

LIV TRUST ACCOUNTING ONLINE TERMS AND CONDITIONS

The following terms and conditions govern access to and use of LIV Trust Accounting Online.

1. Definitions and Interpretation

1.1 In these terms and conditions:

“Business Hours” means from 9.00am to 5.00pm Australian Eastern Standard Time on Mondays to Fridays but excluding any day that is a proclaimed public holiday in the State of Victoria;

“Commencement Date” means five (5) business days after the day the LIV receives from the Customer:

- a. the Setup Fee; and
- b. these terms and conditions signed by or for the Customer;

“Customer” means either —

- a. a Law Practice which is an Incorporated Legal Practice; or
- b. a partner of a Law Practice; or
- c. a Principal of a Law Practice —

with a Customer Account;

“Customer Account” means the Customer account established by the LIV to enable the Customer to access and use LIV Trust Accounting Online;

“Customer Data” means data uploaded to, transferred through, processed or entered into LIV Trust Accounting Online by the Customer or a User;

“External Examiner” has the same meaning as it has in the **Legal Profession Act 2004 (Vic)**;

“GST Act” has the same meaning as it has in **A New Tax System (Goods and Services Tax) Act 1999 (Cth)**;

“GST” has the same meaning as it has in the GST Act;

“Incorporated Legal Practice” has the same meaning as it has in the **Legal Profession Act 2004 (Vic)**;

“Initial Term” means the period of one (1) year from the Commencement Date;

“Law Practice” has the same meaning as it has in the **Legal Profession Act 2004 (Vic)**;

“Laws” means statutes, statutory rules, regulations, instruments and by-laws in force from time to time;

“Licence” means the licence granted under sub-clause 2.1;

“Licence Fee” means the fee payable by the Customer under sub-clause 5.2;

“LIV” means the Law Institute of Victoria Limited ACN 075 475 731;

“LIV Trust Accounting Online” means the web-based trust accounting software application developed by the LIV to enable Law Practices to record all trust money transactions that a Law Practice is required to record pursuant to the **Legal Profession Act 2004 (Vic)**;

“LIV Trust Accounting Online Team” means the group of LIV employees who are from time to time directed by the LIV

to manage the provision of LIV Trust Accounting Online and the Services to all customers and users;

“Principal” has the same meaning as it has in the **Legal Profession Act 2004 (Vic)**;

“Renewal Term(s)” means successive periods of one (1) year each following the Initial Term;

“Services” means the maintenance, support, Customer Data storage and other services provided by the LIV in accordance with these terms and conditions;

“Setup Fee” means the amount of \$250.00 (exclusive of GST);

“User” means —

- a. a person employed or engaged by the Customer; or
- b. a partner of the Customer where the Customer is a Law Practice; or
- c. a principal of the Customer where the Customer is a Law Practice —

who the Customer has recorded on the Customer Account as being authorised to view and/or record Customer trust money transactions.

1.2 In these terms and conditions, headings are for convenience of reference only and do not affect interpretation.

1.3 In these terms and conditions, the singular includes the plural and vice versa.

1.4 These terms and conditions must be interpreted so that they comply with all Laws applicable in Victoria. If any term or condition does not comply with any Law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the other terms and conditions.

1.5 The Laws of Victoria apply to these terms and conditions.

2. Licence

2.1 Subject to these terms and conditions, the LIV grants to the Customer a non-exclusive, non-transferable licence to access and use LIV Trust Accounting Online via the Internet during the Initial Term. This Licence enables the Customer to record, view print, download and export Customer Data.

2.2 Unless the Customer provides at least one (1) month's written notice to the LIV prior to the expiry of the Initial Term or any subsequent Renewal Term that the Customer does not wish to renew the Licence, the Licence will be automatically renewed for subsequent Renewal Terms.

3. Licence Limitations

3.1 The Customer may allow Users to access and use LIV Trust Accounting Online in accordance with these terms and conditions. Subject to sub-clause 3.2, the maximum number of Users that may access and use LIV Trust Accounting Online under the Licence must not at any time exceed:

- a. twenty (20) where the Customer is an Incorporated Legal Practice; or
 - b. nineteen (19) where the Customer is the principal or partner of a Law Practice.
- 3.2 If the Customer requires an increase in the maximum number of Users that may access and use LIV Trust Accounting Online, the Customer must request from the LIV a quotation for additional fees payable by the Customer in respect of the Customer's required increase. The maximum number of Users will increase after the Customer confirms in writing to the LIV that the Customer accepts and agrees to pay the additional fees specified in the quotation.

4. Accessibility

- 4.1 The Customer acknowledges that:
- a. there are minimum system requirements for LIV Trust Accounting Online which are available at <https://ta.liv.asn.au/About.aspx>, and that the Customer and Users may not be able to access or use LIV Trust Accounting Online if the system which the Customer or User is using does not meet any of or all of the minimum system requirements;
 - b. access and use by the Customer and Users of LIV Trust Accounting Online will be via the Internet only, and that the Customer and Users may not be able to access or use LIV Trust Accounting Online if the Internet connection used by the Customer or User is deficient, interrupted or unavailable for any reason.

5. Fees

- 5.1 The Customer must pay the Setup Fee at the time of applying for an account to access and use LIV Trust Accounting Online.
- 5.2 The Customer must pay a licence fee for the Licence. The licence fee will be —
- a. \$70.00 (exclusive of GST) per calendar month if the Customer is a current member of the Law Institute of Victoria for that calendar month; or
 - b. \$85.00 (exclusive of GST) per calendar month if the Customer is not a current member of the Law Institute of Victoria for that calendar month —
- which is to be paid by the Customer on the first day of each calendar month.
- 5.3 If the Commencement Date of the Licence is on a day other than the first day of a calendar month the Customer must pay an appropriate apportionment of the Licence Fee for that month.
- 5.5 If any portion of the Licence Fee is not paid within fourteen (14) days of the due date the Customer must pay a late payment fee of \$15.00 for each late payment in addition to the Licence Fee.
- 5.6 The Customer must pay on the first day of each calendar month any additional fees that the Customer has agreed to pay pursuant to sub-clauses 3.2 and 9.3 of these terms and conditions.
- 5.7 The Customer acknowledges and agrees that all fees payable by the Customer pursuant to this clause 5 will be debited from the Customer's nominated credit card account.
- 5.8 The LIV may at its sole discretion increase any fees payable by the Customer, including but not limited to the Licence Fee. The LIV will provide to the Customer two (2) months' notice of any increase in fees. This sub-clause 5.8 will not apply during the Initial Term.

6. Maintenance

- 6.1 The LIV will carry out routine system maintenance of LIV Trust Accounting Online outside of Business Hours. The LIV will notify the Customer by electronic mail to the Customer's nominated electronic mail account of the proposed routine maintenance at least one (1) week in advance.
- 6.2 The LIV may carry out emergency system maintenance of LIV Trust Accounting Online at any time. The LIV will use best endeavours to minimise the period of emergency maintenance.
- 6.3 The Customer acknowledges and agrees that the Customer and Users may not be able to access or use LIV Trust Accounting Online during periods of maintenance.

7. Modifications and Upgrades

- 7.1 The LIV may effect modifications, upgrades and updates to LIV Trust Accounting Online including but not limited to the design, technical specifications, operational method and systems of LIV Trust Accounting Online.
- 7.2 Subject to sub-clause 7.3, the LIV will effect routine modifications, upgrades and updates to LIV Trust Accounting Online outside of Business Hours. The LIV will notify the Customer by electronic mail to the Customer's nominated electronic mail account of a proposed modification, upgrade or update at least one (1) week in advance.
- 7.3 The LIV may carry out emergency modifications, upgrades and updates to LIV Trust Accounting Online at any time. The LIV will use best endeavours to minimise the period required to effect the emergency modification, upgrade or update.
- 7.4 The Customer acknowledges and agrees that the Customer and Users may not be able to access or use LIV Trust Accounting Online during periods of modification, upgrading or updating.

8. Back Ups

- 8.1 The LIV will carry out Customer Data back ups every twenty-four (24) hours.
- 8.2 The Customer acknowledges and agrees that any back up carried out by the LIV pursuant to sub-clause 8.1 will not constitute a back-up copy for the purposes of regulation 3.3.7 of the Legal Profession Regulations 2005 (Vic).

9. Training

- 9.1 The LIV will provide two (2) hours of training in access to and use of LIV Trust Accounting Online.
- 9.2 The training referred to in sub-clause 9.1 will be:
- a. undertaken as one, two (2) hour session;
 - b. conducted at times nominated by the LIV which are acceptable to the Customer;
 - c. conducted as a group session, possibly with other customers or users;
 - d. conducted at the LIV's offices which are currently situated at 470 Bourke Street, Melbourne, Victoria; and
 - e. made available to up to two (2) persons nominated by the Customer to attend.
- 9.3 If the Customer requires additional training the Customer must request from the LIV a quotation for additional fees payable by the Customer in respect of the Customer's additional training requirements. Further training can be coordinated once the Customer confirms in writing to the LIV that the Customer accepts and agrees to pay the additional fees specified in the quotation.

10. LIV Trust Accounting Online Services

- 10.1 The LIV, through its LIV Trust Accounting Online Team, will provide electronic mail and telephone support to the Customer during Business Hours, including in relation to:
- amendments to the Customer Account;
 - the status of the Customer Account;
 - the operation of LIV Trust Accounting Online; and
 - queries about Customer Data.
- 10.2 The Customer acknowledges and agrees that members of the LIV Trust Accounting Online Team may access and view Customer Data in the course of providing electronic mail or telephone support to the Customer.
- 10.3 The Customer may access electronic mail support from the LIV by forwarding an electronic mail request to:
- tahelp@liv.asn.au**
- or any other electronic mail address nominated by the LIV from time to time.
- A telephone support number may be provided by the LIV Trust Accounting Online Team if a member of the LIV Trust Accounting Online Team considers that the Customer query cannot be addressed via electronic mail support.

11. Customer Obligations

- 11.1 The Customer must ensure that all details recorded in the Customer Account are correct and current, including but not limited to:
- the Customer's postal address;
 - the Customer's telephone number;
 - the Customer's nominated electronic mail address to receive electronic mail communications from the LIV;
 - the Customer's credit card number and details for the purposes of payment of fees and any penalties; and
 - details of all Users and restrictions on User access.
- 11.2 The Customer must provide a copy of these terms and conditions to all Users, and ensure that all Users comply with all Laws and these terms and conditions.
- 11.3 The Customer and all Users must comply with all directions relating to LIV Trust Accounting Online notified by the LIV to the Customer from time to time by electronic mail, the LIV Trust Accounting Online webpages or in any other manner.
- 11.4 The Customer and all Users must comply with all Laws and these terms and conditions in respect of:
- the Customer's access to and use of LIV Trust Accounting Online;
 - any User's access to and use of LIV Trust Accounting Online; and
 - the recording, amendment, deletion, retention and storage of Customer Data.
- 11.5 The Customer or any User must not access or use LIV Trust Accounting Online in any manner that hinders or prevents access to or use of LIV Trust Accounting Online by the LIV, the Customer or other customers or users.
- 11.6 The Customer and all Users must ensure that usernames, identities and passwords obtained by the Customer in conjunction with establishment of the Customer Account are stored and used in a secure manner and cannot be accessed and used by any other person, body or corporation which is not expressly authorised to access or use LIV Trust Accounting Online.
- 11.7 The Customer must notify the LIV of any breach, potential breach or suspected breach of sub-clauses 11.1 to 11.6 (both inclusive).

12. Access to Customer Data

- 12.1 Subject to sub-clause 12.2, the LIV will use its best endeavours to ensure that Customer Data is kept free from access by unauthorised persons, bodies, corporations or other legal entities.
- 12.2 The Customer acknowledges and agrees that an External Examiner is entitled under the Legal Profession Act 2004 (Vic) to view, print, download or export Customer Data.

13. Suspension and Termination

- 13.1 The LIV may at its sole discretion suspend the Customer Account with immediate effect where:
- the Customer does not pay the Setup Fee, the Licence Fee or any other fee payable by the Customer in accordance with these terms and conditions or otherwise as required by the LIV; or
 - the Customer or any User uses LIV Trust Accounting Online in a manner that causes loss or the risk of loss for the LIV or any other person, body, corporation or other legal entity.
- 13.2 The LIV may at its sole discretion reinstate the Customer Account.
- 13.3 The LIV may at its sole discretion terminate the Licence upon providing one (1) month's written notice to the Customer of its intention to terminate.
- 13.4 The Customer may request the LIV to terminate the Licence. The request must be in writing. The LIV will terminate the Licence which will take effect one month after the LIV receives the Customer's request and subject to the payment of all outstanding fees payable by the Customer.
- 13.5 In the event of suspension of the Customer Account or termination of the Licence the Customer and any Users will only be able to view Customer Data uploaded to, transferred through, processed or entered into LIV Trust Accounting Online prior to the date of suspension or termination.
- 13.6 Unless otherwise agreed in writing, termination of the Licence will not abrogate, release or extinguish any debt, obligation or liability of the Customer to the LIV or which may have accrued including, without limitation, any debt, obligation or liability which was a cause of termination or arose out of such cause.
- 13.7 This clause 13 and clauses 11, 14, 16, 18, 20, 21 and 23 will survive termination of the Licence.

14. Intellectual Property

- 14.1 The Customer acknowledges and agrees that any and all intellectual property rights (including but not limited to rights relating to copyright, trade mark, logo, design, patent and confidentiality) relating to LIV Trust Accounting Online and the Services are vested in the LIV except where those rights are vested in another person, body, corporation or other legal entity.
- 14.2 The LIV acknowledges and agrees that any and all intellectual property rights (including but not limited to rights relating to copyright, trade mark, logo, design, patent and confidentiality) relating to Customer Data are vested in the Customer except where those rights are vested in another person, body, corporation or other legal entity.

15. Variation to Terms and Conditions

- 15.1 The LIV may amend any or all of these terms and conditions from time to time in the following way:
- a. the LIV will notify the Customer of any amendment by electronic mail to the Customer's nominated electronic mail account and/or notice of the amendment will be posted on the LIV Trust Accounting Online webpages;
 - b. the Customer is deemed to have received notice of the amendment within one (1) week of the electronic mail being sent to the Customer and/or notice of the amendment being posted on the LIV Trust Accounting Online webpages;
 - c. subject to sub-clause 15.2 the Customer is deemed to have accepted the amendment one (1) month after the LIV notification referred to in sub-clause 15.1.a, and the amendment takes effect on that day.
- 15.2 If the Customer does not accept an amendment to these terms and conditions the Customer may request the LIV to terminate the Licence. The request must be in writing and be received by the LIV within one (1) month of the LIV notification referred to in sub-clause 15.1.a. The LIV will terminate the Licence which will take effect immediately upon receipt of the Customer's request by the LIV's Trust Online Team.

16. Disclaimer, Release and Indemnity

- 16.1 The LIV:
- a. makes no representation or warranty as to the contents of LIV Trust Accounting Online or any Customer Account;
 - b. expressly disclaims any liability for or with respect to the contents of LIV Trust Accounting Online and any Customer Account;
 - c. expressly disclaims any liability for and makes no warranties in respect of any loss incurred by a Customer or User or harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb, root kit, trojan or other computer program;
 - d. makes no representation or warranty as to the provision of the Services; and
 - e. expressly disclaims any liability for or with respect to the provision of the Services.
- 16.2 To the fullest extent permitted by law, the Customer releases the LIV from any liability for any loss, injury, claim, or damage of any kind whatsoever resulting from:
- a. the unavailability of LIV Trust Accounting Online;
 - b. the interruption of access by the Customer or User to, or their use of, LIV Trust Accounting Online;
 - c. use by the Customer or User of LIV Trust Accounting Online;
 - d. the provision of any Services to the Customer or Users; and
 - e. the unavailability of any Services.
- 16.3 The Customer indemnifies the LIV and keeps indemnified and holds the LIV, its directors, officers, employees and agents harmless from and against any and all claims, demands, actions, damages, liability and loss (including legal costs and expenses on a solicitor and own client basis) made against, incurred or suffered by the LIV, its directors, officers, employees or agents as a direct result, or indirect result, or in connection with:
- a. any breach of these terms and conditions by the Customer and/or a User; or
 - b. any default, negligence, act or omission of the Customer and/or a User in the course of or related to:
 - i. these terms and conditions;
 - ii. the access to and use of LIV Trust Accounting Online by the Customer and/or a User;
 - iii. the Licence; and/or
 - iv. the Services.

17. Privacy

- 17.1 The LIV will comply with the LIV's "Policy for the Management of Personal Information" in respect of the collection, use and disclosure of information about the Customer and any User. This policy is available at:
<http://www.liv.asn.au/privpolicy.html>

18. Waiver

- 18.1 The waiver by the LIV of any default or breach of these terms and conditions will not constitute a waiver of any other or subsequent default or breach.

19. Assignment

- 19.1 The LIV may, in whole or in part, assign its rights and obligations under these terms and conditions to another person, body, corporation or other legal entity without the Customer's consent.
- 19.2 The Customer may not, in whole or in part, assign the Customer's rights and obligations under these terms and conditions without the LIV's prior written consent. Where the Customer assigns the Customer's rights and obligations under these terms and conditions, and the assignee fails to perform their obligations, the Customer will be liable for the performance of such obligations.

20. Notices

- 20.1 Except as otherwise specified in these terms and conditions, all notices must be in writing and delivered or sent to the address of the addressee set out below:

Customer:

the address provided by the Customer to the LIV and recorded in the Customer Account;

LIV:

470 Bourke Street, Melbourne, Victoria, 3000 or as otherwise directed by the LIV

Any notice under these terms and conditions may be delivered by hand to the addressee or sent by registered post or pre-paid letter to the addressee.

21. Disputes

- 21.1 Except where urgent interlocutory relief is being sought, if a dispute arises out of or relates to these terms and conditions (including any dispute as to breach or termination of the Licence) the LIV or the Customer may not commence any court proceedings relating to the dispute unless it has complied with the dispute resolution procedure set out in sub-clause 21.2.
- 21.2 The dispute resolution procedure is:
- a. If either the LIV or the Customer claims that a dispute ("the dispute") has arisen under or in relation to these terms and conditions, they must give written notice to the other specifying the nature of the dispute.
 - b. On receipt of that notice by the LIV or the Customer (as the case may be), the LIV and the Customer must endeavour in good faith to resolve the dispute expeditiously using mediation.
 - c. The LIV and the Customer must jointly appoint a mediator. If the parties fail to agree on the appointment within five (5) days of service of notice or any other time that the LIV and the Customer agree to in writing, either the LIV or the Customer may apply to the President of the Institute of Mediators and Arbitrators to appoint a mediator.

- d. The parties must abide by the instructions of the mediator about the conduct of the mediation.
- e. If the dispute is not resolved within thirty (30) days after the mediator is appointed, or any other time that the LIV and the Customer agree to in writing, the mediation ceases.
- f. The LIV and the Customer must pay an equal share of the costs of the mediation to the mediator, and the LIV and the Customer each agree to indemnify the mediator against liability in respect of the mediation of the dispute.
- g. If the dispute is resolved, the LIV and the Customer must each sign terms of agreement and the terms are binding on the LIV and the Customer and override these terms and conditions if there is any conflict.
- h. The mediation is confidential and —
 - i. documents prepared for or by the mediator or for or by the LIV or the Customer or any Users for the purposes of the mediation,
 - ii, any terms of agreement entered into by the LIV and the Customer, whether signed or unsigned;
 - iii. any discussions between the LIV and the Customer and between the LIV, the Customer and the mediator before or during the mediation procedure — cannot be used in any legal proceedings or disclosed to any person, body, corporation or other legal entity other than to financial advisors for taxation purposes or as required by law.

22. Force Majeure

22.1 Without limiting clauses 4 or 16, the LIV will not be liable for:

- a. the unavailability of LIV Trust Accounting Online;
- b. the interruption of access by the Customer or User to, or their use of, LIV Trust Accounting Online;
- c. the unavailability of any Services —

if the unavailability or interruption is due to a cause or causes beyond the LIV's control, including without limitation, acts of God or public enemy, fire, floods, storms, epidemic or quarantine restrictions, earthquakes, riots or civil commotion, strikes, war, and restraints of government, freight or other embargoes or weather conditions.

23. GST

- 23.1 Expressions used in this clause 23 and in the GST Act have the same meanings as when used in the GST Act.
- 23.2 Amounts payable and consideration provided under or in respect of the Licence and Services (other than under sub-clause 23.3) are GST exclusive except where otherwise specified.
- 23.3 The recipient of a taxable supply made under or in respect of the Licence or Services must pay to the supplier, at the time the consideration for the supply is due, the GST payable in respect of the supply.
- 23.4 An amount payable by the Customer in respect of a creditable acquisition by the LIV from a third party must not exceed the sum of the value of the LIV's acquisition and the additional amount payable by the Customer under sub-clause 23.3 on account of the LIV's liability for GST.
- 23.5 Neither the Customer nor the LIV is obliged, under sub-clause 23.3, to pay the GST on a taxable supply to it under these terms and conditions, until given a valid tax invoice for the supply.

24. Authority to Sign

- 24.1 A person signing these terms and conditions for and on behalf of the Customer represents and warrants that he or she is duly authorised by the Customer and has legal capacity to sign these terms and conditions for and on behalf of the Customer and to thereby bind the Customer to these terms and conditions.