

SOFTWARE-as-a-SERVICE AGREEMENT

Agreement entered into on **today**, whose provisions come into effect fully on the date of software registration by the client, between:

PARTIES

ISB Ltd, (hereinafter referred to as the Service Provider) both with registered office **ISB, 169, Triq Guze` D'Amato, Tarxien, Malta**, company registration numbers **C66857** as duly represented hereon;

and

The registering and subscribing Entity (hereinafter referred to as the *Client*) as duly represented hereon.

The Service Provider and the Client are individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

BACKGROUND

Whereas:

- (A) The Service Provider has developed certain software applications and platforms which it makes available for use to subscribers as a service via the internet.
- (B) The Service Provider has agreed to provide to the Client, a Subscription, as defined below, to the Services during the Subscription Term, which the Client has agreed to pay for, subject to the terms and conditions of this agreement.
- (C) The Client wishes to use the Services in its business operations.

NOW THEREFORE BOTH PARTIES AGREE AS FOLLOWS:

1. INTERPRETATIONS

1.1 The following definitions and rules of interpretation apply within this agreement:

- a) **Effective Date:** the effective date of this agreement shall be the date at which this agreement has been signed by the Parties.
- b) **The Services:** the provision by the Service Provider to the Client of a shared and hosted facility to use the Software, defined in Schedule 1 of this agreement, and Documentation on a shared, hosted environment and the provision of all other services necessary for productive use of such software including company set-up and configuration, user identification and password change management, data processing and reporting, data import/export, monitoring, client support services, systems maintenance and administration, application and systems administration, management and monitoring, data backup and change management but specifically excluding any rights to intellectual property or copyright to this software.
- c) **Hosting Environment:** shall mean the hardware, operating system, management environment and computing resources utilised for the running of the Software.
- d) **Software:** the online software applications provided by the Service Provider as part of the Services as defined in Schedule 1 of this agreement.
- e) **Documentation:** the document(s) made available by the Service Provider to the Client, either physically or online, which describe the functions, features and the instructions for usage of the Services. The Documentation shall provide Authorized Users with sufficient instruction such that an Authorized User can become as self-reliant as possible with respect to access and use of the Services.
- f) **Authorised Users:** those of the Client's employees, contractors, agents, and/or any other individual or entity authorized by the Client to use the Services solely in line with the terms of this agreement;
- g) **Subscription:** a renewable, non-exclusive, royalty-free, and worldwide right granted by the Service Provider to the Client during the Term to allow Authorised Users to access and use the Services.
- h) **Company Set-Up Fees:** the one-off charge that may be applicable for the set-up of each company within the Services.
- i) **Initial Subscription Period:** is the period of one year starting from the Effective Date.

- j) **Renewal Period:** the period described in clause 2.
 - k) **Renewal Anniversary Date** is the date that occurs annually 12 months after the Effective Date.
 - l) **Subscription Term:** is the period consisting of the Initial Subscription Period as well as any subsequent Renewal Period
 - m) **Subscription Fee:** the fee payable by the Client to the Service Provider, in accordance with this agreement, for subscription to the Services during the Term for the quantity of User Subscriptions.
 - n) **User Subscription:** the subscription purchased by the Client pursuant to clause 9.1 which entitles the number of Authorised Users equivalent to the number of User Subscriptions to access and use the Services and the Documentation during the Subscription Term in accordance with this agreement.
 - o) **User Account:** an account set up on the Software to enable access to the Services using a User Subscription.
 - p) **Price List:** a document which outlines the prices at which the Services are provided by the Service Provider to Clients, which is subject to change at the Service Provider's sole discretion.
 - q) **Client Data:** the data inputted by the Client, Authorised Users or the Service Provider on the Client's behalf for the purpose of using the Services or facilitating the Client's use of the Services.
 - r) **Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 18.6.
 - s) **Business Day:** any day which is not a Saturday, Sunday or public holiday in the Republic of Malta.
 - t) **Normal Business Hours:** 8.00 am to 17.00 pm Malta time, each Business Day.
 - u) **Service Level Standards:** the standard, scope and procedures that govern the service levels at which the Service Provider shall provide the Services to the Client as defined in 0 of this agreement.
 - v) **Support Services Policy:** the Service Provider's policy for providing support in relation to the Services as defined in section 3 of 0 may be notified to the Client from time to time.
 - w) **Virus:** anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
 - x) **Cause:** basis upon which this agreement may be terminated as provided for in Clause 5 of this agreement.
- 1.2 Any reference in this agreement to a clause, schedule or paragraph refers to a clause, schedule or paragraph containing within this agreement unless specifically stated to the contrary.
 - 1.3 The heads given to any Clause, schedule or paragraph shall not affect the interpretation of this agreement.
 - 1.4 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
 - 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
 - 1.6 Words in the singular shall include the plural and vice versa.
 - 1.7 A reference to one gender shall include a reference to the other genders.
 - 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
 - 1.9 A reference to writing or written includes a communication sent via e-mail.
 - 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. TERM

- 2.1 This agreement shall commence on the Effective Date and shall continue for the Initial Subscription Period and, thereafter, this agreement shall be automatically renewed annually for successive periods of 12 months (each a Renewal Period) from the end of the Initial Subscription Period unless Terminated as provided in clause 5.

3. SERVICES

- 3.1 The Service Provider shall, during the Subscription Term, provide the Services and make available the Documentation to the Client on and subject to the terms of this agreement.
- 3.2 The Services shall consist of the provision of access and processing facilities to a number of Authorised Users, based on the number of User Subscriptions to which the client has subscribed (Defined in Appendix 1), to the Software, which will be hosted on the Hosting Environment, together with the Documentation and the provision of all other services necessary for productive use of the Software including user identification and password change management, data processing and reporting, data importing and exporting, monitoring, technical support, software maintenance, data backup and recovery, systems administration, systems management, systems monitoring and change management but specifically excluding any rights to intellectual property or copyright to this software.
- 3.3 The Service Provider shall use commercially reasonable endeavours to make the Services available in accordance with the Service Level Standards defined in 0.
- 3.4 The Service Provider will, as part of the Services and at no additional cost to the Client, provide the Client with the Service Provider's standard Client Support Services as defined in section 3 of 0 and the Maintenance Services outlined in section 4 of 0. The Service Provider may amend the Client Support Services policy at its sole discretion giving 60 days' notice. The Client may purchase enhanced support services separately at the Service Provider's then current rates.

4. TRAINING

- 4.1 The Service Provider agrees to provide the number of hours of training purchased by the Client at the cost in the prevailing price list at the time. Training will be provided in a location and method of delivery determined by the Service Provider.

5. TERMINATION

- 5.1 Either party shall be able to terminate this agreement without Cause at any time by a simple notification to the other party in writing at least 30 days prior to the next Renewal Anniversary Date, effective as at the next Renewal Anniversary Date, hereinafter referred to as the Last Date of Service.
- 5.2 In addition either party will be able to terminate the agreement for Cause, after the party in default has been notified of the breach in writing and been given 5 working days to remedy his breach and still this remedy has been unforthcoming, if:
- a) The other party is in breach of any conditions, terms or provisions of this agreement or any provisions required by law;
 - b) Insolvency of the other party;
 - c) an order is made or a resolution is passed for the winding up of the other party, or its placing under administration or the appointment of a liquidator
- 5.3 The Client shall have the right, in addition to any other rights and remedies under this Agreement or at law, to immediately terminate this Agreement where the Service Provider fails to meet the Service Level Standard defined in 0 of this agreement for a consecutive three (3) month period.
- 5.4 In addition the Service Provider shall be able to terminate this agreement for Cause forthwith in the event of the failure by the Client to pay Subscription Fees and any charges due in terms of this agreement within the stipulated time.
- 5.5 As a result of the provisions outlined above for termination for Cause by the Client which remains uncontested, any money already paid by the *Client* to the Service Provider in respect of a Subscription for the remaining period shall be refunded by the *Service Provider* within 30 days of such termination.
- 5.6 On termination of this agreement for any reason:
- a) all Subscriptions to the Services granted under this agreement shall terminate effective as defined above;
 - b) the Client shall cease to make use of the Services and Documentation

6. DATA TREATMENT ON TERMINATION

6.1 In the event of termination without Cause, the Client may make a request for the provision by the Service Provider of the version of the Client Data valid as at the Last Service Date providing that:

- a) a request in writing is received within 15 days of the Last Service Date;
- b) the Client has fully paid all due fees and charges outstanding;
- c) the data is to be provided in an electronic format determined by the Service Provider at its sole discretion;
- d) the data is to be provided by the Service Provider within 30 days of the Last Service Date

6.2 The Service Provider shall destroy all the Client Data in its possession within 60 days of the Last Service Date but not sooner than 30 days after the Last Service Date. Without prejudice to the foregoing, the Service Provider retains the right at law to maintain Client Data or any other data relating to this agreement relating to transactions in any shape or form arising from this agreement as it may be required to by law, in which event, it is warranted that such Client Data or other data shall only be kept on record as provided for by law and shall not be utilised, exploited or processed in any manner.

7. USER SUBSCRIPTIONS

7.1 The right to utilise the Software shall be governed by Appendix 1 to this Agreement.

8. [INTENTIONALLY LEFT BLANK]

9. CHARGES AND PAYMENT

9.1 The Parties agree that the charges due by the Client to the Service Provider for the Services are to be based on the Service Provider's Price List for the Services current at the time of the provision of the Services.

9.2 Pricing for the Services is based on the price list of the Software.

9.3 The price for Additional processing credits shall be as per Appendix 1 to this Agreement.

9.4 [INTENTIONALLY LEFT BLANK].

9.5 [INTENTIONALLY LEFT BLANK]

9.6 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in Euros or any other currency agreed to in writing by the Parties;
- (b) are, subject to clause 5, non-cancellable and non-refundable, save when Termination for Cause has been effected as described above
- (c) are exclusive of value added tax, duties or any other such taxes which shall be added to the Service Provider's invoice(s) at the appropriate rate applicable at the time of the provision of the service should they be imposed by legislation or legal notice.

9.7 [INTENTIONALLY LEFT BLANK]

9.8 The Service Provider shall be entitled to increase its Fees, upon 90 days' prior notice to the Client.

9.9 ISB Technologies, as owner and operator of LEAP Payroll and LEAP.MT portal and solution is responsible for all transactions and purchase of credits taking place on the website LEAP.mt.

9.10 ISB Technologies hereby confirms that no payment card information is being stored or kept by the website LEAP.mt and all such information is being securely sent to a PCI compliant payment gateway.

10. RIGHT TO SUSPEND THE SERVICES

10.1 If the Service Provider has not received payment, then, without prejudice to any other rights and remedies of the Service Provider, the Service Provider:

- (a) may, five days following a notice of suspension sent in writing to the Client, and without any liability to the Client, disable access to all or part of the Services for all the User Accounts of the Authorised Users of the Client;
- (b) shall be under no obligation to provide the Services while the invoice(s) concerned remain unpaid;
- (c) shall be entitled for payment even for the period of suspension

- (d) interest shall accrue on such overdue amounts at an annual rate equal to 8% at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

11. USAGE

- 11.1 The Client shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; causes damage or injury to any person or property; and the Service Provider reserves the right, without liability to the Client, to disable the Client's access to the Services until such time as such material is removed.
- 11.2 The Client shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - a) attempt to copy, modify, duplicate, create derivative works from, frame, or republish any portion of the Services and/or Documentation in any form or media;
 - b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services;
 - c) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
 - d) subject to clause 26.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users;
 - e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided within this agreement.
- 11.3 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Service Provider.

12. CONTROL AND LOCATION OF SERVICES.

- 12.1 The method and means of providing the Services shall be under the exclusive control, management, and supervision of the Service Provider, giving due consideration to the requests of the Client.
- 12.2 The Services (including data storage), shall be provided solely from within the European Union or European Economic Area and on computing and data storage devices residing therein.

13. CLIENT DATA

- 13.1 The Client shall own all rights, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.
- 13.2 The Service Provider shall follow its archiving procedures for Client Data as set out in its Back-Up Policy which may be amended by the Service Provider in its sole discretion from time to time. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy shall be for the Service Provider to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by the Service Provider in accordance with the archiving procedure described in its Back-Up Policy. The Service Provider shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party.
- 13.3 The Service Provider shall, in providing the Services, comply with its Privacy and Security Policy applicable at the time relating to the privacy and security of the Client Data and such policy may be amended from time to time by the Service Provider in its sole discretion. In the event of such amendments to either its Privacy and/or Security Policy, the Service Provider shall notify the Client that such a change has taken place.
- 13.4 If the Service Provider processes any personal data on the Client's behalf when performing its obligations under this agreement, the parties record their intention that the Client shall be the data controller and the Service Provider shall be a data processor and in any such case:
 - a) the Service Provider shall ensure that the personal data will be stored within the European Union or the EEA or the country where the Client and the Authorised Users are located in order to carry out the Services and the Service Provider's other obligations under this agreement;

- b) the Client shall ensure that the Client is entitled to transfer the relevant personal data to the Service Provider so that the Service Provider may lawfully use, process and transfer the personal data in accordance with this agreement on the Client's behalf;
 - c) the Client shall ensure that the Authorised Users and any other relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - d) the Service Provider shall process the personal data:
 - i. only in accordance with the terms of this agreement;
 - ii. subject to any lawful instructions reasonably given by the Client from time to time whether such processing should involve processing the personal data internally between the Client and the Service provider or where the Service Provider is instructed by the Client to process the personal data towards any third party indicated through the Client's instructions
 - iii. when required to do so by law, whether this shall be required by the laws of Malta or any European Union law;
 - e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage;
 - f) each party shall ensure that all obligations relating to secure processing of data required by the laws of Malta and any applicable European Law are appropriately adhered to for the purposes of processing of data under this Clause.
 - g) the Service Provider shall not engage any third party to process any personal data on the Client's behalf without the express written permission of the Client to do so. Furthermore, it is warranted by the Service Provider that where a third party is engaged with the written permission of the Client, such third party shall be contractually bound to all the conditions under this Clause 13.4 in its entirety as well as contractually precluded from engaging any other processor in its stead for any reason whatsoever;
 - h) the Service Provider warrants that all of its personnel who may engage in processing the personal data on behalf of the Client are subject to strict obligations of confidentiality;
 - i) the Service Provider shall endeavour to the best of its ability through applicable technical and organisational measures to assist the Client in responding to any of its data subjects' requests for exercising any rights over the Client as a data controller;
 - j) the Service Provider shall assist the Client to the best of its ability, taking into consideration the information actually available to it as a processor to assist the Client in referring to any supervisory authority it is required to by any applicable law prior to commencing any processing operations;
 - k) the Service Provider shall, if instructed to by the Client, delete or return all personal data belonging to the Client subsequent to processing operations being carried out as well as deleting all copies of such data on the Service Provider's records unless required to maintain such data by applicable Maltese or European Union law;
 - l) the Service Provider shall, where required to by the Client, allow the Client to subject the Service Provider's data processing under this Clause 13.4 to an audit, whether carried out directly by the Client or any third party engaged by the Client for the purposes of this Clause 13.4 in order to ensure that the Service Provider is acting in compliance with applicable data protection laws; and
 - m) where the Service Provider receives instructions from the Client which are in breach of applicable laws, the Service Provider shall notify the Client that such instruction would constitute a breach of law and such instructions by the Client shall not be considered binding upon the Service Provider under this Agreement.
- 13.5 Each party shall ensure that any and all other personal data to be processed for the purposes of the rights and obligations set out in this agreement shall be carried out in compliance with the General Data Protection Regulation (Regulation 2016/679) and/or any applicable law which may supplement, amend or replace said law from time to time.

14. SERVICE LEVELS

- 14.1 The Service Provider shall provide the Services in accordance with the Service Level Standards defined in 0 of this agreement.
- 14.2 In the event that the Service Provider does not meet the Service Level Standard, the Service Provider shall use its best efforts to ensure that any unmet Service Level Standard is subsequently met.

- 14.3 Notwithstanding the foregoing, the Service Provider will use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Service.
- 14.4 The Client or his assigned agent shall have the right, not more frequently than once a quarter, to inspect the Service Level attainment records, measurement and auditing tools of the Service Provider to verify Service Level Standard achievement .

15. SERVICE PROVIDER'S OBLIGATIONS

- 15.1 The Service Provider undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 15.2 The undertaking at clause 15.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Service Provider's instructions, or modification or alteration of the Services by any party other than the Service Provider or the Service Provider's duly authorised contractors or agents.
- 15.3 If the Services do not conform with the foregoing undertaking, Service Provider will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 15.1. Notwithstanding the foregoing, the Service Provider:
- a) does not warrant that the Client's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by the Client through the Services will meet the Client's requirements; and
 - b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 15.4 This agreement shall not prevent the Service Provider from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

16. CLIENT'S OBLIGATIONS

The Client shall:

- a) provide the Service Provider with all necessary co-operation in relation to this agreement and all necessary access to such information as may be required by the Service Provider in order to render the Services, including but not limited to Client Data, remote access controlled by the Client, security access information and configuration services;
- b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- c) carry out all other Client responsibilities set out in this agreement in a timely and efficient manner or within the timeframes explicitly specified in this agreement. In the event of any delays in the Client's provision of such assistance as agreed by the parties, the Service Provider may, at its sole discretion, adjust any agreed timetable or delivery schedule as reasonably necessary;
- d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Service Provider, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- f) ensure that its network and systems comply with the relevant specifications provided by the Service Provider from time to time; and
- g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Service Provider's Hosting Environment, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

17. PROPRIETARY RIGHTS

17.1 The Client acknowledges and agrees that the Service Provider and/or its licensors own all intellectual property rights in the Services and the Documentation. This agreement does not grant the Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

18. CONFIDENTIALITY

18.1 The Service Provider acknowledges that the Client Data is the Confidential Information of the Client and that the Service Provider has no rights of ownership or usage to the Client Data.

18.2 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- a) is or becomes publicly known other than through any act or omission of the receiving party;
- b) was in the other party's lawful possession before the disclosure;
- c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

18.3 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

18.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

18.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

18.6 The Client acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Service Provider's Confidential Information.

18.7 This clause 18 shall survive termination of this agreement, however arising and shall subsist on a perpetual basis within the scope of this agreement.

19. LIMITATION OF LIABILITY

19.1 Subject to the provisions of clause 20, this clause 19 sets out the entire financial liability of the Service Provider (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

- a) any breach of this agreement;
- b) any use made by the Client of the Services and Documentation or any part of them; and
- c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

19.2 Except as expressly and specifically provided in this agreement:

- a) the Client assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Client, and for conclusions drawn from such use. The Service Provider shall have no liability for any damage caused by errors or omissions in any information, or instructions or scripts provided to the Service Provider by the Client in connection with the Services, or any actions taken by the Service Provider at the Client's direction;
- b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- c) the Services and the Documentation are provided to the Client on an "as is" basis.

19.3 [INTENTIONALLY LEFT BLANK]

19.4 Subject to clause 19.2 and clause **Error! Reference source not found.** the Service Provider shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for

any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement, unless this shall have been caused by wilful misconduct or gross negligence.

- 19.5 The maximum aggregate liability applicable under this contract shall not exceed the charges equivalent to one year's Subscription.

20. INDEMNITY

- 20.1 The Service Provider shall, subject to clause 20.4, defend the Client, its officers, directors and employees against any claim that the Services or Documentation infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:

- a) the Service Provider is given prompt notice of any such claim;
- b) the Client provides reasonable co-operation to the Service Provider in the defence and settlement of such claim, at the Service Provider's expense; and
- c) the Service Provider is given sole authority to defend or settle the claim.

- 20.2 In the defence or settlement of any claim, the Service Provider may procure the right for the Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on two Business Days' notice to the Client, refunding any amounts already paid by the Client for the future use of the Services, without however any additional liability or obligation to pay liquidated damages or other additional costs to the Client.

- 20.3 In no event shall the Service Provider, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:

- a) a modification of the Services or Documentation by anyone other than the Service Provider; or
- b) the Client's use of the Services or Documentation in a manner contrary to the instructions given to the Client by the Service Provider; or
- c) the Client's use of the Services or Documentation after notice of the alleged or actual infringement from the Service Provider or any appropriate authority.

- 20.4 The foregoing states the Client's sole and exclusive rights and remedies, and the Service Provider's (including the Service Provider's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

21. FORCE MAJEURE

The Parties shall have no liability to each other under this agreement if they are prevented from or delayed in performing their obligations under this agreement, or from carrying on their business, by acts, events, omissions or accidents beyond their reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the other Party is notified of such an event and its expected duration.

22. NOTICES

- 22.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by e-mail, by fax, by hand or sent by post or recorded delivery to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, save that any notice that relates to any situation that could lead to a termination of the Services must be sent by hand delivery or by post.

- 22.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid or recorded delivery shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax or e-mail shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

23. WAIVER

- 23.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 23.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

24. SEVERANCE

- 24.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 24.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

25. ENTIRE AGREEMENT

- 25.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them, in writing or orally, relating to the subject matter they cover.
- 25.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

26. ASSIGNMENT

- 26.1 The Client shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement without the prior written consent of the Service Provider, which consent would not be unreasonably withheld.
- 26.2 The Service Provider may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement by a simple notice to that effect sent to the Client.

27. NO PARTNERSHIP OR AGENCY

- 27.1 Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

28. THIRD PARTY RIGHTS

- 28.1 This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns).

29. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

- 29.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of the Republic of Malta.
- 29.2 Both parties agree that any dispute, controversy or claim arising out of or relating to this agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the rules of the Malta Arbitration Centre in force at the time of the dispute. It is also agreed that:
- (a) the appointing authority and administrator shall be the Malta Arbitration Centre
 - (b) the number of arbitrators shall be one
 - (c) the place of arbitration shall be Malta.
 - (d) the applicable substantive law shall be the laws of Malta

30. COMING INTO EFFECT

- 30.1 This agreement has been entered into on the date stated at the beginning of it and becomes binding on the Parties on the date of signature of the last Party or on the effecting of a digital signature through an on-line acceptance of terms.

THE SOFTWARE

The User Subscription applies in respect of the following Software:

Description
LEAP Payroll Software

SERVICE LEVEL STANDARDS

This Schedule regards support and availability of the Services governed by this agreement so as to provide consistent and appropriate IT service support and delivery by the Service Provider to the Client under the terms of this agreement.

1. Support Service Definition

The table below outlines the support services provided as a part of this agreement.

Service	Service Definition
Hosting Services	The Service Provider shall provide hosting services through its preferred hosting partner, Microsoft Azure, or any other such partner as may be chosen by the Service Provider at its sole discretion.
Application Administration Services	Management of the Application Software provided under this agreement will be the responsibility of the Service Provider.
Software Maintenance and Upgrade Services	The Service Provider will provide software maintenance and upgrade services to the Client in respect of standard features of the Software forming a part of the Services under this agreement.
Application and Data Recovery Services	The Service Provider will provide the following Recovery Services in line with the response times defined within this schedule: <ul style="list-style-type: none">• Hosting Infrastructure and environment recovery processes.• Application recovery processes.
Client Help Desk Services	Client assistance and help desk services <ul style="list-style-type: none">• Online Ticketing and Support System• Remote assistance using Remote tools• Planned or Emergency On-site assistance (extra costs and response times apply)• Regular system health checks Contact with end-users will be coordinated by and through the Client's staff. The Client shall assign Support Contacts for the project.

2. Services Availability

The Service Provider will use its best efforts to make the Services available with a Monthly Uptime Percentage of 95% during any calendar month, hereinafter referred to as the "Service Commitment", based on a method of calculation outlined in section 2.2 of Schedule 2.

2.1. Downtime

Downtime is the period in which the Services are not available for use by the Client and specifically excludes Permitted Downtime.

Permitted Downtime is planned service and maintenance about which the Client has been informed in a timely manner to address planned maintenance and upgrades of the Services

The Service Provider is not responsible for downtime or any other failure to satisfy the agreed service level if the Service Provider can prove it was caused by any of the following circumstances and provided that the said

circumstance was not directly attributable to the Service Provider and such time shall be excluded from the calculation of downtime:

- a. Circumstances outside the Service Provider's area of responsibility for the Service, such as a failure of communications or other products or services from third parties for which Service Provider has not specifically taken responsibility.
- b. Any other circumstances for which the Client has responsibility under the terms of the agreement including but not limited to Internet connectivity.
- c. Virus or other malevolent attack on security, as long as the Service Provider has taken reasonable and professional security measures,
- d. any circumstance referred to as force majeure
- e. Interruption from Internet provider
- f. If the Client had his account suspended as allowed within this agreement for any period of the month under analysis
- g. Downtime due to the acts or omissions of the Client, its employees, agents, or third party contractors or vendors for whom the Client is responsible.

Downtime is calculated from the moment in time the Service Provider receives an e-mail reporting the failure in Availability to the Service Provider, in the manner defined below, until the Services become available again.

2.2. Monthly Uptime Percentage Calculation

The Monthly Uptime Percentage (MUP) is calculated using the following formula:

$$\text{MUP (\%)} = ((\text{AS} - \text{PD} - \text{DT}) \times 100) / (\text{AS} - \text{PD})$$

AS = Agreed Hours of Service during any period of one calendar month

PD = Permitted Downtime

DT = Downtime

2.3. Reporting of Downtime and/or Faults

Downtime and/or faults are to be reported by the Client to the Service Provider via e-mail through the Ticketing and Support System provided by the Service Provider. The report shall include a description of the fault to a level of detail so as to allow the Service Provider's support staff to address the issue and contact details for the users affected.

2.4. [INTENTIONALLY LEFT BLANK]

2.5. Service Level Standards Exclusions

The Service Commitment does not apply to any unavailability, suspension or termination caused by:

- factors outside of our reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of the Services;
- that result from any actions or inactions of the Client or any third party;
- that result from the Client's or any 3rd party's equipment, software or other technology and;
- arising from our suspension or termination of the Client's right to use the Services in accordance with this Agreement.

3. Client Support Services

The Service Provider shall provide a Help Desk service to assist Client's Authorised Users in their use of the Services as defined in this Schedule.

The Client Support Services shall be available during the Client Support Coverage Hours of 08:00 CET – 17:00 CET Monday – Friday, excluding Public Holidays unless the Client has entered into a separate Extended Hours Support Coverage agreement.

The following Client Support & Maintenance Services will be provided by the Service Provider.

- Monitored Ticketing System
- Remote assistance using Remote tools
- Regular system health checks
- Carrying out of backups

Contact with end-users will be coordinated by and through the Client's staff. The Client shall assign Support Contacts for the project.

Service requests are to be submitted by designated staff of the Client and not directly by users.

3.1. Response Times for Support & Maintenance Services

The Service Provider will respond to support requests submitted by the Client in the manner specified within the following time frames:

Category	Definition	Response Time
High Priority	Users are unable to access the software and log into the system. Users cannot process a payroll run Users cannot issue payroll payments	Within 4 working hours
Medium Priority	Unable to generate statutory reports Unable to maintain critical employee details and critical support files	Within 8 working hours
Low Priority	Unable to generate non-critical reports Unable to maintain non-critical employee details and non-critical support files	Within 48 working hours

The hours of response outlined above are hours contained within the Support Coverage Hours.

4. Maintenance

The Service Provider shall provide enhancements and upgrades to the Application Software which form a part of the Software as made available for general release to clients by the Service Provider. The Service Provider shall also provide upgrades to the operating system and hosting environment as required to ensure efficient operations and maintain the availability and integrity of the system.

5. Backup Policy

The Service Provider shall carry out whatever is necessary to maintain a back-up of the data stored in the Hosted Environment in such a manner as to allow a point-in-time recovery of data for up to the previous 12 days on a rolling basis.

Should the Client wish to restore their data to any point in time within this time window, the Client must make a request in writing within 10 days of the period to which the data relates.

This service is subject to the Service Provider's then current hourly rate for services of this nature.

Appendix 1 - LEAP Payroll Licence Terms and Conditions:

- 1.0 The LEAP licence cost is calculated in credits as follows:
 - 1.1 Credits are purchased for the group of companies that the client operates. A client can therefore purchase credits and share them over all its companies. Similarly a bureau can purchase credits and share them across its clients;
 - 1.1 One credit is consumed to process one payslip;
 - 1.2 In the case of an employee having more than one payslip a month, only one credit shall be consumed for each employee per month;
 - 1.3 LEAP will not allow processing of a payroll if credits are not available;
 - 1.4 Clients will have the opportunity to buy credit bundles online;
 - 1.5 Clients will be alerted in advance when the current balance of credits held reaches low levels;
 - 1.6 Credits can be purchased in bundles as defined in the, then current, price list;
 - 1.7 ISB reserves the right to change pricing of the LEAP credits on an ongoing basis;
 - 1.8 Any credits that have already been purchased will still retain their value as a LEAP credit despite the LEAP credit price of the day.
- 2.0 Clients who have a balance of LEAP Credits shall be deemed to be valid users enjoying access to a LEAP licence.
- 3.0 Valid users enjoying access to a LEAP licence shall benefit from:
 - 3.1 Availability of the LEAP software hosted and managed by ISB;
 - 3.2 Maintenance of the LEAP software and the application of patches and any new features as deemed fit by ISB;
 - 3.3 Licence for the client to use the software;
 - 3.4 Free Support for trained users based on Schedule 2 of this document;
- 4.0 A valid LEAP licence does not cover:
 - 4.1 Any time that a client chooses to ask ISB to assist them in setting up their LEAP system;
 - 4.2 Training on the LEAP product;
 - 4.3 Any data migration costs that might be required.

LEAP CREDITS RULES:

- 5.0 Credits are pre-purchased and pre-paid;
- 6.0 Credits are non refundable and non transferrable;
- 7.0 Credits are valid for a maximum of 24 calendar months from date of purchase. If they are not used these will automatically expire;
- 8.0 In the case of credits expiring, if, before expiry, a client purchases another bundle having at least 75% the number of credits of the expiring ones then the expiry date of the expiring credit bundle shall be changed to match the expiry date of the newly purchased bundle.
- 9.0 LEAP Credits can be purchased in bundles that are defined in the, then current, LEAP credit price list.

SUPPORT

- 10.0 Support is defined in Schedule 2 of this document
- 11.0 All support is to be received through the online ticketing system;
- 12.0 Any support call that is received through other means, such as a direct phone call or email, will have a ticket raised for it and will be dealt with in the same way;
- 13.0 Any ticket escalation, requests for further information as well as resolution information will be dealt with in the ticketing system;
- 14.0 Support tickets can only be logged for clients who have active LEAP credits held at ISB;
- 15.0 Support tickets can only be logged by client staff members who have attended a LEAP training course;
- 16.0 Support tickets are processed free of charge for LEAP customers having active credits. This free support covers:
 - 16.1 Technical issues relating to the LEAP system;
 - 16.2 User issues in using the LEAP system;
 - 16.3 Issues arising from any malfunctions of the LEAP system;
- 17.0 Support does not cover:
 - 17.1 Issues that have arisen due to incorrect use of the system or incorrect data inputting;

- 17.2 Issues relating to the User requiring training or not having adequate knowledge in using the LEAP system;
- 17.3 In the case of any such issues being reported through support, the client shall immediately be alerted and a quote raised. Following acceptance the work will be carried out;
- 17.4 Should the eventuality arise that any onsite visits are required, these will be billed separately at the then current rates.