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## 1. Overview

The following terms and conditions (“Terms”) apply to the Licensee’s access to the System and the purchase and use of Instant Online Courses provided by Activate Training Centre Limited trading as Instant Online (‘IO’). For the purpose of these terms “Licensee” means the person or entity who has signed the Order Form and accepted these Terms (“Licensee”). If you are accepting these Terms on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these Terms.

- 1.1. These Terms along with the Order Form, Acceptable Use Policy and Privacy Policy form the basis of IO’s agreement with the Licensee (“**Agreement**”). By accessing or using the System, which includes without limitation Instant Online Courses, the Licensee agrees to be bound by this Agreement.
- 1.2. In consideration for the Licensee’s performance of its obligations set out in this Agreement, and subject to the Licensee complying and continuing to comply with this Agreement, IO hereby grants to the Licensee, a limited, non-exclusive, non-transferable subscription licence to access and use the System for the Subscription Term.
- 1.3. Subject to earlier termination of the Subscription Term, the Licensee may elect to apply to renew the Subscription Term by providing notice to IO no later than one month prior to the expiry of the then current Subscription Term. If IO agrees to such renewal request, the parties shall enter into a new written agreement setting out the terms and conditions applicable to such extension or renewal, including without limitation any new or amended fees as determined by IO from time to time.

## 2. Definitions

- 2.1. ‘CONTENT’ includes but is not limited to text, definitions, questions, audio, video, electronic books, diagrams, formatting, computer files (such as MS Excel or MS Access files), images, interactive content, or any other material supplied in an Instant Online Course by IO.
- 2.2. ‘DOMESTIC LEARNER’ means a person who is:
  - a. Resident in New Zealand (including New Zealand citizens, permanent residents, or others who are legally entitled to reside or study in New Zealand);
  - b. New Zealand citizens who are living overseas; or
  - c. enrolled in the Licensee’s organisation as a learner.
- 2.3. ‘FORCE MAJEURE EVENT’ means a fire, flood, tsunami, storm, tempest, earthquake, pandemic, epidemic or other act of God, nature, contamination, war or government, any civil disturbance, or any labour disruption, or any cause reasonably beyond the control of a party, to the extent that such event makes it impossible or illegal to perform, or prevents compliance with, this Agreement.
- 2.4. ‘IO e-learning platform’ means the e-learning platform operated by IO that hosts the System and software application which provides the administration, documentation, tracking, reporting, automation, and delivery of all Instant Online Courses.
- 2.5. ‘INSTANT ONLINE COURSE’ means the content and format and container for the materials supplied under this Agreement. Instant Online Courses may consist of an individual assessment, teaching or learning material, interactive pdf electronic files, online resources, supplementary materials, or any combination or permutation of the above. Materials can be supplied in secure electronic PDF format and/or e-learning format and/or hard copy format and/or any other educational format dependent upon the product or service purchased, and Licence agreement entered into. Materials supplied may or may not relate to NZQA Unit Standards and/or NZQA Achievement Standards.
- 2.6. ‘INSTANT ONLINE’ is a trading name of Activate Training Centre Limited, a private charitable company registered with the New Zealand Companies Office, [913506], and also registered in New Zealand as a Private Training Establishment by the New Zealand Qualifications Authority pursuant to the Education Amendment Act 1990. ATC New Zealand, Activate Training Centres and ATC have a similar meaning.
- 2.7. ‘INTELLECTUAL PROPERTY’ means, all intellectual and industrial property rights and interests (including common law rights and interests) including, without limitation, the System and all Instant Online Courses, trademarks, applications for trademarks, trade name(s), know-how, being technical and other information or experience or trade secrets, designs, whether or not registered or protected by copyright, patents and applications for patents, copyright material, and any other intellectual property rights.
- 2.8. ‘LICENCE FEE’ means the fees to be paid by the Licensee to IO in accordance with this Agreement and the pricing plan selected by the Licensee on the Order Form.
- 2.9. ‘LICENSEE’ is any organisation or person who purchases any Instant Online Course subject to this Agreement and any other terms and conditions provided by IO from time to time.
- 2.10. ‘PRICING PLAN’ means the pricing for the Subscription Term as selected by the Licensee in the Order Form and as amended by IO from time to time.
- 2.11. ‘MAINTENANCE’ means the provision of patches, bug fixes and updates as part of IO’s standard maintenance of the System, but excludes any customised functionality (including any patches, bug fixes or updates thereto) and excludes upgrades to Instant Online Courses.
- 2.12. ‘ONLINE LEARNING SYSTEM’ refers to any internet-based system used for the purposes of storing, accessing, distributing, and teaching of Instant Online Courses in electronic form (excluding the IO learning system) This includes but is not limited

to Intranet systems, MOOCs, Google Drive, Google Classrooms, use on Apple, Android, on any other mobile devices, Moodle, Moodle docs, Wikispaces or any other web-based learning technologies. The definition of Online Learning System does not include the IO e-learning platform.

- 2.13. 'ORDER FORM' means the form setting out the particulars of the subscription entered into by the Licensee.
- 2.14. 'OWNED AND OPERATED' - A delivery site is deemed to be owned and operated by an organisation if the delivery site is registered by NZQA as a:
  - a. Main office (with a registered Education Organisation Number) OR
  - b. Delivery site (with a registered Location and Number)
- 2.15. 'SECONDARY SCHOOL' means any school offering classes from Year 9 to Year 13. It also includes Middle Schools, Junior High Schools, Area Schools, Composite Schools (Yr 1-15) and any special character schools or charter schools registered with NZQA.
- 2.16. 'STUDENT ACCOUNT' means each student registered under the Licensee's licence and subject to an annual subscription paid by the Licensee to IO.
- 2.17. 'STUDENT USER' means each student who is registered and approved by IO and the Licensee to hold a Student Account.
- 2.18. 'SUBSCRIPTION TERM' means the term of the Licensee's subscription as agreed between the Licensee and IO and as set out in the Order Form and subject to any renewals as provided for in clause 1.3.
- 2.19. 'SUPPORT' Support means the provision of support, provided by email or phone during Business Hours, in relation to the use of the System by the Licensee or Student Users. Support excludes Maintenance.
- 2.20. 'SYSTEM' means IO's e-learning platform and Instant Online Courses. The System includes any modifications, amendments, or improvements, whether as part of maintenance. support, upgrades, or otherwise.
- 2.21. 'TRAINING ESTABLISHMENT' includes but is not limited to Private Training Establishments, Institutes of Technology and Polytechnics, Industry Training Organisations and Workforce Development Councils
- 2.22. 'UPGRADE' means any changes to an Instant Online Course due to an NZQA version change, NZQA moderation feedback, or any internal changes made by IO.
- 2.23. 'USE' means use of the content of the Instant Online Course by learners enrolled in the educational institution, and teachers employed by that institution, provided that such use is in the format permitted by that type of licence, and the nature and extent of distribution is in accordance with the terms of that type of licence.
- 2.24. 'WORKING DAYS' has the meaning set out in the Companies Act 1993, applicable to the Waikato region but excludes any working days which fall within IO's shut down period each year as notified to the Licensee from time to time.
- 2.25. 'WORKING HOURS' are between the hours of 9am to 5pm on Workings Days.

### 3. Usage

The following applies to the Licensee's use of the System:

- 3.1. Instant Online Courses are to be accessed through a Student Account by Student Users who are at all times Domestic Learners. The Licensee shall at all times ensure that Student Users are aware of and accept the Acceptable Use Policy and these Terms as applicable.
- 3.2. Customisation, modification or variation by the Licensee or any Student User of the System, including any Instant Online Course within the System, including downloadable Content, is prohibited unless agreed to in writing between the Licensee and IO. Additional fees may apply for customisation, modification, or variation.
- 3.3. The System, including any Instant Online Courses may not be copied, stored, or otherwise reproduced or distributed in any form by the Licensee or any Student User other than as provided for in these Terms. Student Users may download content as required by the Instant Online Course, any downloaded, copied, or stored content is for the use of the individual Student User and shall not be shared with or distributed to any other person or entity whatsoever.
- 3.4. Uploading any Instant Online Courses on the Licensee's Online Learning System is prohibited unless agreed in writing between the licensee and IO.
- 3.5. The Licensee shall ensure that at all times the Student Users comply with these Terms and the Terms of Use.
- 3.6. **SECONDARY SCHOOLS**
  - a. Where the Licensee is a Secondary School, Student Users are required to be at all times current students of the Licensee. The Licensee may use any Instant Online Courses purchased under this Agreement for students enrolled in up to four separate sites Owned and Operated by the Licensee. The Licensee shall notify IO of the names of the Licensee's sites that are using the Instant Online Courses. IO shall have the right to request this information from the Licensee at any time.
- 3.7. **TRAINING ESTABLISHMENT**
  - a. Where the Licensee is a Training Establishment, Student Users are required to be at all times current students of the

Licensee. The Licensee may use any Instant Online Course purchased under this Agreement for Student Users enrolled at all sites Owned and Operated by the Licensee.

#### 4. Licence Fees and Payment

- 4.1. The Licensee shall pay to IO the Licence Fees invoiced and calculated in accordance with the Pricing Plan selected by the Licensee on the Order Form. Pricing will be dependent upon the total number of Student Users enrolled to use the Instant Online Course as provided for in the Order Form. New Student Users may be added throughout the Subscription Term subject to the agreed Pricing Plan. Any Pricing Plan may be subject to a discount (if any) as agreed by IO from time to time.
- 4.2. The Licensee shall pay each invoice issued by IO, in cleared funds without deduction or setoff, to IO's nominated bank account, payment in full must be made by the 20th of the month following the month in which the invoice is issued.
- 4.3. IO may from time to time amend the Subscription Fee payable by the Licensee. Any amendment to the Subscription Fee will be notified to the Licensee prior to the expiry of the then current Subscription Term. Where the Licensee does not agree to the amended Subscription Fee, the Licensee shall notify IO in accordance with clause 1.3.
- 4.4. Except where expressly specified in the Agreement, or as otherwise agreed with IO in writing, all Licence Fees and other fees paid pursuant to this Agreement to IO by the Licensee are non-fundable, including without limitation on termination or expiry of this Agreement.
- 4.5. Where the Licensee fails to pay any amounts pursuant to this Agreement on or prior to the due date, IO may in its sole discretion, without prejudice to and in addition to any other rights and remedies, do any one or more of the following:
  - a. suspend the Licensee and Student Users from accessing the System and all Student User accounts;
  - b. enforce the terms of the Agreement;
  - c. Cancel any pending order for an Instant Online Course;
  - d. Charge interest at a rate of 1.5% per month on all amounts due but unpaid, calculated on a daily basis from the due date until the IO receives payment in full including any interest charged; and
  - e. Cancel the Agreement.
- 4.6. Any costs or expenses, including without limitation legal costs on a solicitor/client basis, incurred by IO in collecting or attempting to collect any amount due to be paid pursuant to this Agreement shall be paid by the Licensee on IO's written request.

#### 5. Returns

- 5.1. Instant Online Courses may not be returned or refunded unless expressly agreed to in writing by IO. Where a refund is given for any reason, access to the refunded Instant Online Course will immediately be revoked. Any Instant Online Course Content (including downloadable Content) must be deleted from all storage mediums by the Licensee and Student Users and may not be used, copied, stored, or otherwise reproduced or distributed by the Licensee or any Student User.

#### 6. Upgrades

- 6.1. The Licensee will have access to any upgrades published by IO at their sole discretion due to NZQA changes, moderation, or internal quality control, provided that the Licensee has a current licence with IO.

#### 7. Product Quality

Our Instant Online Courses are designed to support teaching and formal assessment.

- 7.1. Subject to clause 7.2, and subject to the Licensee's payment of all fees and other amounts payable pursuant to this Agreement, IO warrants that reasonable efforts have been made to ensure that the Instant Online Courses have been developed in accordance with industry best practice.
- 7.2. IO does not warrant that:
  - a. the System is bug or error free, the existence of any bugs or errors will not constitute a breach of this Agreement;
  - b. the System will be compatible with all software;
  - c. any defects, whether notified or not, in the System will be corrected by IO;
  - d. the System will always be available, or be uninterrupted;
  - e. the System will be secure, or free from viruses or other malicious software;
  - f. the Instant Online Courses are fit for any particular purpose;
  - g. any data on the system will be stored or backed up;
  - h. the System will comply with or continue to comply with applicable law; and
  - i. the Instant Online Courses will pass moderation by external standard setting or moderation monitoring authorities on

every occasion;

**7.3.** The Licensee acknowledges and agrees that it is entering into this Agreement for a business purpose, and the parties agree that:

- a. except as expressly set out in clause 7.1, the System and any other goods and services provided by IO are supplied on an “as is” and “as available” basis, without any guarantee, warranty, condition or representations (whether express, implied by law, statute, trade custom or otherwise) including without limitation in relation to quality, merchantability, suitability or fitness for a particular purpose, ownership, title, non-infringement, or otherwise;
- b. the Licensee acknowledges that by entering into this Agreement, it is relying on its own expertise, skill, and judgement and that it is not relying on the expertise, skill, judgement, or any pre-contractual representation of IO; and
- c. the implied terms, guarantees, covenants, and conditions in the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1993, do not apply, and are excluded to the fullest extent permitted by applicable law.

## **8. Moderation Guarantee**

**8.1.** In the event the Licensee provides IO with a moderation report from an approved standard setting body or moderation monitoring authority (“Moderation Report”) and that Moderation Report determines that an Instant Online Assessment fails to comply with the requirements of the standard setting body or moderation monitoring authority, IO will modify and replace the Instant Online Assessment free of charge within a reasonable timeframe, provided that:

- a. no alterations have been made to the relevant assessment materials by the Licensee or any third party. IO may ask the Licensee for confirmation that no alterations have been made to the assessment prior to fulfilling our requirements under the moderation guarantee;
- b. the Licensee supplies IO with an electronic copy of the report from the external standard setting or moderation monitoring authorities that notifies the failure of the materials to meet the standard and specifies the areas that require remedial attention; and
- c. the Licensee supplies IO with an electronic copy of the assessment materials sent for moderation.

## **9. Intellectual Property**

**9.1.** The parties agree that all Intellectual Property rights in and to the System, including but not limited to any Instant Online Courses (including any associated Materials) and any goods and or services provided by IO remain owned by IO and shall not transfer in any way as part of the licence under these Terms.

**9.2.** The Licensee shall not, except without IO’s prior written consent:

- a. Use, modify, or otherwise alter IO’s Intellectual Property;
- b. Tamper with or remove any markings, patent numbers or other indication of the source or origin of the System or any Instant Online Course;
- c. Damage or otherwise endanger IO’s Intellectual Property rights;
- d. All Instant Online Courses must not be altered in any way unless specific written permission is given to the Licensee by IO.
- e. All copyright statements and brand identification tags must always be retained in the material unless specific permission has been given to the licence holder. This applies irrespective of whether the material was supplied as hard-copy, electronic or web-based course Content.
- f. The reproduction of Content in any form, including the alteration of layout and graphics, shall not void the copyright held by IO in the materials or derivatives of them. Under no circumstances may the licensee use, sell, or give original or altered Instant Online Courses to any person or organisation other than those specified in the licence agreement.

**9.3.** The Licensee agrees:

- a. not to cause or permit anything that may damage or endanger IO’s Intellectual Property, or ownership thereof;
- b. to notify IO of any suspected infringement of IO’s Intellectual Property;
- c. to take such reasonable action as IO may direct at the expense of the Licensee in relation to such infringement;
- d. to compensate IO for any use of IO’s Intellectual Property by the Licensee or any person associated with the Licensee or by any person through the instrumentality of the Licensee otherwise than in accordance with these Terms; and
- e. not to use IO’s Intellectual Property otherwise than as permitted by these Terms.

## **10. Distribution of Instant Online Courses**

**10.1.** Other than as provided for in these Terms, Instant Online Courses may not be copied, on-sold, distributed, made available to, gifted, emailed, duplicated, scanned, shared, or otherwise made available by any means to any third party other than the Licensee and Student Users without the express written permission of IO.

- 10.2.** Where a Licensee wishes to use Instant Online Courses with users other than approved Student Users (including online learning materials) who do not meet the requirements under this Agreement the Licensee must in all cases obtain express written consent from the Manager of IO.
- 10.3.** For the avoidance of doubt the Licensee shall not distribute or share the System or any parts of the System including the Instant Online Courses without the express written consent of IO and on terms agreed upon between the parties to be documented in a separate licence agreement.

## **11.No Assignment**

- 11.1.** The Licensee may not subcontract, novate, transfer, or otherwise assign their rights, obligations, and responsibilities under this Agreement to any other party without IO's written consent.

## **12.Disclaimer and Limitation to Liability**

- 12.1.** IO does not make any warranty or assume any legal liability or responsibility for the accuracy, currency, or completeness of any information contained in any Instant Online Course or the System.
- 12.2.** IO shall not be liable whatsoever for any direct or indirect loss, consequential loss, loss of profit, loss of bargain, loss of business opportunity or exemplary damages or losses suffered by the Licensee or any other person, whether arising out of or flowing from any pre-contractual misrepresentation, forecast or other dispute arising out of or incidental to these Terms or not, and whether actionable in contract, tort (including negligence), equity or otherwise.
- 12.3.** IO shall not in any circumstance be liable for any loss of data whatsoever, or be liable for any loss, cost, expense, or damage suffered or incurred by the Licensee or a Student User as a result of loss or reconstitution of any data, whether caused by any defect, malfunction, or non-performance of the System, or otherwise.
- 12.4.** The Licensee shall indemnify IO in respect of all liabilities, costs (including full costs between solicitor and client), claims or demands made by any third party, arising out of or incidental to the IO's or any Student User's breach of this Agreement.
- 12.5.** In the event that despite the proviso in clauses 12.2, IO is found liable for any loss, including without limitation loss set out in the preceding clause 12.2, such liability will be limited to the Licence Fee paid by the Licensee in the proceeding 12 month period.

## **13.Consent to Receive Electronic Messages**

- 13.1.** The Licensee hereby explicitly grants permission to IO to contact them, or their employees, by means of the use of electronic messages for the purpose of providing services under this Agreement including general after-sales services. These services include, but are not limited to, providing information on:
- a.** quotations
  - b.** updates to the products and services
  - c.** new products or services
  - d.** the activities of customer representatives in your region that are intended to maintain contact with clients and keep clients informed of the relevant developments.
- 13.2.** The Licensee may unsubscribe from the electronic messaging services at any time by e-mailing IO at [instant@instant.org.nz](mailto:instant@instant.org.nz) and clearly stating each of the email address(es) that they wish to be unsubscribed from the electronic message services. Address(es) so specified will be removed within five working days.
- 13.3.** A choice to unsubscribe from the electronic message services will not affect the Licensee's continued entitlement to use any products or services for which they hold a valid and current licence. A choice to unsubscribe from the electronic messaging services will remove any obligation from IO to provide any information to the Licensee in any other form, or by any other means of transmittal, whether bought as a component of this licence or not, or to provide the Licensee or their employees, with access to any web library or electronic file download facilities.
- 13.4.** IO shall not be liable for any consequential issues arising from the decision of the Licensee to unsubscribe from the electronic messaging service, including, but without limitation, any issues arising from the use of products or services that are out of date with respect to moderation or academic requirements.
- 13.5.** The Licensee shall at all times provide a valid email and postal address for invoicing purposes.

## **14.Force Majeure**

- 14.1.** Neither party shall be liable for any failure or delay in complying with any obligation imposed on it under these Terms if:
- a.** the failure or delay arises from a Force Majeure Event;
  - b.** that party, on becoming aware of the Force Majeure Event, promptly notifies the other party advising of the nature and expected duration of, and the obligation affected by, the Force Majeure Event; and
  - c.** that party uses its best endeavours:



- (i) to mitigate the effects of the Force Majeure Event on that party's obligations under these Terms; and
- (ii) to perform that party's obligations under these Terms on time despite the Force Majeure Event.

**14.2.** An obligation to pay money, or the consequences of insolvency, or financial difficulty, are never excused by a Force Majeure Event.

**14.3.** If a party fails to meet a material obligation under this Agreement continuously for three months as a result of a Force Majeure Event despite meeting all that party's obligations under this clause, another party may terminate these Terms by giving one month's notice in writing to all other parties.

## **15. Dispute Resolution**

**15.1.** In the event of any dispute between the parties in relation to these Terms, the parties will first seek to resolve such dispute by promptly giving notice to the other party specifying the nature of the dispute. Any dispute will first be dealt with by the Manager of IO and such internal person to be appointed by the Licensee. All reasonable effort must be made to resolve the dispute between the parties. Manager of IO or the Licensee.

**15.2.** If the dispute is not resolved between the parties, either party may refer this dispute to mediation. The mediation will be conducted in accordance with the terms of the LEADR New Zealand Incorporated Standard Mediation Agreement. The mediation fee will be shared equally between the parties.

**15.3.** If the dispute is not resolved within 30 days after the appointment of the mediator, either party may refer the matter to arbitration. Arbitration shall be undertaken by a sole arbitrator in accordance with the Arbitration Act 1996 and its amendments and the AMINZ Arbitration Rules current at the time arbitration is commenced. The place of arbitration will be Hamilton and the law applicable to the arbitral proceedings and the matters in dispute will be New Zealand law.

**15.4.** The parties acknowledge that an actual or threatened breach of these Terms may cause damage to the other that is unable to be adequately compensated for by monetary damages. In such circumstances a party may seek urgent injunctive relief from the Court.

## **16. Instant Online Courses**

The Licensee is permitted to have access to a limited number of Instant Online Courses per Student User. This pay per Student User is calculated at the time of invoice in accordance with the Pricing Plan and will indicate how many courses the student has access to and for what duration.

**16.1.** Instant Online Courses may be added by the Licensee at any time during the Term. Once an Instant Online Course is added to a Student User's profile, it is deemed 'added' to the total number of Instant Online Courses available to the Student User. As provided for in clause 4, each Student User registered under the Licensee's licence has access to a maximum of five courses during the Term. Where the Licensee purchases additional Instant Online Courses for a Student User, the Licensee shall be invoiced pursuant to clause 4. Each Student User will have access to an individual Instant Online Course from the date on which the Instant Online Course is processed by IO unless access is terminated in accordance with these Terms.

**16.2.** Once a licence timeframe has expired and access to any Instant Online Courses has been removed, the Licensee and any Student User has no rights to use the Instant Online Course in any manner. Any hard-copies or electronic forms of the material must also be removed from circulation or deleted. It is the Licensee's responsibility to ensure that all Student Users comply with this.

**16.3.** Access to additional Instant Online Courses, beyond the total number specified in the invoice, may be granted at an additional cost. Such agreement will be considered a variation to this licence Agreement. And must be agreed in writing. IO reserves the right to remove any Instant Online Courses from its IO catalogue at any time.

**16.4.** IO reserves the right to add or not add any Instant Online Courses to the IO catalogue as it sees necessary. Requests for certain Instant Online Courses to be added to the IO catalogue will not necessarily be granted.

**16.5.** IO reserves the right to provide Instant Online Courses that contain assessment material only or teaching material only. Provision of Instant Online Courses that contain assessments and teaching material will be provided at the sole discretion of IO.

## **17. Access to Instant Online Courses**

**17.1.** A Licensee may only have access to Instant Online Courses by accessing them through the System.

**17.2.** Any alterations to assessments will automatically void any moderation guarantee. IO will ask the licensee for confirmation that the assessment has not been altered before fulfilling our requirements under the moderation guarantee.

**17.3.** If an achievement standard assessment has been altered, the Licensee must remove the NZQA Quality Assured Assessment Materials (QAAM) trademark approval from the assessment (unless the specific alteration is permitted in the assessment). This is a condition of the QAAM approval process required by NZQA.

## **18. Maintenance and Support**

**18.1.** IO may perform Maintenance on or to the System from time to time. Such Maintenance may alter the functionality or

operation of the System. The System may be unavailable while Maintenance is being performed. All Maintenance undertaken on the System will be performed by IO or its service provider(s)/subcontractors. IO will use reasonable endeavours to:

- a. perform scheduled maintenance on the System outside of Working Hours; and
- b. provide a reasonable period of notice to the Licensee of any scheduled Maintenance required to be undertaken during Working Hours.

**18.2.** For the avoidance of doubt, Maintenance, whether scheduled or emergency, may be undertaken by IO at any time without notice to the Licensee.

**18.3.** IO will use reasonable endeavours to provide Support within two Working Days from the time a request for Support is received by IO. Support can be accessed by the Licensee by phone or email, during Working Hours, using the contact information set out on the Website.

## **19. System and data location, disaster recovery and backup**

**19.1.** The System, and any data, may be located on hardware owned, leased, or otherwise made available for use, by IO, and may be located anywhere in the world, as determined by IO from time to time.

**19.2.** IO will implement IT security measures regarding the System that are substantially in accordance with industry standard practice.

**19.3.** IO will use reasonable endeavours to ensure any third party hosting the System has robust disaster recovery and business continuity processes in place.

## **20. School Administrator**

**20.1.** The Licensee will inform IO of their designated School Administrator(s). The School Administrator is granted access by IO to view available Instant Online Courses and to monitor student progress and download assessment submissions (as available). Any Instant Online Course can only be accessed during the term of the agreement.

## **21. Termination**

**21.1.** Termination by Licensee:

- a. Termination of this License agreement may occur at any time provided a party provides 30 days' notice. If a Licensee terminates this agreement prior to the end of the Subscription Term, the Licensee will maintain access to already purchased Instant Online Course until the end of the Subscription Term and all obligations of the Licensee and Student Users shall continue under the Licence. Unless agreed otherwise in writing by IO, all Subscription and other fees are non-refundable including upon termination.

**21.2.** If the Licensee fails to pay any amounts pursuant to this Agreement on or prior to the due date, or is otherwise in breach of this Agreement, IO may, in its sole discretion, without prejudice to and in addition to any other rights and remedies, do any one or more of the following:

- a. Suspend the Licensee's licence to use the System. Such suspension may be lifted by IO providing further notice in writing to the Licensee. For the avoidance of doubt, there is no refund of Licence Fees and or any other fees paid during any period of suspension;
- b. Enforce the terms and conditions of this Agreement;
- c. sue for infringement of IO's Intellectual Property rights including without limitation regarding any unlicensed use of the System and Intellectual Property;
- d. take legal action to recover the amounts owing, appoint a collections agent, receiver or other third party to collect the amounts owing, and all costs and expenses associated with such (including legal costs as between solicitor and client), shall be paid by the Licensee in addition to any amount owing.

**21.3.** A party may terminate this Agreement immediately if:

- a. the other party commits, or in its reasonable opinion is likely to commit, a breach of the terms and conditions of this Agreement and such breach, if capable of remedy, is not remedied to the satisfaction of the notifying party within 30 days of receipt by the breaching party of written notice of such breach from the notifying party; or
- b. the other party to this Agreement enters into administration, receivership or liquidation, or reasonably appears to be insolvent or unable to pay its due debts.

**21.4.** Termination of this Agreement shall be without prejudice to any rights and/or obligations of the parties existing at the time of termination. Upon the termination or expiry of this Agreement with no refunds provided by IO, the Licensee shall (unless otherwise agreed between the parties) immediately cease use of the System, Content and any other material provided by IO whatsoever, including all IO owned Intellectual Property rights and return all IO property to IO within 7 days of termination. Any Content and Material that is electronic in nature and cannot be returned must be permanently deleted or destroyed. Once this license is terminated, regardless of the reason why it was terminated, all rights of usage of the Licensee are terminated and all electronic copies of Instant Online Courses (including altered Instant Online Courses) must be destroyed



unless agreed in writing by both parties. Any paper copies of Instant Online Courses must be returned to IO or destroyed. IO may ask for written notification that this has occurred.

## 22. Storage of Assessments and Results

- 22.1. It is the sole responsibility of the Licensee to ensure that copies of assessments and student progress ('Assessment Data') is downloaded and saved according to their internal processes. Licensees may keep copies of completed assessments for the purpose of moderation or internal processes in their own administration system or file storage system. IO reserves the right to remove any content produced by the student after the licence term has expired.
- 22.2. IO shall not in any circumstance be liable for any loss of Assessment Data, any other data, or be liable for any loss, cost, expense, or damage suffered or incurred by the Licensee or any Student User as a result of loss or reconstitution of the Assessment Data or any other data, whether caused by any defect, malfunction, or non-performance of the System or otherwise. The Licensee agrees to record and backup the Assessment Data at all times.

## 23. Audit

- 23.1. The Licensee shall allow IO, or its agent(s), on giving three Working Days' notice in writing provided to the Licensee, during the Subscription Term, to attend the Licensee's premises during normal working hours, to inspect, and take and remove copies of, all of the Licensee's records, accounts and information relating to its use of the System, and to observe the Licensee's use of the System, for the purpose of ensuring that the Licensee is complying with this Agreement (**Audit**).
- 23.2. In the event the Audit reveals, or IO otherwise becomes aware, that the Licensee is in breach of this Agreement, then IO may, without prejudice to any other right or remedy, do any one or more of the following:
- invoice the Licensee for an amount that would have been payable if the Licensee was correctly licensed to use the System. Such invoice shall be paid by the Licensee within 3 Working Days of the Licensee's receipt; and/or
  - where the breach is minor, issue written notice to the Licensee setting out those measures that the Licensee must immediately take to rectify such breach (**Rectification Measures**), the Licensee shall immediately comply (to the satisfaction of IO) with such Rectification Measures, and provide evidence of such implementation and compliance to IO; and/or
  - terminate the Agreement.

## 24. Variation

- 24.1. This Agreement may be varied as follows:
- mutually by the parties, provided such variation is in writing and signed by each party; or
  - unilaterally by IO, by providing at least 30 days' notice in writing to the Licensee (**Variation Notice**). If the Licensee does not accept the variation set out in the Variation Notice, then the Licensee may terminate this Agreement by providing 30 days' notice in writing to IO, which must be received by IO prior to the variation taking effect.

## 25. Notices

- 25.1. Notices, communication documents or demands required to be made or served pursuant to this Agreement shall be in writing signed by the party giving the notice. Any notice or document shall be deemed to be duly given or made if delivered by hand, when so delivered; if sent by post, on the third working day following posting; if communicated by email, when transmitted with no indication of incomplete work delivery to the recipient's last known email address.

## 26. Relationship

- 26.1. This Agreement does not create a joint venture, partnership, agency, or employer/employee relationship between the parties.

## 27. Waiver

- 27.1. The waiver of any right or claim pursuant to this Agreement shall not be effective unless in writing.

## 28. Governing Law

- 28.1. This Agreement shall be interpreted in accordance with New Zealand law, and any dispute arising out of the subject matter of this Agreement shall, subject to clause 15, be determined by the New Zealand courts.

## 29. Subcontracting

- 29.1. IO may subcontract all or any part of its obligations pursuant to this Agreement, without notice to the Licensee.

## 30. Counterparts

30.1. This Agreement may be executed in counterparts (which may be email copies) and all of which, when taken together constitute the one document.