

# SLS Terms & Conditions

May 2024

## 1. Introduction

- 1.1. This Agreement governs the provision of the Services.
- 1.2. You may ask us to perform Services for you in respect of one or more Matters. Each time you instruct us in relation to a Matter, a new and separate Agreement will be entered into between us for that Matter.
- 1.3. If this Agreement is accompanied by a Quote, you can accept this Agreement as described in that Quote or by accessing or using the Services in relation to a Matter.
- 1.4. This Agreement applies to all Services, including those provided prior to such acceptance.
- 1.5. Unless otherwise agreed between the parties in writing, any timeframe for the provision of Services is indicative only.

## 2. Our Services

- 2.1. We will provide the Services to you in accordance with the Quote or as otherwise requested.
- 2.2. We may engage Assisting Parties to assist us in performing the Services. More information about our Assisting Parties is available at <https://kpmg.com/nz/en/home/misc/use-of-third-party-cloud-providers.html>.
- 2.3. We shall provide you with Login Credentials to access and use the Services. You must keep your Login Credentials secure and confidential and take appropriate steps to prevent unauthorised access to the Services. You are responsible for all activities that take place on the Services using your Login Credentials.
- 2.4. We may require your Authorised Users to accept end-user terms before accessing or using the Services. If you wish to nominate a third party from outside your organisation as an Authorised User, we may also require the third party to enter into a separate agreement with us before accessing or using the Services. Any such end-user terms or separate agreement will not be inconsistent with this Agreement.
- 2.5. Our provision of the Services is subject to any assumptions, dependencies, limitations or similar qualifications set out in this Agreement.
- 2.6. We may provide services to persons whose interests compete or conflict with yours, provided that where we determine that the provision of such services gives rise to a specific and direct conflict of interest, we will put in place appropriate ethical dividers.
- 2.7. The Services will be provided to you for the term set out in the Quote, or as otherwise agreed between the parties in writing.

## 3. Information provided by you

- 3.1. You must ensure that any data, information, materials (including documents) that forms part of Your Materials and any of Your Systems comply with all applicable laws, do not contain any viruses, bots, worms or other harmful code, are not defamatory, fraudulent, indecent or offensive, can be provided to us, do not infringe the rights of any third party including Intellectual Property Rights or privacy rights, are not subject to governmental regulations, do not require security measures beyond those we agree to provide, and do not give rise to any civil or criminal liability for us.

- 3.2. Our Services are limited to the formatting and collating of Your Materials so that you may access and search them on the SLS online portal, together with ancillary support services. We will not review or verify Your Materials or make any determination as to their accuracy or completeness.
- 3.3. We will make reasonable endeavours to implement, maintain and operate appropriate technical, organisational and security measures to ensure that Your Materials are protected against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing. Your Materials are stored either in KPMG's environment in New Zealand or in KPMG's cloud-based Azure instance, which is hosted in Australia.
- 3.4. We may Use information obtained in performing the Services for Business Purposes, provided that any output is anonymised or aggregated so that no Personal Information or information relating specifically to you is identifiable.

## 4. Use of our Services

- 4.1. The Services are provided for your sole use and benefit and may only be used for your internal business purposes, any other purposes set out in this Agreement or otherwise as agreed by us in writing. Subject to clause 6.2, you may not:
  - (a) provide or permit use of the Services by anyone other than your Authorised Users;
  - (b) use the Services for the benefit of a third party; or
  - (c) use our name, logo or trademarks in any marketing, promotional material or other publication, unless required by law or with our prior written consent.
- 4.2. You must comply with all applicable laws in using the Services.
- 4.3. You must ensure that your Authorised Users comply with your obligations under this Agreement and you are liable for their conduct as if it were your own, including any loss, damage or claim caused by their conduct.
- 4.4. You warrant that you will comply with all applicable import, export and economic sanctions laws and regulations that prohibit or restrict the export, re-export or transfer of products, technology, service or data, directly or indirectly, to or from certain countries or end users. If you export or import the Services or technical data, you will secure all necessary clearance requirements, export and import licences and exemptions and make all proper filings. We may, on reasonable notice, audit and inspect your use of the Services to confirm your compliance with this Agreement and you agree to provide us with reasonable access and cooperation requested by us in connection with any such audit.
- 4.5. You must:
  - (a) not commercially exploit or make available for the benefit of any third party any part of the Services;
  - (b) not modify, decompile, disassemble or reverse engineer the Services nor attempt to do so, except as permitted by law;
  - (c) only access the Services via the interfaces provided by us, and not create unauthorised links to, or frame or mirror, the Services;
  - (d) not compromise or attempt to compromise the Services or the infrastructure over which the Services are provided;

- (e) not take any action that is likely to adversely affect the use or functionality of the Services;
  - (f) comply with our security, technology and risk management requirements as communicated to you from time to time;
  - (g) promptly notify us if you become aware of any matter that may affect the security or integrity of the Services.
- 4.6. You acknowledge that there are inherent risks associated with internet based information transmission and online service delivery, many of which are outside our reasonable control. For example, the Services may be affected by cyber-attacks or by third parties who provide or maintain aspects of the Services. If this occurs, we will make commercially reasonable efforts to make the Services available to you and assist you to access and recover Your Materials from the last available backup. We do not guarantee that your access to the Services or Your Materials will always be secure, uninterrupted or error free. To the maximum extent permitted by law, we will not be liable for any loss (including loss of any of Your Materials) which occurs outside our systems or our reasonable control.
- 4.7. Our Services are not intended to be used for archival purposes and you should retain separate backup copies of Your Material.
- 4.8. We may upgrade, maintain, backup or otherwise alter (**Change**) the Services from time to time. If we are aware that a Change will materially reduce the functionality of the Services, we will notify you accordingly with a reasonable Notice Period in order to minimise any potential disruption to you.
- 4.9. We may from time to time suspend the Services or disconnect or deny your access to the Services:
- (a) during any technical failure, modification or maintenance that relates to the Services although we will endeavour to procure the resumption of the Services as soon as reasonably practicable;
  - (b) where you undermine the security or integrity of the Services; or
  - (c) if you are, in our opinion, in breach of this Agreement.
- Where we suspend the Services (for reasons other than non-payment) we will endeavour to give reasonable notice to you. Notwithstanding any suspension of any Services under this clause 4.9, you shall remain liable for all fees due through the period of suspension.
- 4.10. We may change the terms of this Agreement by notifying you accordingly with a Notice Period of at least 30 days, or such shorter period as we may reasonably require. Unless those changes are required by law or to comply with applicable professional and ethical standards or codes, if you do not accept those changes, you may terminate this Agreement in accordance with clause 9.2(d).
- 4.11. The Services do not include the provision of legal advice or legal due diligence services.
- 5. Our Fees and Quotation**
- 5.1. You agree to pay our fees and expenses set out in the Quote or as agreed in writing between the parties. Where no Quote is provided or no price is agreed in advance, we will charge you fees in accordance with our standard rates at the time of performing the Services.
- 5.2. Our fees, expenses and charges are exclusive of GST (unless stated otherwise) and GST will be added where applicable.
- 5.3. You agree to pay our fees, expenses and charges, plus any applicable GST, on or before the 20<sup>th</sup> of the month following the date of issue of our invoice.
- 5.4. If any amount you owe to us is more than 10 days overdue, we may:
- (a) charge you interest at the rate of 2% above the 90-day bank bill rate;
  - (b) suspend our Services pursuant to clause 9.1; and/or
  - (c) exercise a lien over any of Your Materials that are in our possession.
- 5.5. You agree to cover all our costs (including our legal costs) incurred by us in recovering any amount outstanding under this Agreement.
- 5.6. We reserve the right to amend a Quote at any time before it is accepted by you.
- 5.7. If we are required by law or by reason of any judicial, regulatory, professional or administrative process to produce documents, provide information or give evidence in connection with the Services, you agree to:
- (a) pay for the time spent by us at our then-current rates, and any expenses incurred by us, in complying with that requirement except where a claim or regulatory action is against us; and
  - (b) promptly cooperate with us, including providing any consent, to the extent necessary for us to comply with that requirement.
- 6. Confidentiality and IP**
- 6.1. Each party will keep the other party's Confidential Information confidential and use it only for the purposes permitted in this Agreement, including performing or receiving the Services. Each party will protect the other party's Confidential Information as it would protect its own, using at least a reasonable standard of care.
- 6.2. Each party may disclose the other's Confidential Information:
- (a) to its legal advisers and external auditors;
  - (b) where we are the recipient of the Confidential Information, to our insurers, professional advisers or financiers;
  - (c) to the extent required by law or applicable professional and ethical standards and guidelines; or
  - (d) with the prior written consent of the disclosing party.
- 6.3. Except for the disclosures under clause 6.2(c), the recipient must ensure that any person to whom it makes a disclosure is required to keep the Confidential Information confidential on substantially the same basis as this clause 6.
- 6.4. We may use and disclose:
- (a) knowledge, experience and skills of general application gained through the provision of the Services; and
  - (b) your name, contact details, logo and a description of the Services for marketing purposes.
- 6.5. We or our licensors own, or have appropriate rights relating to, all Intellectual Property Rights in the Services. We grant you a non-exclusive, non-transferable licence to use, and permit your Authorised Users to use, the Services for the purpose described in clause 4.1.
- 6.6. This Agreement does not affect the ownership of any Intellectual Property Rights in Your Materials. You grant us a non-exclusive, non-transferable, royalty-free licence to Use Your Materials as described in this Agreement including to provide the Services. You warrant that our Use of Your Materials in accordance with this Agreement does not infringe the rights of any third party, including any Intellectual Property Rights or privacy rights.
- 7. Privacy**

- 7.1. Subject to clause 7.2, we may Use (including disclosing to persons located outside New Zealand) Personal Information as set out in our privacy statement which may be found at [sls.net.nz/privacy-policy/](https://sls.net.nz/privacy-policy/). You should bring this notice to the attention of relevant individuals, including your personnel.
- 7.2. Where we are acting as a data processor due to the nature of the Services and the Personal Information being Used, then the Data Protection Terms available at <https://kpmg.com/nz/en/home/misc/client-data-protection-terms.html> will apply in respect of our processing of your relevant Personal Information, subject to the following amendments:
- all references to "KPMG" shall be replaced with "Streamlined Litigation Support Limited" and all references to "Engagement Letter" shall be replaced with the term "Agreement" as defined in these Terms;
  - the definition of "KPMG" in clause 9 shall be deleted; and
  - the "Scope of processing" details in Part B shall be deleted and replaced with "software-as-a-service and electronic data transfer services".
- 7.3. You agree to provide all necessary notifications and obtain any necessary permissions or consents in connection with our Use of Personal Information or Confidential Information as contemplated by this Agreement.
- 7.4. Our information technology systems include processes to store and back up information (including your information but excluding Your Materials) outside New Zealand.
- 7.5. You will inform us if Your Materials includes the personal information of any individuals based outside of New Zealand.
- 8. Liability**
- 8.1. Other than those provisions expressly set out in this Agreement, subject to clauses 8.4 and 11.2 the Services are provided on an 'as is' basis and all other implied or express warranties, representations and guarantees are expressly excluded. In particular we do not warrant that the operation of the Services will be error free or uninterrupted. Electronic services and communications may be subject to interference, interception or corruption. We do not represent or warrant that our electronic services or communications will always be accurate, complete, confidential and secure.
- 8.2. Subject to clause 8.4, to the extent permitted by law our maximum aggregate liability for all causes of action is limited to the fees paid by you for the Services under this Agreement.
- 8.3. To the extent permitted by law, but subject to clause 11.2:
- we are not liable for any indirect or consequential loss or damage, loss of or damage to business; goodwill or reputation; loss of revenue or profits; loss of data; or business interruption;
  - our liability will be further reduced to the extent that you or anyone acting for you has contributed in any way to any loss or damage you have suffered.
- 8.4. If a guarantee or other provision is implied or imposed by law in connection with the Services or this Agreement, and we are permitted to do so, our liability for breach of that guarantee or other provision is limited to the re-supply of the Services; or the payment of the cost of having Services re-supplied.
- 8.5. This clause 8 applies to any claim or liability in connection with the Services or this Agreement, regardless of the basis on which it arises whether in contract (including under an indemnity), tort (including negligence), under statute or otherwise.
- 8.6. Subject to clause 11.2, if we engage a Member Firm as an Assisting Party, where any scheme approved under professional standards legislation applies to the Services performed by that Member Firm, the Member Firm's liability in relation to the Services to which the scheme applies is limited in accordance with the scheme.
- 8.7. You agree not to bring any claim against any Member Firms, Assisting Parties, Controlled Entities or Personnel in connection with any Services they perform which fail to meet the requirements of the Agreement. You acknowledge that damages are unlikely to be an adequate remedy for your breach of this clause 8.7, and we may enforce this clause 8.7 on behalf of other Member Firms, Assisting Parties, Controlled Entities and Personnel.
- 8.8. Each party (**Indemnifying Party**) indemnifies the other (**Indemnified Party**) against any direct loss or damage which the Indemnified Party suffers as a result of any claim made by a third party that:
- your use of the Services, but excluding any Third Party Software and Your Materials (where we are the Indemnifying Party); or
  - your use of the Services, or Your Materials (where you are the Indemnifying Party), infringe the Intellectual Property Rights of a third party; or
  - your Use of the Services, or Your Materials (where you are the Indemnifying Party), breaches another party's confidentiality or privacy rights, provided that:
    - the Indemnified Party promptly gives the Indemnifying Party notice of the claim and provides all reasonable assistance in connection with the claim at the Indemnifying Party's expense; and
    - where we are the Indemnifying Party, you give us control of the defence of the claim.
- 8.9. If we are the Indemnifying Party under clause 8.8:
- the indemnity will not apply to the extent the infringement is caused by an Excusing Event; and
  - we may modify or replace the Services to make them non-infringing or obtain for you the right to continue using them. If, despite using commercially reasonable efforts we are unable to do so, we may terminate this Agreement upon 30 days' notice and refund any fees you have pre-paid for the Services for the period after termination.
- 9. Suspension and termination**
- 9.1. We may suspend the Services for so long as:
- any fees payable by you are overdue; or
  - you are, in our opinion, in breach of this Agreement; or
  - there is a dispute, the subject of clause 10,
- and if the Services are suspended for more than 21 days, we may terminate this Agreement immediately by written notice.
- 9.2. Either party may terminate this Agreement immediately by written notice to the other if:
- the other materially breaches this Agreement and, to the extent such breach is capable of remedy, fails to remedy that breach on 14 days' notice;
  - the other becomes insolvent; or
  - if the Services are suspended for more than 14 days under clause 9.1(c) unless the dispute relates to our fees; or
  - for convenience upon 30 days' written notice.
- 9.3. We may also terminate this Agreement immediately by written notice if, in our reasonable opinion, our provision of Services:

- (a) does or would breach any applicable laws, regulations, professional or ethical standards or codes or internal directions or policies (including any requirements relating to independence);
  - (b) has the potential to bring us into disrepute; or
  - (c) may expose Personnel to unreasonable physical or personal risk.
- 9.4. Upon termination or expiry of this Agreement or expiry of any licence granted under them, you must and must ensure your Authorised Users immediately cease using the Services.
- 9.5. Termination or expiry does not affect any accrued rights of either party, including your obligation to pay our fees, expenses and charges for work performed up to the effective date of termination or expiry.
- 9.6. Upon termination or expiry of this Agreement or your right to use the Services, despite clause 9.4 we will continue to provide you with access to the Services for up to 90 days for the sole purpose of you exporting your Materials in a format supported by us, and following the expiry of the 90 day period, we may destroy your Materials.

## 10. Dispute Resolution

- 10.1. We welcome your feedback on our Services. We are committed to investigating and resolving any concerns or complaints you may have as soon as possible. Our complaints process is set out at <https://kpmg.com/nz/en/home/misc/complaints.html>.
- 10.2. If any dispute arises in connection with this Agreement or the Services (**Dispute**):
- (a) the party raising the Dispute must notify the other party of the Dispute, with sufficient detail to enable the dispute to be considered (**Dispute Notice**); and
  - (b) the parties must engage in confidential senior level negotiations with a view to resolving the Dispute.
- 10.3. If a Dispute is not resolved through negotiations, both parties will attempt to resolve the Dispute through mediation or some other form of alternative dispute resolution.
- 10.4. If a Dispute has not been resolved following mediation or some other form of alternative dispute resolution the Dispute shall be referred to and finally resolved by arbitration in accordance with the New Zealand Arbitration Act 1996 and its amendments, and the Arbitrators' and Mediators' Institute of New Zealand (**AMINZ**) Arbitration Rules current at the time arbitration is commenced. The law applicable to the arbitral proceedings and the matters in dispute will be the laws of New Zealand.
- 10.5. The arbitration shall take place in Auckland, New Zealand, with one arbitrator to be agreed between the parties. If the parties fail to agree within 21 days from the date on which the Dispute Notice is given, the arbitrator shall be appointed by the President of AMINZ or their nominee.
- 10.6. The arbitration process (including all documents prepared for or relating to that process) and its outcome shall be confidential.
- 10.7. In making an award in the arbitration, the tribunal must:
- (a) determine the rights and liabilities of the parties in the same way as if Proportionate Liability Law applied to each claim in the arbitration, irrespective of whether or not the tribunal is otherwise bound or entitled to apply Proportionate Liability Law and whether or not the claim is an apportionable claim under Proportionate Liability Law;

- (b) in so doing, have regard to the comparative responsibility of the parties to the arbitration and of any concurrent wrongdoer who is not a party to the arbitration; and
- (c) give full effect to this clause notwithstanding any provisions in Proportionate Liability Law which express a contrary intention or which are inconsistent with this clause, and notwithstanding the inability of the parties in the arbitration to join any concurrent wrongdoers in the arbitration.

It is the intent of this clause to apply proportionate liability to all claims within the arbitration, even if they would not be subject to proportionate liability if made in court.

- 10.8. You must commence arbitration proceedings against us within three years of the Dispute arising, failing which you hereby agree to waive any claims relating to the Dispute.
- 10.9. Nothing in this clause 10 shall prevent either party from initiating court proceedings in respect of:
- (a) urgent injunctive, interlocutory or declaratory relief; or
  - (b) enforcing any measure or order awarded by the arbitrator.
- 10.10. Subject to any award of the arbitrator, each party shall bear its own costs of complying with this clause 10.

## 11. General

- 11.1. This Agreement is governed by the laws of New Zealand and subject to clause 10, the parties unconditionally submit to the exclusive jurisdiction of the courts sitting in New Zealand.
- 11.2. This Agreement does not limit or exclude any liability of a party that cannot be excluded or limited by law. If the Services are being procured for business purposes, the parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986, and that it is fair and reasonable to do so.
- 11.3. Subject to clause 11.2, this Agreement constitutes the entire agreement between the parties regarding the provision of the Services, and supersedes all previous agreements or understandings relating to the Services. Except as otherwise expressly stated, no variation of this Agreement is effective unless agreed by the parties in writing.
- 11.4. Clauses, 3.4, 4.1 to 4.7, 5, 6.1 to 6.4, 6.6, 7, 8, and 10 survive termination or expiry of this Agreement, together with any other clause which by its nature is intended to do so.
- 11.5. Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement or term is not affected.
- 11.6. Neither party will be liable for any failure to perform its obligations (other than an obligation to pay) under this Agreement to the extent that performance is delayed, prevented, restricted or interfered with for any reason beyond the reasonable control of that party.
- 11.7. Nothing in this Agreement is intended to constitute a fiduciary relationship, relationship of employment, or an agency, partnership, franchise or trust.
- 11.8. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- 11.9. The term "including" is not a term of limitation.
- 11.10. Each party irrevocably consents to this Agreement being signed and/or accepted electronically.

## 12. Definitions

**Agreement** means these Terms and the Quote.

**Assisting Parties** means (i) Member Firms; (ii) our Controlled Entities; and (iii) our third party contractors and suppliers, including cloud computing providers, who assist us in performing the Services and those engaged to facilitate and support Member Firms' businesses.

**Authorised Users** means those users described in the relevant Quote who are permitted to use and access the Services, or (if none are specified) your employees.

**Business Purposes** means to enable SLS, including with the assistance of Assisting Parties, to: (i) provide and enhance services and deliverables to clients (including you); (ii) develop expertise and know-how; (iii) undertake benchmarking services, analytics, quality assurance, risk management and thought-leadership; and (iv) use information for other purposes related to SLS' business.

**Confidential Information** means information disclosed in connection with this Agreement which by its nature is confidential, is designated as confidential, or which the recipient knows or reasonably ought to know is confidential, including information contained in Your Materials, but does not include information that is in the public domain without a breach of confidence, is obtained from a third party without an obligation of confidence, or is independently developed without breach of this Agreement.

**Controlled Entity** means any entity under SLS and/or KPMG's control.

**Entity** means an organisation of any nature (whether incorporated or not) including any partnership or company.

**Excusing Event** means: (i) the Services not being used in accordance with this Agreement and their associated documentation; (ii) the Services being used in conjunction with other products not provided or authorised by us; (iii) the Services being modified by anyone other than us; or (iv) any matter outside our reasonable control.

**GST** means goods and services tax payable under the GST Act.

**GST Act** means the Goods and Services Tax Act 1985.

**Intellectual Property Rights** means all and any patents, patent applications, trade marks, service marks, trade names, registered designs, unregistered design rights, copyright, know how, trade secrets, business and domain names, internet addresses, and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same now or in the future.

**Login Credentials** means credentials such as user names and passwords.

**KPMG** means the New Zealand Partnership of KPMG and the beneficial owner of Streamlined Litigation Support Limited.

**KPMG Global Organisation** means, as applicable, any or all of KPMG International Limited (an English company limited by guarantee); KPMG International Services Limited (an English company limited by guarantee); KPMG International Cooperative (a Swiss entity); and their respective subsidiaries.

**Matter** means each distinct piece of e-discovery or litigation support for which you request our Services.

**Member Firms** means KPMG, KPMG Global Organisation, and any Entities that are: (i) members of KPMG Global Organisation (**Members**); (ii) parties to a participation agreement which permit it to be a part of the KPMG network (**Sublicensees**); or (iii) directly or indirectly, wholly or dominantly owned or controlled by any Member Firm, Sublicensee or KPMG Global Organisation.

**Notice Period** means a period for the giving of a notice before a specified event occurs, as specified in clauses 4.8 or 4.10 as appropriate.

**Personal Information** has the meaning given to that term in the Privacy Act 2020.

**Personnel** means the partners, officers, employees, contractors, secondees and agents of us and our Assisting Parties.

**Proportionate Liability Law** means any legislative provisions or common law principles relating to proportionate liability which are applicable to a claim, or which would be applicable to the claim if it were an apportionable claim.

**Quote** means the document provided to you with these Terms setting out the scope and price of Services for a Matter.

**Services** means the services that we provide to you, including access to the SLS online portal and ancillary support services, in connection with e-discovery and litigation support.

**Terms** means these SLS Terms and Conditions.

**Third Party Software** means open source software or software licensed by a third party for installation by you (and not as a service) which we provide to you.

**Use** means collect, use, access, modify, transfer, sublicense and disclose.

**we, us, our (or derivatives) and SLS** means Streamlined Litigation Support Limited, an entity beneficially owned by KPMG.

**you, your (or derivatives)** means the client described in the Quote.

**Your Materials** means any data, information, materials (including documents and software) provided or made available to us by you or by third parties on your behalf for the performance of the Services.

**Your Systems** means your internal IT systems, networks, interfaces, software and hardware for which you are responsible.