandemic;
- (e) any failure or refusal of any government or public authority to grant any necessary licence, permit or consent;
- (f) interruption or failure of a utility service or transport or telecommunications network and/or breakdown of plant or machinery;
- (g) severe delays or disruptions to the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
- (h) any change in applicable law which materially impacts a party's ability to perform any obligation under this Agreement and/or significantly increases the costs to be incurred and/or effort to be expended by any party in performing its obligations under this Agreement;
- (i) earthquake, storm, fire, flood, landslide or other natural disaster; and
- (j) industrial action, strikes or lock-outs by employees of third parties (excluding sub-contractors and suppliers of the party seeking to rely on such event unless no substitute is reasonably available).

## 14. LIMITATION OF LIABILITY

14.1 We are not liable to you for any loss or damage arising from delay or failure to perform our obligations due to any matter beyond our reasonable control nor any loss or damage caused or contributed to by you.

- 14.2 To the fullest extent permitted by law, we will not be liable to you or anyone else for any loss or damage to information or data from any cause, any economic loss, any loss of business, revenue, profit, goodwill, opportunity or anticipated saving or any incidental, indirect, special or consequential loss or damage, even if we knew or should have known about the possibility of such loss or damages.
- 14.3 The limitations and exclusions of liability in this Agreement apply however any liability arises, whether in contract, under indemnity, in tort (including negligence) or otherwise.
- 14.4 No action may be brought against us unless notice of such claim is given to us within one (1) month of delivery of the Software or provision of the Services. We will be released from all or any liability unless proceedings are brought in a Court of competent jurisdiction within one (1) year of the date of delivery of the Software or provision of the Services.

## 15. DEFAULT

- 15.1 If you do not pay any money owed to us (the **unpaid money**) by the due date, we may charge penalty interest at a rate of [two per cent (2%)] per calendar month calculated daily and capitalised monthly on the unpaid money from the due date until payment in full is made (including after as well as before any Court judgment).
- 15.2 You indemnify us for and agree to pay, on demand, all reasonable costs incurred by us (including legal costs on a solicitor-client basis and debt collection costs) in the recovery or attempted recovery of unpaid money and/or the enforcement of these Terms.

## 16. TERMINATION

- 16.1 We may terminate this Agreement immediately without notice to you if you breach any provision of this Agreement or if you fail to pay any money owed to us, and such breach is not remedied within 10 Business Days' notice by us of the breach.
- 16.2 We may terminate this Agreement in accordance with clause 5.2.
- 16.3 Termination of this Agreement for any reason shall not affect the validity and enforceability of any rights of a party against the other party which accrued up to and including termination, or the provisions of this Agreement which by their nature survive termination, including clause 11 (Confidentiality), clause 12 (Exclusion of Warranty), and clause 14 (Limitation of Liability), clause 16 (Termination) and the clauses in Part 2 through 6 related to ownership of intellectual property and limitation of liability.

## 17. HEALTH AND SAFETY

- 17.1 Where, as part of the Services, we require access to your premises, you must comply with the Health and Safety at Work Act 2015 and notify us of any known hazards or risks

to which a worker or any person may be exposed prior to any work commencing. You must also ensure, so far as is reasonably practicable, that your premises, the means of entering and existing your premises, any fixtures, fittings or plant and anything arising from the premises are without risks to the health and safety of any person. To the extent that there are overlapping duties, and so far as is reasonably practicable, you must consult, cooperate with, and coordinate activities with us.

- 17.2 We will comply with the Health and Safety at Work Act 2015, and ensure, so far as is reasonably practicable, the health and safety of our personnel while they are carrying out work for us. We will ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out by us and our personnel. To the extent that there are overlapping duties, and so far as is reasonably practicable, we will consult, cooperate with, and coordinate activities with you.

## **18. GENERAL PROVISIONS**

- 18.1 These Terms apply to all transactions we have with you. If there is any inconsistency between these Terms and any Schedule, the relevant Schedule prevails.
- 18.2 This Agreement is restricted to you. You may not assign or transfer this Agreement without written approval. Such approval will not be unreasonably withheld. We may assign this Agreement without notice.
- 18.3 Each Agreement constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of that Agreement.
- 18.4 Failure or neglect by us to enforce at any time any of the terms, conditions or provisions of this Agreement shall not be construed to be a waiver of our rights, or to in any way affect the validity of the whole or any part of this Agreement, or to otherwise prejudice our right to take subsequent action. Any waiver by a party in respect of any right provided for in this Agreement shall not be construed to be a waiver of any further or future right arising under this Agreement.
- 18.5 If any provision of these Terms is held by any Court to be illegal, void or unenforceable, that will not impair the enforceability of the remaining provisions.
- 18.6 These Terms are governed by, and will be construed in accordance with, the laws of New Zealand. Both parties submit to the non-exclusive jurisdiction of the New Zealand Courts.
- 18.7 We may review and change these Terms at any time and from time to time. Any such change will take effect from the date on which we notify you of the change. You consent to such future changes being made by updates on our website, and agree that such update will constitute agreement by you to the amended terms.

## 19. DISPUTE RESOLUTION

- 19.1 The parties agree to use their best endeavours to resolve any dispute or difference that may arise under this Agreement. The following process will apply to disputes:
- (a) a party must notify the other if it considers a matter is in dispute;
  - (b) the contract managers will attempt to resolve the dispute through direct negotiation ; and
  - (c) if the contract managers have not resolved the dispute within 10 Business Days of notification, they will refer it to the parties' senior managers for resolution.
- 19.2 The parties may, if they agree, refer the dispute to mediation or some other form of alternative dispute resolution. If a dispute is referred to mediation, the mediation will be conducted:
- (a) by a single mediator agreed by the parties or if they cannot agree, appointed by the Chair of Resolution Institute.
  - (b) on the terms of the Resolution Institute standard mediation agreement, and
  - (c) at a fee to be agreed by the parties or if they cannot agree, at a fee determined by the Chair of Resolution Institute.
- 19.3 Each party will pay its own costs of mediation or alternative dispute resolution under this clause
- 19.4 If there is a dispute, each party will continue to perform its obligations under this Agreement as far as practical given the nature of the dispute.
- 19.5 Each party agrees not to start any court action in relation to a dispute until it has complied with the process described in clause 19.1, unless court action is necessary to preserve a party's rights.

## 20. NOTICE

- 20.1 Any notice or correspondence required to be given or sent by either party to the other must be in writing and be sent to the addresses set out in the relevant Schedule.

## PART 2 – SUPPLY OF SOFTWARE

### 21. INTERPRETATION

- 21.1 In this Part 2 – Supply of Software:
- (a) **Documentation** means all documentation or other materials provided to you by us in relation to the Software.
  - (b) **Licence** means the licence granted pursuant to clause 22.1.
  - (c) **Purchase Fee** means the fee for the supply of Software as set out in the relevant Schedule.

## 22. PURCHASE TERMS

- 22.1 **Grant of Licence:** Subject to your performance of your obligations under this Agreement (including full payment of all amounts payable to us), we grant you a non-transferable, non-exclusive, non-sublicensable licence to use each of the Software in New Zealand and Australia in object code form only in accordance with the terms of this Agreement. Any rights not expressly granted herein are expressly excluded.
- 22.2 **Term:** The term of the Licence is perpetual unless terminated under clauses 16 and 27.
- 22.3 **General use:** You may access and use the Software only on your Microsoft 365 Tenant. You agree to maintain and use the Software according to the Documentation supplied by us (including any configuration requirements set out in such Documentation).
- 22.4 **Services:** We are not obliged to provide any services under this Agreement in relation to the Software, including without limitation installation, testing, training or changes to the Software. If we agree to provide any such services to you, those services will be performed under a separate Agreement.
- 22.5 **Business purposes:** You may use the Software to facilitate communication, collaboration and record sharing with your employees, partners, contractors and other parties with whom you collaborate in order to meet your standard business purposes, but you may not use the Software to provide services to third parties on a rental, hosting, application provider or similar basis such as is done by hosting companies, service bureaus or other organisations.
- 22.6 **Additional restrictions:** Without our prior written consent, you must not:
- (a) remove any proprietary notices or labels on the Software or any copies thereof;
  - (b) copy, distribute, rent, lease, export, grant a security interest in, sub-licence, resell, resupply or otherwise transfer all or any portion of the Software or the rights therein or thereto;
  - (c) reverse engineer, decompile, disable any control feature or otherwise recreate the source code from the object code of the Software;
  - (d) permit individuals not authorised hereunder to use the Software, and you agree to take all reasonable steps to prevent such use; or
  - (e) modify, adapt, alter, translate or create derivative works from the Software.

## 23. PURCHASE FEE

- 23.1 **Purchase Fee:** You will pay us the Purchase Fee as per the relevant Schedule. Payment of the Purchase Fee entitles you to use the Software in accordance with this Agreement.
- 23.2 **Exclusions:** For the avoidance of doubt, the Purchase Fee excludes:
- (a) answering support requests or queries;

- (b) installation or training for the Software; and
  - (c) any updates, new features or enhancements to the Software;
- provided that, each of the above may be included in a separate Agreement.

## 24. OWNERSHIP AND INTELLECTUAL PROPERTY

24.1 **Ownership:** All rights, titles, and interests in and to the Software are and shall remain our sole and exclusive property. For the avoidance of doubt, all rights, titles, and interests in and to all modifications to the Software, including all modifications made at your request, shall remain our sole and exclusive property.

## 25. WARRANTIES

25.1 **Authority:** We warrant that we are authorised to grant you the Licence under the terms of this Agreement.

25.2 **Customer responsibilities to successful deployment, implementation, and business benefits:** The Customer accepts that, as the Software are only an addition to Microsoft 365 functionality, the successful deployment and utilisation of the added functionality is their responsibility and is not covered by this Agreement. Successful deployment and utilisation are dependent on many factors, including, but not limited to, how Microsoft 365 is set up, on-going updates to Microsoft 365 or other software, PC client software and hardware, general IT infrastructure, training and support, and how users utilise the Software and Microsoft 365.

25.3 **Updates:** Any updates to the Software are not included. Updates may be available to you at an additional fee.

## 26. LIMITATION OF LIABILITY

26.1 We and our employees and agents shall not be liable to you for any claim for breach of Contract (except in relation to ILDS itself as provided in clause 26.2 below) or Statute or breach of duty in Tort (including negligence) or for any claim in Equity or otherwise at law.

26.2 Your sole remedy against us shall be limited to breach of contract and the extent of any such liability shall be limited to the Purchase Fee.

## 27. TERM AND TERMINATION

27.1 **Termination by you:** You may terminate this Agreement by giving us at least one month's notice in writing of your intention to do so. No fees paid in advance to us (including Purchase Fees) will be refunded.

27.2 **Termination by us:** We may terminate this Agreement and/or remove the Software from use if it becomes impractical, not commercially viable or not possible in our view to

make the Software work due to changes in Microsoft 365, or other associated platforms. We are not liable for any re-tooling, conversion or update costs needed to allow or compensate for the Software not being available. If requested we may provide a proposal to assist with any changes.

## **28. MICROSOFT, THIRD-PARTY AND OPEN-SOURCE PRODUCTS**

- 28.1 We are not responsible for any bugs, defects or limitations in Microsoft products or in products created by any other third party. Software that is delivered on Microsoft 365 may be impacted by limitations in Microsoft or third-party products some of which may be unforeseen. We may choose to investigate any such issue at our sole discretion but are under no obligation to do so.
- 28.2 Due to the evolving Microsoft platform, we cannot guarantee the Software will continue to provide the same functionality and accordingly, we cannot take responsibility for such continuance. However, if the flow-on effects of the Microsoft updates cause issues in the Customer's environment, such as losing functionality, responsiveness or the need to change settings or configuration of instances of the Software, we can support and in many cases provide these changes on a time and materials basis but we are not responsible for the impact of the changes or resolving them.
- 28.3 We are not responsible for where the Software is used in your Microsoft 365 Tenant tenancy, how it is applied or any liability for unwanted outcomes.

## PART 3 – SAAS SERVICES

### 29. INTERPRETATION

29.1 In this Part 3 – SaaS Services:

- (a) **Documentation** means all documentation or other materials provided to you by us in relation to the SaaS Software.
- (b) **Licence** means the licence granted pursuant to clause 30.1.
- (c) **SaaS Software** means any and all iWorkplace™ Apps provided to you by us as specified in the relevant Schedule and which includes any and all updates to such SaaS Software provided to you in accordance with this Agreement.
- (d) **Subscription** means the arrangement to subscribe to use the SaaS Software by paying in advance in accordance with this Agreement.
- (e) **Subscription Fee** means the annual fee corresponding to the relevant SaaS Software as specified in the relevant Schedule.

### 30. LICENCE TERMS

- 30.1 **Grant of Licence:** Subject to your performance of your obligations under this Agreement (including full payment of the all amounts payable to us), we grant you a non-transferable, non-exclusive, non-sublicensable licence to use the SaaS Software in New Zealand and Australia in object code form only in accordance with the terms of this Agreement. Any rights not expressly granted herein are expressly excluded.
- 30.2 **Term:** This Agreement will, unless terminated under clauses 16 and 35, commence on the date of the relevant Schedule and will continue for an initial term of 12 months and, thereafter will be automatically renewed for successive periods of 12 months (**a Renewal Term**) unless you notify us in writing at least 60 days before the end of the initial term or a Renewal Term.
- 30.3 **General use:** You may access and use the Apps only on your Microsoft 365 Tenant. You agree to maintain and use the SaaS Software according to the Documentation supplied by us (including any configuration requirements set out in such Documentation).
- 30.4 **Services:** We are not obliged to provide any services under this Agreement in relation to the SaaS Software, including without limitation installation, testing, training or changes to the SaaS Software. If we agree to provide any such services to you, those services will be performed under a separate Agreement.
- 30.5 **Business purposes:** You may use the SaaS Software to facilitate communication, collaboration and record sharing with your employees, partners, contractors and other parties with whom you collaborate in order to meet your standard business purposes, but you may not use the SaaS Software to provide services to third parties on a rental,



hosting, application provider or similar basis such as is done by hosting companies, service bureaus or other organisations.

30.6 **Additional restrictions:** Without our prior written consent, you must not:

- (a) remove any proprietary notices or labels on the SaaS Software or any copies thereof;
- (b) copy, distribute, rent, lease, export, grant a security interest in, sub-licence, resell, resupply or otherwise transfer all or any portion of the SaaS Software or the rights therein or thereto;
- (c) reverse engineer, decompile, disable any control feature or otherwise recreate the source code from the object code of the SaaS Software;
- (d) permit individuals not authorised hereunder to use the SaaS Software, and you agree to take all reasonable steps to prevent such use; or
- (e) modify, adapt, alter, translate or create derivative works from the SaaS Software.

## 31. SUBSCRIPTION AND SUBSCRIPTION FEE

31.1 **Subscription:** Payment of the Subscription Fee entitles you to use the SaaS Software in accordance with this Agreement.

31.2 **Subscription Fee:** The Subscription Fee is paid as an on-going subscription on the following basis:

- (a) Usage of the SaaS Software within agreed user and/or file limit parameters as notified by ILDS to you in writing (including in the relevant Schedule);
- (b) SaaS Software availability may be affected by constraints such as:
  - (i) *ILDS or Microsoft scheduled maintenance of infrastructure, services and apps;*
  - (ii) *Unscheduled maintenance; or*
  - (iii) *Throttling of services to ensure service stability and availability;*
- (c) The Subscription Fee is payable annually in advance of the initial term or a Renewal Term. No refunds will be made on Subscription Fees paid except for as described in clause 35.1.

- (d) The Subscription Fee will increase annually by at least 4.5% based on factors such as inflation, operational costs, market conditions, or other relevant considerations. ILDS reserves the right to increase beyond 4.5% per annum based on external factors and circumstances. ILDS will provide written notice to you of at least 30 days prior to the effective date of the annual price increase, if the increase is greater than 4.5%. You acknowledge and agree that continued use of the SaaS Software (including Azure hosting where applicable) after the effective date of a price increase shall constitute acceptance of the annual price increase for the subsequent year.
- (e) Online Documentation is provided here: [Awhina](#)
- (f) Notification of updates and changes to SaaS Software provided to you from time to time.

31.3 **Exclusion:** For the avoidance of doubt, the Subscription Fee excludes:

- (a) answering support requests or queries; and
- (b) installation or training for the SaaS Software;
- (c) provided that, each of the above may be included in a separate Agreement.

31.4 **Azure Hosting: The SaaS Software can be hosted in:**

- (a) ILDS's multi-tenanted Microsoft Azure environment. The costs to operate and maintain this environment are shared by licensees of the SaaS Software and are included in the Subscription Fee; or
- (b) You may choose to host the SaaS Software in a dedicated Microsoft Azure environment in your own tenancy. If you choose this option, you will be solely responsible for all costs and all requirements of your Azure environment including, but not limited to, configuration, security, maintenance and functionality.

## 32. OWNERSHIP AND INTELLECTUAL PROPERTY

32.1 **Ownership:** All rights, titles, and interests in and to the SaaS Software are and shall remain our sole and exclusive property. For the avoidance of doubt, all rights, titles, and interests in and to all modifications to the SaaS Software, including all modifications made at your request, shall remain our sole and exclusive property.

## 33. WARRANTIES

33.1 **Authority:** We warrant that we are authorised to grant you the Licence under the terms of this Agreement.

33.2 **Customer responsibilities to successful deployment, implementation, and business benefits:** The Customer accepts that, as the SaaS Software are only an addition to Microsoft 365 functionality, the successful deployment and utilisation of the added functionality is their responsibility and is not covered by this Agreement. Successful deployment and utilisation are dependent on many factors, including, but not limited to, how Microsoft 365 is set up, on-going updates to Microsoft 365 or other software, PC client software and hardware, general IT infrastructure, training and support, and how users utilise the SaaS Software and Microsoft 365.

33.3 **Updates:** The SaaS Software are updated on a semi-regular basis, for improved functionality, bug fixes and/or changes to accommodate changes in the underlying Microsoft 365 platform.

33.4 **Service Level:** The SaaS Software's availability is expected to be 99% availability (excluding any Microsoft outages).

#### 34. LIMITATION OF LIABILITY

34.1 We and our employees and agents shall not be liable to you for any claim for breach of Contract (except in relation to ILDS itself as provided in clause 26.2 below) or Statute or breach of duty in Tort (including negligence) or for any claim in Equity or otherwise at law.

34.2 Your sole remedy against us shall be limited to breach of contract and the extent of any such liability shall be limited to the equivalent of one year's Subscription Fee for the relevant SaaS Software underlying the breach of contract claim.

#### 35. TERM AND TERMINATION

35.1 **Termination by you:** You may terminate this Agreement by giving us at least one month's notice in writing of your intention to do so. No fees paid in advance to us (including Subscription Fees) will be refunded.

35.2 **Termination by us:** We may terminate this Agreement and/or remove the SaaS Software from use if it becomes impractical, not commercially viable or not possible in our view to make the SaaS Software work due to changes in Microsoft 365, or other associated platforms. We are not liable for any re-tooling, conversion or update costs needed to allow or compensate for the Software not being available. Where we terminate this Agreement under this provision, we will refund Subscription Fees for such removed SaaS Software paid in advance for any time beyond the termination date.

35.3 **Consequences of termination:** Upon termination of this Agreement, your License terminates and we will disable the SaaS Software functionality from your Microsoft 365 Tenant on the date of termination of this Agreement. Your content will not be affected but you may wish to re-design and/or reconfigure your workspaces. Within ten (10) Business Days after sending or receiving any termination of this Agreement, you must:

- (a) pay all amounts owed to us under this Agreement as at the date of termination;
- (b) at our request, deliver up to us, or destroy, all SaaS Software and Documentation, including all copies (including electronic copies) thereof, in your possession, custody or control;
- (c) delete any and all copies of the SaaS Software and Documentation that are stored in any computer or other storage facility, and
- (d) confirm in writing to us that all copies of SaaS Software and Documentation has been so deleted or destroyed.

### **36. MICROSOFT, THIRD-PARTY AND OPEN-SOURCE PRODUCTS**

- 36.1 We are not responsible for any bugs, defects or limitations in Microsoft products or in products created by any other third party. SaaS Software that is delivered on Microsoft 365 may be impacted by limitations in Microsoft or third-party products some of which may be unforeseen. We may choose to investigate any such issue at our sole discretion but are under no obligation to do so.
- 36.2 Due to the evolving Microsoft platform, we cannot guarantee the SaaS Software will continue to provide the same functionality and accordingly, we cannot take responsibility for such continuance. However, if the flow-on effects of the Microsoft updates cause issues in the Customer's environment, such as losing functionality, responsiveness or the need to change settings or configuration of instances of the SaaS Software, we can support and in many cases provide these changes on a time and materials basis but we are not responsible for the impact of the changes or resolving them.

## **PART 4 - SLA SUPPORT SERVICES**

### **37. SLA SUPPORT SERVICES**

37.1 During the term of the SLA Support Services (as set out in the relevant Schedule), we will provide the SLA Support Services in accordance with the relevant Schedule.

### **38. SERVICE**

38.1 Save for where we reasonably determine that we require access to your site to provide the relevant SLA Support Services, all SLA Support Services will be provided on an off-site basis (such as over the telephone or by e-mail) from our offices.

38.2 You acknowledge that, to properly assess and resolve support requests, it may be necessary for you to permit us direct access at your site to your IT system and your files, equipment and personnel.

### **39. SERVICE EXCLUSIONS**

39.1 We may reasonably determine that any service is excluded from the SLA Support Services, and if we make any such determination, we will promptly inform you of that determination. Notwithstanding our discretion to determine exclusions from the SLA Support Services, you agree that the following are excluded from the SLA Support Services:

- (a) Customisation or configuration changes made to iWorkplace apps by the Customer without the agreement of ILDS.
- (b) Issues with 3rd party apps and products, for example the operating system and Customer applications.
- (c) Issues or modifications resultant from the addition of 3rd party applications to the Customer tenant.
- (d) Issues caused by Microsoft or other vendors' products.

Any excluded work which ILDS undertakes is not subject to any SLA timeframes, must be agreed between the Customer and ILDS and will be best efforts, and billable as time and materials.

### **40. LIMITATION OF LIABILITY**

40.1 We and our employees and agents shall not be liable to you for any claim for breach of Contract (except in relation to ILDS itself as provided in clause 40.2 below) or Statute or breach of duty in Tort (including negligence) or for any claim in Equity or otherwise at law.

40.2 Your sole remedy against us shall be limited to breach of contract and the extent of any such liability shall be limited to the fees (if any) paid by you to us for the provision of the

support case or particular component of an assignment or project in question within the current quarter.

#### **41. TERMINATION**

- 41.1 Either party may terminate this Agreement with three months' notice to the other in writing. Any services scheduled to be undertaken during the notice period will be completed. Any costs associated with these scheduled services, whether they be fixed time costs, additional costs, or expenses, will be paid by the Customer in full.

### **PART 5 - PROFESSIONAL CONSULTING SERVICES**

#### **42. PROVISION OF PROFESSIONAL CONSULTING SERVICE**

- 42.1 We will provide the Professional Consulting Services (as set out in the relevant Schedule) to you.
- 42.2 Any changes proposed to be made to an agreed statement of work (**SoW**) in the relevant Schedule, will need to be mutually agreed by both of us in writing.

#### **43. INTELLECTUAL PROPERTY**

- 43.1 Reports and other deliverables created or developed by ILDS in performing the Professional Consulting Services will be owned by the Customer from the date these are created or developed provided that ILDS retains all rights to its know-how, intellectual property, methodologies, processes and development tools used in performing the Professional Consulting Services which are based on trade secrets or proprietary information of ILDS (or its affiliates), or are developed or created by ILDS without reference to or use of the intellectual property of the Customer, or otherwise are loaned or licensed by ILDS.

#### **44. LEAD TIME**

- 44.1 The Customer agrees that ILDS has a lead time of a minimum of four weeks for Professional Consulting Services after signing of a Schedule unless agreed otherwise in writing. If ILDS is unable to begin work on the Professional Consulting Services within the agreed timeframes due to factors outside of their control, ILDS will notify the Customer as soon as possible to discuss and agree a new start date.

#### **45. COMMITMENTS UNDER STATEMENTS OF WORK**

- 45.1 In accepting a statement of work the Customer acknowledges that ILDS will allocate resources to the SoW and hence this resource will be unavailable for other work.
- 45.2 For SoW under a total value of NZ\$500,000 a minimum of one month's notice is required to cancel or suspend the SoW unless mutually agreed.

45.3 For work over a total value of NZ\$500,000 a minimum of three month's notice is required to cancel or suspend the SoW unless mutually agreed.

45.4 If the appropriate notice period is not provided then ILDS shall be entitled to bill the Customer for the work that was scheduled to take place over this duration.

#### **46. RATES**

46.1 You acknowledge and agree that the rates contained in a relevant Schedule are reviewed annually and are subject to change at our sole discretion. We will notify you of any changes with at least 30 days' notice.

#### **47. LIMITATION OF LIABILITY**

47.1 We and our employees and agents shall not be liable to you for any claim for breach of Contract (except in relation to ILDS itself as provided in clause 47.2 below) or Statute or breach of duty in Tort (including negligence) or for any claim in Equity or otherwise at law.

47.2 Your sole remedy against us shall be limited to breach of contract and the extent of any such liability shall be limited to the fees (if any) paid by you to us for the provision of the support case or particular component of an assignment or project in question.

#### **48. MICROSOFT AND THIRD-PARTY PRODUCTS**

48.1 ILDS is not responsible for any bugs, defects or limitations in Microsoft products or in products created by any other third party. Solutions that are delivered on SharePoint may be impacted by limitations in Microsoft or third-party products some of which may be unforeseen. ILDS may choose to investigate any such issue at its sole discretion but is under no obligation to do so.

#### **49. DISBURSEMENTS**

49.1 Fees are based on a delivery of services from home cities of Auckland, Wellington and Christchurch. Disbursements will be charged as follows:

- (a) Disbursements on airfares, accommodation, phone calls, parking, ground transport, meals etc are charged at cost.
- (b) Where estimated disbursements are not specifically included in a Schedule, SoW or other Agreement, these will be agreed with the Customer ahead of time.
- (c) Materials used charged at cost.
- (d) Intellectual Property from 3rd parties quoted and agreed with the Customer prior to use.
- (e) Private car travel outside home cities is charged at IRD mileage rates IRD Kilometre rates for business use of vehicle (as set out in the IRD website for the applicable year).

- 49.2 Travel Time: Where two flights and/or a drive of over one hour is involved then a travel charge of \$500 each way / per resource in addition to direct expenses as per the clause above will be incurred.

## **PART 6 - DASHBOARD**

### **50. DASHBOARD**

- 50.1 To provide the Dashboard, we will access your data and transfer such data into a database in our Microsoft Azure environment.
- 50.2 We will process your data in our Microsoft Azure environment to provide a report of your compliance with the Public Records Act 2005 and/or other statutory or regulatory compliance requirements or information protection measures, as agreed between us.

### **51. PREREQUISITES AND CUSTOMER CONDITIONS**

- 51.1 You will:
- (a) provide us with access to such information and data along with all necessary co-operation we may reasonably require in order to provide the Dashboard; and
  - (b) complete the requisite app registration and provide the required service account with which the information and data will be extracted.

You acknowledge and agree that if you fail to meet these prerequisites, we will be unable to provide the Dashboard to you.

- 51.2 You hereby agree and consent to our:
- (a) accessing, aggregating, collecting, storing, processing and using your data and our creating derivative works from your data for the purposes of providing you with the Dashboard; and
  - (b) retaining copies of your data and derivative works in accordance with our privacy policy.

- 51.3 You warrant and represent to us that:
- (a) you have all rights and licenses necessary or desirable to allow us to use your data, and to share with, input or transmit your data to us in the manner anticipated by this Agreement and the provision of the Dashboard;
  - (b) use of your data by us in connection with the provision of the Dashboard will not breach any laws or infringe the intellectual property rights of any person.

### **52. OWNERSHIP AND INTELLECTUAL PROPERTY**

- 52.1 **Ownership:** All rights, titles, and interests in and to the Dashboard are and shall remain our sole and exclusive property. For the avoidance of doubt, all rights, titles, and



interests in and to all modifications to the Dashboard, including all modifications made at your request, shall remain our sole and exclusive property.

### **53. LIMITATION OF LIABILITY**

53.1 We and our employees and agents will not be liable to you for any loss or damage whatsoever arising directly or indirectly in connection with this Agreement and/or the Dashboard, including (without limitation) any loss of profit, business, revenue, goodwill, data, privacy or anticipated savings. This exclusion of liability applies to liability in contract, tort (including negligence) and any other principle of legal liability (including any claim in equity).

53.2 Your sole remedy against us shall be limited to breach of contract and the extent of any such liability shall be limited to the equivalent of ten New Zealand Dollars (NZD\$10.00).

### **54. TERMINATION**

54.1 We may terminate our agreement to provide the Dashboard to you at any time, without cause, by not less than 1 days' prior notice in writing.