

VWork Limited Subscription Agreement TERMS AND CONDITIONS (Last updated 9 March 2016)

These Terms and Conditions are made a part of and incorporated by reference into the vWork Subscription Agreement by and between Client and VWork Limited (“vWork”) (the “Agreement”).

1. Definitions.

- a) **“Affiliate”** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **“Client Data”** means proprietary or personal data regarding Client or any of its users under this Agreement.
- c) **“Confidential Information”** means any non-public information of VWork or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked “confidential” or “proprietary” or some similar designation by the disclosing party. Confidential Information shall not, however, include any information which the recipient can establish: (i) was or has become generally known or available or a part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient’s prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- d) **“Customer User”** refers to any customer of the Client who is permitted by Client to access the Software.
- e) **“Free Trial”** means a period whereby VWork has allowed Client to use the Software on a free trial basis for thirty (30) days.
- f) **“Implementation”** means implementation, deployment, and/or training relating to the Software.
- g) **“Intellectual Property Right”** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- h) **“Order”** means a Product purchase in a schedule, statement of work, order, addendum, or amendment signed by both parties.
- i) **“Service”** means any service rendered by VWork specifically to Client, including, but not limited to: (i) hosting of the Software; (ii) Implementation; (iii) development of Software functionality specially requested by Client; and/or (iv) any consulting service.
- j) **“Software”** means any and all of VWork’s proprietary software offerings, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements

thereto, as well as software that has been modified in any way by VWork at the request of a client.

- k) **“User”** means an employee or member of Client or one of its Affiliates who is permitted by Client to access the Software, excluding
- l) **“Subscription”** means a subscription purchased by Client for a User to access the Software. Note that this excludes Customer Users, whose access is free of charge.
- m) **“Term”** means the Initial Term plus all Renewal Terms.

2. Related Policies:

Please refer to the following:

- a) The vWork Support Policy, which can be found at: <https://vwork-assets.s3.amazonaws.com/docs/vWork-Support-Policy.pdf>
- b) The vWork Privacy Policy which can be found at: <https://www.vworkapp.com/privacy>
- c) The vWork Maintenance Policy which can be found at: <https://help.vworkapp.com/hc/en-us/articles/204631460>

- 3. Fees and Payment. Client shall pay all fees in accordance with the billing frequency set forth in the applicable Order, or as advised in the Software. VWork may increase fees for future Renewal Terms by giving Client at least sixty (60) days’ prior written notice of the increase. Payment of fees set forth in an Order will be due within fourteen (14) days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. Payment of other fees incurred on continued use of the Software at the end of a Free Trial, will be due in advance of the next period (usually one month) and paid by way of an authorized credit card, unless otherwise agreed. All payments must be made in New Zealand dollars unless another currency is specified, and are exclusive of all applicable taxes and net of applicable withholding taxes. Services are subject to suspension for failure to timely remit payment therefor. If Client fails to satisfy its tax and/or duty obligations herein, Client shall reimburse VWork upon demand for any taxes and/or duties paid on behalf of Client and shall indemnify and hold VWork harmless against any claim and/or liability (including penalties) resulting from Client’s failure to pay such taxes and/or duties.
- 4. VWork Obligations. In accordance with the terms and conditions of the Agreement, VWork will: (i) make the Software and Services available on a non-exclusive basis to Client and Users via the Internet; (ii) maintain appropriate safeguards for protection of Client Data, including regular back-ups and security protocols; (iii) not access or disclose Client Data (except as compelled by law, to prevent or address service or technical issues, or if otherwise permitted by Client); and (iv) retain only twelve (12) months of Client Data on the Software (to the current date, in order to maintain effectiveness of the

Software), subject to both any other agreement and clause 7(d) Effect of Termination.

5. Client Obligations. Client may only use the Software and Services for its own lawful, internal business purposes. Client shall not: (i) use or deploy the Software in violation of applicable laws or this Agreement; (ii) resell the Software or Services; create any derivative works based upon the Software or Services; (iii) reverse engineer, reverse assemble, decompile or otherwise attempt to derive source code from the Software or any part thereof (except to the extent that such restriction is not permitted under applicable law); (iv) make the Software or Services available to any unauthorized parties, including without limitation, competitors of VWork; or (v) perform, or release the results of, benchmark tests or other comparisons of the Software or Services with other software, services, or materials. Client will be responsible for Users' compliance with the Agreement and liable for Users' breach thereof. Client will ensure that it has obtained all necessary consents and approvals for VWork to access Client Data for the purposes permitted under this Agreement. If Client is in breach of this section, VWork may suspend Services, in addition to any other rights and remedies VWork may have at law or in equity.
6. Intellectual Property. As between the parties, VWork will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Software and Services. Client retains all ownership rights to Client Data.
7. Term and Termination.
 - a) Term. The initial term of this Agreement shall be as set forth in the Order, or one (1) year if no Order is completed, unless earlier terminated pursuant to Section "Termination" below (the "**Initial Term**"). The Agreement will automatically renew for additional, consecutive one-year periods (each a "**Renewal Term**"), unless and until Client or VWork provides written notice to the other, at least ninety (90) days prior to the end of the Initial Term or applicable Renewal Term.
 - b) Free Trial. If Client is using the Software pursuant to a Free Trial, access to the Software will immediately cease at the end of the Free Trial, unless Client has purchased Subscriptions and paid the fees associated with continued use.
 - c) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
 - d) Effect of Termination. Immediately following termination of the Agreement, Client shall cease using the Software. Within thirty (30) business days of termination of the Agreement, all remaining Client Data will be deleted from the Software and destroyed.
8. Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of VWork providing Services hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement. If a party breaches any of its obligations with respect to confidentiality or the unauthorized use of

Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.

9. Indemnification.
 - a) VWork's Indemnification Obligations. VWork agrees to indemnify, defend, and hold harmless Client from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) incurred or suffered by Client which directly relate to or directly arise out of the violation or infringement of any third-party Intellectual Property Rights by Client's authorized use of the Software. The foregoing provisions of this section shall not be applicable, with respect or related to, or in connection with: (i) Client Data; or (ii) unauthorized or negligent use and/or alteration of the Software. To obtain indemnification, Client shall: (i) give written notice of any claim promptly to VWork; (ii) give VWork, at its option, sole control of the defense and settlement of such claim, provided that VWork may not, without the prior consent of Client (not to be unreasonably withheld), settle any claim unless it unconditionally releases Client of all liability; (iii) provide to VWork all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
 - b) Infringement Cures. Should the Software or any part thereof become, or in VWork's reasonable opinion be likely to become, the subject of a claim for infringement of a third party Intellectual Property Right, then VWork shall, at its sole option and expense: (i) procure for Client the right to use and access the infringing or potentially infringing item(s) of the Software free of any liability for infringement; or (ii) replace or modify the infringing or potentially infringing item(s) of the Software with a non-infringing substitute otherwise materially complying with the functionality of the replaced system. If (i) and (ii) are not reasonably available in VWork's reasonable opinion, VWork may terminate the Agreement in which case Client shall receive a refund of prepaid, unearned fees.
 - c) Exclusive Remedies. The remedies set forth in this section shall be exclusive with respect to any infringement claim hereunder.
10. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. **VWORK WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS, AND THAT THE SOFTWARE WILL PERFORM SUBSTANTIALLY IN MATERIAL ACCORDANCE WITH THE AGREEMENT AND APPLICABLE DOCUMENTATION PROVIDED BY VWORK. CLIENT'S EXCLUSIVE REMEDY FOR ANY BREACH OF THESE WARRANTIES SHALL BE TO TERMINATE THE AGREEMENT FOR CAUSE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, VWORK DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT (EXCEPT FOR THE INFRINGEMENT INDEMNIFICATION PROVIDED HEREUNDER) AND ANY WARRANTIES ARISING FROM A**

COURSE OF DEALING, USAGE OR TRADE PRACTICE. CLIENT UNDERSTANDS THAT THE SOFTWARE IS SOFTWARE-AS-A-SERVICE. ACCORDINGLY, SOFTWARE ENHANCEMENTS MAY BE MADE BY VWORK ON A PERIODIC BASIS, AND CLIENT WILL ONLY HAVE ACCESS TO THE MOST RECENT VERSION OF THE SOFTWARE.

11. Liability. EXCEPT FOR: (i) VWORK'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS; (ii) BREACH BY CLIENT OF SECTION "CLIENT OBLIGATIONS"; OR (iii) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT:

a) Liability Cap. EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL FEES PAID BY CLIENT TO VWORK HEREUNDER FOR THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND VWORK ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.

b) Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, PROVIDING REPLACEMENT SOFTWARE (EXCEPT AS SET FORTH IN SECTION "RIGHT TO PROCURE OR SUBSTITUTE"), OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. Communications. Neither party shall issue any publicly disseminated statement using the name of the other party as a customer or provider without the other party's consent (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, VWork may mention Client by name during investor-related communications and list Client's name and logo alongside VWork's other clients on the VWork website and in marketing materials, unless and until Client revokes such permission.

13. Miscellaneous Provisions.

a) Governing Law; Jurisdiction. If Client is an entity registered in: (i) New Zealand or Australia, the Agreement will be governed by and construed in accordance with the laws of New Zealand, and the courts of New Zealand shall have exclusive jurisdiction in any proceedings relating to it; (ii) the United States, the Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles, and the state and federal courts of the State of California located in the County of Los Angeles shall have exclusive jurisdiction in any proceedings relating to it; (iii) any jurisdiction other than New Zealand, Australia, or the United States, the Agreement will be governed by and construed in accordance with the laws of England and Wales, and the courts of England and Wales shall have exclusive jurisdiction in any proceedings relating to it.

b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation, acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.

c) Counterparts; Facsimile. This Agreement may be executed in any number of counterparts and in facsimile or electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.

d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein. Purchase orders submitted by Client are for Client's internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force and effect.

e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.

f) Assignment. Client may not assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without VWork's prior written consent; provided, however, Client, without VWork's consent, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of VWork are not increased by such assignment and the rights and remedies available to VWork are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of and be enforceable against the parties and their respective successors and permitted assigns.

g) No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

h) Aggregated Data Use. Without limiting the confidentiality rights and protections set forth in this Agreement, VWork owns the aggregated, anonymized, and statistical data ("Aggregated Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting VWork from utilizing the Aggregated Data for business and/or operating purposes, provided that VWork does not share with any third party Aggregated Data which reveals the identity of Client, Client's users, or Client's Confidential Information.

i) Suggestions. VWork shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Software any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client or its Users relating to the operation of the Software.

j) Integration with Third-Party Offerings. The Software may contain features designed to operate with third-party applications. To use such features, Client may be required

to obtain access to such applications from a third-party provider. Client shall not be entitled to a refund, credit, or other compensation if VWork ceases to offer certain features because the application provider ceases to make such application available for interoperation with the Software.

k) Minimum Technical Requirements for Software Use.

(i) Please refer to the following:

1. <https://help.vworkapp.com/hc/en-us/articles/203694560>

2. <https://help.vworkapp.com/hc/en-us/articles/203694550>

(ii) In addition, all Users and Customer Users are encouraged to download and update the vWork mobile app available online, in order to optimize performance.

l) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.

m) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by facsimile or mailed by registered or certified mail, return receipt requested, postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of facsimile delivery (if followed up by such registered or certified mail); and five days after being so mailed. Notices to VWork shall be delivered to Peter Weaver, Level 1, 18 Railway Street, Newmarket, Auckland 1023, New Zealand or by email to pete@vworkapp.com.

n) Independent Contractors. Client and VWork are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and VWork. Each party understands that they do not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.

o) Subcontractors. Should VWork use any subcontractors to perform any Services hereunder, VWork shall be fully responsible for ensuring such subcontractors' compliance with this Agreement.

p) Headings. The headings of the sections of this Agreement are for convenience only and do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.

q) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.

r) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

