

# EMPLIVE SAAS AGREEMENT

THIS EMLIVE SAAS AGREEMENT GOVERNS CUSTOMER'S USE OF EMLIVE, HARDWARE, THIRD PARTY SERVICES AND GLOBAL SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

## OPERATIVE PROVISIONS

### 1. General

#### 1.1. This Agreement

This Agreement relates to the WFS Emplive software as a service platform, together with updates, new releases and/or customisations thereto, and related services including Support Services (collectively, "Emplive") to which Customer is provided use and access rights in accordance with this Agreement, as well as to Global Services (as defined below in Section 7). By signing this Agreement or continuing to access and use Emplive, Customer accepts the terms and conditions set out herein. WFS reserves the right to amend the terms of this Agreement from time-to-time by giving Customer at least 30 days' notice by email. These amendments will be binding on Customer at the end of the 30 day period unless Customer elects to terminate the Agreement within the 30 day notice period by providing WFS with written notice of its election, in which case Customer will be provided with a pro-rata refund for any fees that have been pre-paid and relate to the period after the amendments take effect. Customer's continued use of Emplive after the 30 day notice period will represent Customer's agreement to be bound by the terms of this Agreement as amended.

#### 1.2. Order Forms

"Schedule" means one or more written orders setting forth the Emplive or hardware to be delivered to the Customer, which is signed by both WFS and the Customer and references this Agreement. The term "Order Form" shall refer to a Schedule or a SOW, as applicable. The terms of this Agreement shall be incorporated into each Order Form by reference. Unless expressly stated to the contrary in any Order Form, any terms or conditions specified in the Agreement shall prevail over terms and conditions in the Order Forms.

### 2. Emplive; Services

#### 2.1. Access to Emplive

Subject to the terms and conditions of this Agreement, Customer is granted a limited, non-exclusive, non-transferable right to access and use Emplive as specified in the applicable Schedule, solely for the Customer's internal business purposes. Customer agrees and acknowledges that all rights, title, interests in, and ownership of Emplive shall remain with WFS.

### 2.2. Term & Automatic Renewal

The term of this Agreement starts on the effective date of the first executed Order Form or, if no Order Form has been signed, the date of renewal of the current schedule (the "Effective Date") and terminates concurrently with the last Order Form under this Agreement. The initial term of each Schedule shall commence on the Commencement Date set forth in the Schedule and shall continue until the expiration of the Service Term as defined therein (the "Initial Term"). Upon the expiration of the Initial Term, the Schedule shall automatically renew for additional one (1) year periods (each, a "Renewal Term," and together with the Initial Term, the "Term"), unless the Customer provides written notice of non-renewal of the Schedule to WFS at least thirty (30) days prior to the end of the Term. WFS shall notify the Customer of the forthcoming expiry of the Term and the automatic renewal date at least sixty (60) days prior to the expiration of the Term.

### 2.3 Support Services

WFS shall provide support and maintenance services for EmpLive to Customer in accordance with the Support Plan set out in Exhibit A ("Support Services") and incorporated herein by reference. Terms of the Support Plan supersede the terms in this Agreement.

### 2.4 Fees

All fees for access to EmpLive, the Global Services, and hardware purchases or rentals shall be set forth on an Order Form ("Fees"). Any use of EmpLive in excess of the committed Quantity (as specified in the applicable Schedule) shall be charged to the Customer monthly in arrears at 125% of the unit prices specified in the Schedule ("Overage Fees"). Customer may increase its committed Quantity during the Term of the Schedule by executing an amendment to the Schedule between the parties which details the increased Quantity. Such amendment shall be co-terminous with the Schedule which details the previously committed Quantity. Notwithstanding anything in this Agreement to the contrary, for each Renewal Term, WFS may increase the Fees due under such Schedule at the All Groups CPI, New Zealand rate. WFS shall provide written notice of any increase to the Fees that will apply during a Renewal Term at the same time as it provides a Customer with notice of the forthcoming expiry of a Term pursuant to Section 2.2. All Fees in this Agreement and Order Forms are exclusive of Goods and Services Tax (GST) and any other applicable taxes.

### 2.5 Payment

Invoices will be delivered by email in a printable electronic form to the most recent address supplied to WFS by Customer. Invoices must be paid in full within fourteen (14) days of issue via direct debit. In the event that WFS is not paid in accordance with these terms, in addition to any other action WFS may take under this Agreement, WFS may charge interest at the Reserve Bank Cash Rate for the applicable month plus 3% on any overdue amount of any invoice at the rate disclosed on the invoice, not to exceed the maximum amount allowed by law. WFS may also recover from Customer all reasonable legal and other costs incurred by WFS arising from the collection of any overdue amount. Customer acknowledges that WFS may require Customer to pay a deposit or provide some other assurance of Customer's ability to pay the Fees set forth on the Order Form, and agrees to do so if required.

### 3. Customer Obligations

#### 3.1 Customer Data

Customer shall be responsible for entering its Customer Data into EmpLive and Customer shall be responsible for the maintenance of the Customer Data supplied by it. Customer hereby represents and warrants to WFS that the Customer Data is free of all viruses, Trojan horses, and comparable elements which could harm the systems or software used by WFS or its subcontractors to provide EmpLive. Customer agrees that it has collected and shall maintain and handle all Customer Data in compliance with all applicable data privacy and protection laws, rules and regulations. "Customer Data" shall mean any content, materials, data and information provided by the Customer to WFS in the course of using EmpLive.

#### 3.2 Customer Equipment

Customer has sole responsibility to maintain the integrity, confidentiality and availability of information on Customer equipment.

#### 3.3 Customer Responsibilities

Customer has sole responsibility to (a) check the accuracy of information processed using EmpLive, (b) run all normal processes and procedures within EmpLive such as end of period processing, imports, exports, and file transfers, and (c) manage and configure its Related Systems and ensure they operate properly. "Related Systems" shall mean Customer owned or operated computers, web-browsers, operating systems, firewalls, e-mail servers, LDAP servers, portals, networks, third party software, internet connection, and any other hardware or software that connects to EmpLive or affects EmpLive if they are not configured or operating properly or are operating in such a manner as to cause an interruption or failure of EmpLive, whether or not provided by or configured by WFS.

#### 3.4 Use of Information

Customer is responsible for any inputs to EmpLive, including data and business rules that are set up for Customer, and any incorrect output that results therefrom. When using and applying the information generated by EmpLive, Customer is responsible for ensuring that Customer complies with the applicable requirements of applicable law. Customer agrees: (a) using EmpLive does not release Customer of any professional obligation concerning the preparation and review of such reports and documents, and (b) Customer does not rely upon WFS or EmpLive for any advice or guidance regarding compliance with applicable laws or the appropriate tax treatment of items reflected on such reports or documents.

#### 3.5 Selection; Results

Customer assumes all responsibilities and obligations and expertise with respect to (a) the selection of EmpLive to meet its intended results, and (b) any decision it makes based on the results produced by EmpLive. Customer understands and acknowledges that WFS and any third party providers are not engaged in rendering legal, accounting, tax or other professional advice either as a service or through EmpLive or the Global Services and it is not relying on WFS and any third party providers for any advice or guidance regarding laws and regulations. Customer shall review all calculations and determinations made using EmpLive and satisfy itself those results are accurate. If legal, accounting, tax or other expert assistance is required, the services of a competent professional will be sought by Customer. To the extent permitted by law, Customer shall indemnify and hold WFS harmless from claims and demands of its

employees or former employees arising from the use by Customer of EmpLive or the Deliverables. "Deliverables" means any materials produced and/or provided to Customer by WFS under a Statement of Work ("SOW"), including but not limited to project plans, software, configurations, documentation, and status reports.

### 3.6 Related Systems

Customer is solely responsible to ensure Related Systems operate properly. The support provisions of this Agreement do not apply to Related Systems or problems in EmpLive caused by Related Systems, regardless of who provided, installed, or distributed such. Should WFS identify that the root cause of a problem is caused by Customer modifications to EmpLive or behavior in Related Systems it shall notify Customer and request approval to provide additional assistance (if applicable). Should Customer give its approval, the additional time spent by WFS after such approval shall be billed to customer on a time and materials basis at the then current rates.

### 3.7 Stress Tests

Customer shall not perform any stress test, load test, or security test on EmpLive without first obtaining WFS permission and executing a separate agreement for the services required by WFS to support such tests.

### 3.8 Passwords

Customer shall change all passwords used to access EmpLive at regular intervals. Should Customer learn of an unauthorized third party having obtained knowledge of a password, Customer shall inform WFS thereof without undue delay and promptly change the password. Customer will terminate old users in EmpLive.

### 3.9 Access

Customer is responsible for monitoring user access to EmpLive.

### 3.10 Connection

Customer is responsible for the connection to EmpLive, including the Internet connection.

### 3.11 Confidentiality

(a) Each party shall maintain as confidential and shall not disclose, publish, or use for purposes other than as intended in this Agreement the other party's Confidential Information except to those employees, contractors, legal or financial consultants and auditors of the recipient and its Affiliates who need to know such information in connection with the recipient's performance of its rights and obligations under the Agreement and in the normal course of its business and who are bound by confidentiality terms no less stringent than the terms contained herein. "Affiliate" means a legal entity separate from and controlled by or under common control with the either party. For purposes of this Agreement, the term "control" shall mean ownership of a beneficial controlling interest. "Confidential Information" shall include, but shall not be limited to, Customer Data, EmpLive, the pricing and terms of this Agreement, benchmarks, statistics or information on the capabilities of EmpLive, financial information, business plans, technology, marketing or sales plans that are disclosed to a party and any other information that is disclosed pursuant to this Agreement and reasonably should have been understood by the receiving party to be proprietary and confidential to the disclosing party because of (i) legends or other markings, (ii) the circumstances of disclosure, or (iii) the nature of the information itself.

(b) Each party shall protect such Confidential Information with reasonable care and no less care than it would exercise to protect its own Confidential Information of a like nature and to prevent the unauthorised, negligent, or inadvertent use, disclosure, or publication thereof. Notwithstanding anything else in this Agreement, either party may disclose Confidential Information in accordance with a judicial or governmental order, or as otherwise required by law, provided that the recipient either: (i) gives the disclosing party reasonable notice prior to such disclosure to allow the disclosing party a reasonable opportunity to seek a protective order or equivalent, or (ii) obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation. Notwithstanding the foregoing, neither party shall disclose any computer source code that contains Confidential Information in accordance with a judicial or other governmental order unless it complies with the requirement set forth in sub-section (i) of this Section 3.11(b).

(c) Either party may disclose the existence of this Agreement and its terms to the extent required by law, the rules of any applicable regulatory authority or the rules of a stock exchange or other trading system on which that party's securities are listed, quoted, and/or traded.

(d) Breach of the obligations in Section 3.11 may cause irreparable damage to the disclosing party and therefore, in addition to all other remedies available at law or in equity, the disclosing party shall have the right to seek equitable and injunctive relief for such breach.

### 3.12 Prohibitions

When accessing EmpLive, Customer will not do or attempt to do any of the following:

- Gain unauthorised access to any part of EmpLive or any other system, network or server connected to EmpLive, or any content, information, material, or documentation contained thereon, including by hacking or any other means;
- Use EmpLive to obtain, trace, or exploit the information, including personal information, of any user or other WFS customer;
- Breach or circumvent any security or authentication measures for EmpLive or any other system, network, or server connected to EmpLive;
- Use any software, process, or other means to interfere with the working of EmpLive in any way.
- Use EmpLive for any purpose which is illegal or is in breach of the terms of this Agreement.

### 3.13 Availability of EmpLive

While WFS will endeavour to ensure that EmpLive will be available for use, WFS does not warrant that EmpLive will be available at all times or at any specific times. The Service Level Agreement for EmpLive is set forth in Exhibit A incorporated herein by reference. The credits provided to Customer thereunder shall be Customer's sole and exclusive remedy for WFS's failure to comply with the Uptime Commitment set forth therein.

#### 4. Liability and Indemnity

##### 4.1. Warranty Disclaimer and Indemnifications

(a) WFS shall, at its expense, indemnify, defend and hold Customer harmless from and against any third-party claim that EmpLive and/or an unmodified Deliverable infringes an intellectual property right; provided, however, that (a) Customer promptly notifies WFS of any such claim, and (b) permits WFS to defend with counsel of its own choice, and (c) Customer gives WFS such information and/or assistance in the defense thereof as WFS may reasonably request. In no event shall Customer settle any such claim without the written consent of WFS. If EmpLive and/or an unmodified Deliverable is adjudged to infringe an intellectual property right by a court of competent jurisdiction, WFS shall, at its expense and election either: (i) procure the right for Customer to continue using the infringing items, (ii) replace the infringing items with a functionally equivalent non-infringing product, (iii) modify the infringing items so that they are non-infringing, or (iv) terminate the affected Order Form and refund the unexpired portion of any fees paid. In no event shall WFS, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (a) a modification of EmpLive, documentation, or the Deliverable by anyone other than WFS, or (b) the Customer's use of EmpLive, documentation or the Deliverable in a manner contrary to the instructions given to the Customer by WFS, or (c) the Customer's use of EmpLive, documentation or the Deliverable after notice of the alleged or actual infringement from WFS or any appropriate authority. The provisions of Section 4.1(a) constitute the entire liability of WFS and sole remedy of Customer with respect to any claims or actions based in whole or in part upon infringement or violation of an intellectual property right of any third party.

(b) TO THE EXTENT PERMITTED BY LAW, THE WARRANTIES AND REMEDIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHERS, WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, WFS SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES TO EMPLIVE AND ANY OTHER MATTER WHATSOEVER. NO WFS AGENT, CONTRACTOR, OR EMPLOYEE IS AUTHORISED TO MAKE ANY MODIFICATION TO THIS WARRANTY DISCLAIMER, UNLESS IN A SIGNED WRITING EXECUTED BY A WFS EMPLOYEE WITH ACTUAL AUTHORIZATION TO BIND WFS.

##### 4.2 Non-Excludable Provision

Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty, or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the New Zealand Consumer Law which contains guarantees that protect the purchasers of goods and services in certain circumstances.

If any guarantee, warranty, term, or condition is implied or imposed in relation to this Agreement under the New Zealand Consumer Law or any other applicable legislation and cannot be excluded (a "Non-Excludable Provision"), and WFS is able to limit the Customer's remedy for a breach of the Non-Excludable Provision, then WFS's liability for breach of the Non-Excludable Provision is limited to, at the option of WFS, supplying hardware, EmpLive, or the Global Services again, or the payment of the cost of having hardware, EmpLive or the Global Services supplied again.

4.3 Limitation on Amounts of Damages

Subject to the obligations of WFS under the Non-Excludable Provisions, and to the maximum extent permitted by law, the maximum aggregate liability of WFS for all claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), or equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term, or on any other basis, is limited to an amount equal to the Fees paid by Customer under the applicable Order Form in the twelve (12) month period preceding which the claim arose. This limitation on liability will not apply to liability arising from WFS' breach of contract or negligence which results in:

- (a) any personal injury or death to Customer or its employees, agents and contractors in relation to the supply of the Global Services whilst WFS is on-site at Customer's location;
- (b) any damage to Customer's real or tangible property resulting from the supply of the Global Services whilst WFS is on-site at Customer's location; and
- (c) the indemnification provisions of Section 4.1(a).

In calculating the aggregate liability of WFS under this Section 4.3, the parties must include any amounts paid or the value of any goods or services replaced, repaired, or supplied by WFS for a breach of any Non-Excludable Provision. For the avoidance of doubt, WFS will not be responsible for any loss or damage arising from circumstances outside its reasonable control and WFS's liability will be reduced to the extent any loss or damage is caused by Customer or its employees, agents or contractors.

4.4 Limitation on Types of Damages

Subject to the obligations of WFS under the Non-Excludable Provisions, and to the maximum extent permitted by law, neither party is liable for, and no measure of damages will include, under any circumstances:

- special, indirect, consequential, incidental, or punitive damages; or
- damages for loss of profits, revenue, goodwill, anticipated savings, or loss or corruption of data,

whether in contract, in tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term of this Agreement, or on any other basis, whether or not such loss or damage was foreseeable and even if WFS was advised of the possibility of the loss or damage.

4.5 Release and Indemnity

Customer agrees to release and indemnify WFS from and against all actions, claims, and demands (including the cost of defending or settling any action, claim, or demand) which may be instituted against WFS arising out of any act or omission on Customer's part, including but not limited to a failure by Customer to comply with Customer's obligations under this Agreement. This indemnity will not apply to the extent that the relevant loss or damage is caused by the acts or omissions of WFS. This Section 4.5 survives the termination of this Agreement.

## 5 Intellectual Property

### 5.1 Copyright

Copyright in EmpLive (including text, graphics, logos, icons, sound recordings, and computer programs, applications, and software) is owned and/or licensed by WFS. Other than for the purposes of, and subject to the conditions prescribed under, the *Copyright Act 1968* (Cth), and except as expressly authorised by this Agreement, Customer may not in any form or by any means:

- adapt, reproduce, store, distribute, print, display, perform, publish, or create derivative works from any part of EmpLive; or
- commercialise any information, products, or services obtained from any part of EmpLive without WFS's written permission.

### 5.2 Trade Marks

If Customer uses any WFS trade marks in reference to the activities, products, or services of WFS, the Customer must include a statement attributing that trade mark to WFS. Customer must not use any of WFS trade marks:

- In, or as the whole or part of, Customer's own trade marks;
- in connection with activities, products, or services which are not those of WFS;
- in a manner which may be confusing, misleading, or deceptive; or
- in a manner that disparages WFS or the information, products, or services (including EmpLive) of WFS.

## 6 Privacy

### 6.1 Privacy

Each party must comply with the Privacy Laws in respect of any Personal Information that one party discloses to the other party or comes into the possession or control of a party by any means in connection with this Agreement. "Personal Information" has the meaning given in the *Privacy Act 2020 (New Zealand)*. "Privacy Laws" means the *Privacy Act 2020 (New Zealand)* and any law (to the extent that such law applies to either party) from time to time in force in New Zealand which affects privacy, personal information or the collection, handling, storage, processing, use or disclosure of personal information.

### 6.2 Consents

Both parties agree to provide all necessary notifications and obtain any necessary consents in connection with the disclosure and intended use of Personal Information as contemplated by this Agreement.

### 6.3 Information Collected

WFS requires certain information about Customer's business, personnel, and customers in order for Customer to use EmpLive or for WFS to provide the Global Services. If Customer does not provide this information, WFS may not be able to provide some or all of WFS's services. All such information which WFS collects is kept confidential using reasonable commercial endeavours of WFS, although WFS does not guarantee its security.

6.4 Use of Information

WFS may use the information WFS holds about Customer, and may exchange such information with agents, representatives, or contractors of WFS, and with credit reporting and debt collection agencies, for the purposes of carrying out WFS's business.

6.5 WFS Obligations

WFS will:

- (a) only use Customer Data for a purpose in relation to the performance of the Agreement;
- (b) not purport to sell, let for hire, assign rights in or otherwise dispose of Customer Data; and
- (c) not alter Customer Data in any way, other than in performing their obligations in accordance with this Agreement.

6.6 Sub-processors

Notwithstanding any other provision in this Agreement, the Customer hereby authorises WFS to: engage the sub-processors listed in <https://workforcesoftware.force.com/customers/s/article/Third-parties-sub-processors-who-store-process-or-access-EmpLive-customer-data>, as updated from time to time, to provide EmpLive or the Global Services. WFS shall inform the Customer of any addition or replacement of such sub-processors giving the Customer an opportunity to object to such changes. If the Customer sends WFS a written objection notice in a timely manner (but in any event within 30 days of being notified), setting forth a reasonable basis for objection, the parties will make a good-faith effort to resolve the Customer's objection. In the absence of a resolution, WFS will make commercially reasonable efforts to provide the Customer with the same level of service described in the Agreement, without using the proposed sub-processor to process Customer's Personal Data. If WFS's efforts are not successful within a reasonable time, each party may terminate the portion of the service which cannot be provided without the sub-processor, and the Customer will be entitled to a pro-rated refund of the applicable Fees.

6.7 Publicity

- (a) Each party may include the other party's name or logo in a list of its clients, vendors, or service providers.
- (b) Each party may make reference to the other in an initial press release, provided that any use of the other party's trade mark(s) retain proprietary notices and/or are properly attributed to their owner and also provided that any such press release will require the review and prior written consent of both parties, which shall not be unreasonably withheld, conditioned, or delayed.
- (c) In recognition of the pricing provided under this Agreement, Customer shall (subject to Customer's reasonable right to review and approve): (i) allow WFS to include a brief description of the services furnished to Customer in WFS promotional materials; (ii) allow WFS to make reference to Customer in case studies, ROI analyses, white papers, and related marketing materials; (iii) serve as a reference for potential clients of WFS; (iv) provide interviews to the news media and provide quotes for press releases; (e)

organise mutually convenient site visits for potential clients of WFS; and (v) make presentations at conferences, upon the reasonable request and cost of WFS.

## 7 Global Services

### 7.1 Service Fees and Expenses

Unless indicated otherwise in a SOW, Customer shall pay for Global Services delivered and travel time on a time and materials basis to WFS or its designated representative, plus applicable taxes. "Global Services" means all professional services performed by WFS for Customer pursuant to the Agreement and the applicable SOW. "Statement of Work" or "SOW" means one or more written orders, including without limitation a service request, setting forth the Global Services and Deliverables to be provided by WFS to Customer, which is signed by both WFS and Customer and references the Agreement.

Customer shall also reimburse WFS for travel expenses (including a per-diem fee for food and miscellaneous items at government approved rates), express delivery, and extraordinary phone expenses, all without markup. WFS shall use the lowest cost travel method and itinerary, consistent with industry standards, when considering the cost of the itinerary, travel convenience, and the consultants' billing rates.

### 7.2 Customer Obligations

Customer shall appoint a senior representative to be the point of contact for WFS with regards to the Global Services to be delivered by WFS under the applicable SOW. Such senior representative shall provide the technical direction and approval of the delivered Global Services. If the Global Services are performed at the Customer's facilities, Customer agrees to provide access to such facilities, suitable workspace, equipment and all technical or other information reasonably required by WFS to perform the Global Services.

### 7.4 Training Materials and Deliverables

WFS shall own all rights and interest in: (i) the Training Materials, and (ii) the Deliverables. Customer is granted royalty free, perpetual, worldwide rights to use such Training Materials and Deliverables upon full payment of all fees and expenses due under the applicable SOW. "Training Materials" shall mean the instructor guide(s), student guide(s), job aids and/or tutorials developed by WFS for one or more WFS products.

Customer may not copy or reproduce the Training Materials except as required for its internal training purposes for authorized users. Customer may not transmit, distribute, or disclose the Training Materials to any third party, unless agreed to in writing by WFS. Customer's license to use the Training Materials is granted solely for the purpose of permitting Customer to train authorized users and no other use of the Training Material is permitted.

### 7.5 Termination

In addition to the termination rights within the Agreement, unless expressly stated otherwise within the SOW, Customer may terminate a SOW for convenience upon thirty (30) days written notice to WFS. Customer is responsible for payment for work performed prior to termination, including if applicable, payment on a time and materials basis for any agreed upon services or Deliverables for which WFS has not yet been paid. Notwithstanding anything contained herein to the contrary, in the event of the termination of a fixed-fee

SOW, Customer shall be billed on a time and materials basis at the then current rates for Global Services for unpaid work performed on any milestone for which Customer has not given written sign-off. Such time and materials rate shall be charged to the date of termination.

7.6 Sections 7.3, 7.4, and 7.5 shall survive the termination of the Agreement.

## 8 General

### 8.1 Independent Contractor Status

The parties shall, for all purposes hereunder, be considered independent contractors. The Agreement is not intended in any manner to create the relationship of principal and agent between the parties, nor shall this Agreement be deemed to establish a partnership or joint venture. Neither party shall have the power, expressed or implied, to obligate or bind the other in any manner whatsoever. Each party shall be solely responsible for compensating its own employees, including the payment of employment related taxes and shall maintain its own worker's compensation and general liability insurance.

### 8.2 Agreement Not to Hire

To the extent permitted by applicable law, during the term of the Agreement and for twelve (12) months thereafter, neither party shall hire (either as an employee, an independent contractor, or contractor through a third party) or solicit for hire any current employee or contractor of the other party, or any former employee of the other party who had been employed by the other party in the preceding twelve (12) months. If a party should breach this Section 8.7, it shall be liable to the non-breaching party for an amount equal to the annualized salary paid or payable by the non-breaching party to the employee, independent contractor, or contractor in the year in which the breach took place. This prohibition will not apply to job opportunities posted on recruiting websites or in other publications in which one party seeks to find candidates for open positions (absent direct solicitation and/or recruitment).

### 8.3 Circumstances Beyond WFS's Control

WFS accepts no liability for any failure to comply with this Agreement or for any loss or damage arising from circumstances beyond the reasonable control of WFS, including, but not limited to, any act of God, war, acts of terrorism, labour strikes or other labour action, fire, flood, earthquake, landslide, earth movement, hurricane, typhoon, tsunami, volcanic eruption or other natural disaster, riot, civil unrest, pandemic, acts or omissions of any governmental, legislative or regulatory body, or other acts or occurrences outside of WFS's reasonable control (a "Force Majeure Event").

### 8.4 Termination of Use

- (a) WFS may suspend and/or terminate this Agreement or an applicable Order Form at any time with immediate effect by providing notice in writing to Customer if (i) Customer, or Customer's employees or agents, do anything (or allow anything to be done) that damages or affects the operation of EmpLive or any other services to be provided under this Agreement; (ii) Customer uses WFS confidential information other than for the purpose of using EmpLive; and/or (iii) Customer is in arrears on any payment due to WFS by more than sixty (60) days following notification provided by WFS to the Customer.

- (b) Either party may terminate this Agreement at any time with immediate effect by notice in writing to the other party on or any time after the occurrence of any of the following events: winding-up, administration order, liquidation, or removal from the companies register.
  - (c) Either party shall be entitled to terminate this Agreement or any applicable Order Form in the event of a material breach on the part of the other party. Customer must provide WFS written notice of such material breach and provide WFS with a sixty (60) day period to cure said breach. Such termination shall not become effective if said material breach is cured within such sixty (60) day period.
- 8.5 Assignment  
WFS may assign or novate its rights and obligations under this Agreement to any of WFS's related bodies corporate (as that term is defined in the Corporations Act 2001 (Cth)) or in the event of a merger or sale of a majority of the equity or assets of WFS without the Customer's consent, and the Customer agrees to execute any document WFS reasonably requests to give effect to an assignment or novation. Customer may not assign or novate any of Customer's rights and obligations under this Agreement without WFS's consent (which consent may be withheld at WFS's sole discretion or granted subject to conditions).
- 8.6 Notices  
Any notice to be sent relating to this Agreement shall be in writing and mailed or emailed to the other party at the addresses set forth on the Order Form, which will be deemed to have been received on the second working day after posting in the mail or two hours after emailing (provided a "delivery failure" message is not received). For notices from Customer to WFS, Customer must send a copy of any notice to legal@workforcesoftware.com. Customer is responsible for notifying WFS of its current contact details and contact person from time to time, and WFS will be taken to have provided an effective notice to Customer where it has directed the notice to the most recent contact person and address that Customer has notified to WFS.
- 8.7 Governing Law  
Any dispute under or in connection with this Agreement or related to any matter which is the subject matter of this Agreement shall be subject to the exclusive jurisdiction of the courts of New Zealand, and shall be governed by and interpreted in accordance with the laws in force in New Zealand, without regard to choice of law provisions. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
- 8.8 Waiver  
If WFS waives any rights available to WFS under this Agreement on one occasion, this does not mean that those rights will automatically be waived on any other occasion.
- 8.9 Severability  
If any of the terms and conditions of this Agreement are held to be invalid, unenforceable, or illegal for any reason, the remaining terms and conditions of this Agreement shall nevertheless continue in full force.
- 8.10 Entire Agreement

This Agreement exclusively governs the relationship and agreement between WFS and Customer related to EmpLive, hardware, third party services and Global Services and, to the fullest extent permitted by law, supersedes all previous written agreements between the parties in relation to EmpLive, professional services, hardware, third party services and/or Global Services. For the avoidance of doubt, if this Agreement is replacing a previous agreement, then all current schedules, agreements, order forms, quotations, statements of work, project change requests, service requests and/or any other documents governed by the previous written agreements, will remain in place, and will be governed by this Agreement unless stated otherwise in a new agreement. WFS recommends that Customer prints copies of these documents for Customer's records.

8.11 Allocation of Risk

THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND THE PARTIES HAVE RELIED ON THE LIMITATIONS SET FORTH HEREIN IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT.

## EXHIBITS

Exhibit A – Service Level Agreement and Support Plan

Exhibit B – Terms and Conditions for Third Party Services