

This Agreement sets out the contractual arrangements between you and ClockOn Pty Limited (ABN 83 095 696 049) (us) for the use of ClockOn software as a Service (SaaS). By signing this Agreement or completing our sales order process, you agree to be bound by this Agreement and the terms of each sales order. We may vary this Agreement from time to time by giving you prior notice of the variation. The notice will specify the date from which the variation takes effect.

## 1 Definitions

In this Agreement:

- 1.1 **Agreement** means this document.
- 1.2 **ATO** means the Australian Taxation Office.
- 1.3 **ClockOn FMSTP** means the Free Micro Single Touch Payroll. A free version of ClockOn Payroll (which excludes some features of and is subject to more limitations than the standard version) may be offered to micro customers with up to 20 employees by us as part of the ClockOn SaaS if specified in the sales order and subject to this Agreement.
- 1.4 **ClockOn Payroll** means the specific payroll software module as described on the ClockOn website and may be replaced, updated or varied by us from time to time, which may form part of the ClockOn SaaS offered by us.
- 1.5 **ClockOn Time & Attendance** means the specific time & attendance software module as described on the ClockOn website and as may be replaced, updated or varied by us from time to time, which may form part of the ClockOn SaaS offered by us.
- 1.6 **ClockOn SaaS** means the software specified in the sales order offered to you as a service and accessible via the ClockOn website.
- 1.7 **ClockOn Website** means the website [www.clockon.com.au](http://www.clockon.com.au) or [www.clockon.com](http://www.clockon.com), and any other website that replaces those websites or from which the software may be made available by us and accessed by you from time to time.
- 1.8 **Documentation** means the ClockOn Knowledge Base accessible via the ClockOn website, the ClockOn Help file, video training guides, technical literature, and other related materials in human-readable form, provided or made available by us for assisting in the use and understanding of the software.
- 1.9 **Employment Conditions** means the individual conditions applicable to each of your staff (including, where applicable, award rates and allowances) which are generally configurable in the software.
- 1.10 **Establishment Fee** means the Fee payable by you prior to our authorising access to the software, if specified in the sales order.
- 1.11 **Fees** means fees payable by you to us in connection with this Agreement, including the products in accordance with the initial sales order and any subsequent sales orders.
- 1.12 **Go Live** means that moment at which the software is activated for your use subject to and following payment of the fees. Assistance with Go Live can be provided as a professional service.
- 1.13 **Intellectual Property Rights** mean all intellectual property rights, including but not limited to patents, trademarks and designs (whether registered or not), copyright, know-how and trade secrets and any application or right to apply for registration of any of those rights.
- 1.14 **Licence Count** means the number of your active employees, including any additional buffer licences you may purchase in respect of which the products may be used and for whom you are charged in accordance with this Agreement, as specified in the sales order (subject to clauses 9.7 and 9.6).
- 1.15 **Media Elements** mean ClockOn generated reports or tutorials or webinars, files for export as journal entries to accounting software packages, electronic fund transfer banking files (in the .aba file format) and superannuation export files in the SAFF format.
- 1.16 **Parallel Payroll** means a test of ClockOn Payroll functionality to compare with your pre-existing payroll system for accuracy, prior to Go Live. This trial involves the provision of chargeable professional services.
- 1.17 **Payment Authority** means a credit card or direct debit instruction to your bank authorising the payment of the applicable fees and charges from your credit card or bank account as applicable.
- 1.18 **Personal Information** has the meaning given to that expression in the Privacy Act 1988 (Cth) and includes personal information described in our Privacy Policy.
- 1.19 **Product Support** means assistance with the day-to-day use of the product during service hours via email, not being assistance falling within the definition of technical support, training or professional services (which we will determine at our discretion).
- 1.20 **Products** mean the software or services specified in a sales order which may comprise: (a) one or more of the software modules comprising the software; (b) technical support; and/or (c) supply of professional services.
- 1.21 **Professional Services** means assistance given during the service hours via telephone, email or remote desktop tools, with training, Go Live, Parallel Payroll, consultancy on employee terminations, payroll reconciliations and adjustments, end of financial year reconciliations, specialised payroll compliance reviews, employment conditions updating, data reconfiguration and any other services other than product support. Professional services are a chargeable item.

- 1.22 **Professional Service Credit** means a prepaid credit for the provision of professional services. Professional service credits are non-cancellable and non-refundable.
- 1.23 **Registration Code** means a code delivered by ClockOn that will enable you to access and use the software for the permitted Licence Count. The software will not function without a Registration Code. The Registration Code will be automatically deactivated at the end of each contract period, if the applicable fees are not paid on time or if this Agreement or your access to the software is terminated for any reason.
- 1.24 **Sales Order** means a contract between you and ClockOn to purchase products and services from us. This may be in the form of a formal sales order or an application. It may be completed online or by email or in hard copy, at our option.
- 1.25 **Service Hours** means 8.30am to 5.30pm (AEST/AEDT) Monday to Friday, excluding national and NSW public holidays.
- 1.26 **Software** means all or any of the ClockOn FMSTP, ClockOn Payroll and ClockOn Time & Attendance software modules (as the context requires), and any other software solutions that may be offered or provided by us on a software as a service basis from time to time.
- 1.27 **STP Data** means your payroll details, including your company or business name, ABN, employee names and tax file numbers, salaries, wages and allowances information, the pay as you go (PAYG) income tax withholdings and superannuation payment information. The data included in the STP may change based on the requirements of the ATO.
- 1.28 **STP Data Clearing Service** means ClockOn's preferred single touch payment gateway provider used to transmit your STP Data to the ATO as part of the STP service.
- 1.29 **STP Service** means the service in which your STP Data is transmitted to the ATO using the STP Data Clearing Service.
- 1.30 **Subscription** means an authority to access and use the software in respect of your Licence Count in accordance with this Agreement.
- 1.31 **Superannuation Contributions** mean superannuation contributions for your employees in accordance with the information set up relating to superannuation in the software, including Superannuation Guarantee contributions, any additional superannuation contributions made by you and/or salary-sacrifice superannuation contributions.
- 1.32 **Support** means product support, telephone product support or technical support as the context requires.
- 1.33 **Technical Support** means assistance during service hours via email, telephone or remote desktop tools, with product-related issues of a technical nature, not being assistance falling within product support, telephone product support or training (which we will determine at our discretion). This is a chargeable service.
- 1.34 **Telephone Product Support** means assistance during Service Hours via telephone in addition to standard email support with the day-to-day use of the products, not being assistance falling within technical support or training (which we will determine at our discretion). This is a chargeable item. The definition of telephone support may require the customer to leave a voicemail message when all support agents are busy.
- 1.35 **Term** means the period for which this Agreement is in force as specified in clause 17, unless terminated earlier in accordance with this Agreement.
- 1.36 **Training** means providing guidance or teaching you to acquire the required skills and knowledge in specific areas of the software.
- 1.37 **Upgrade** means a revision or build release of the software.
- 1.38 **You** means the legal entity (individual or company) which applies for one or more products in accordance with this Agreement.

## **2 Agreement to Supply**

- 2.1 Subject to your payment of all applicable fees, we shall use commercially reasonable efforts to provide you access to the software to which you have subscribed as specified in the sales order during the term in accordance with this Agreement.
- 2.2 The description for each product is set out in the ClockOn website. We may vary the scope and features of products periodically and from time to time at our discretion. In the case of the software, we may add, remove or change functionality or features of all or any parts of the software from time to time by updating the ClockOn website or other documentation and those varied functions and features will then constitute the relevant software for the purposes of this Agreement from the date of variation.

## **3 Employment Conditions**

- 3.1 You acknowledge that the software will only correctly calculate your payroll if the employment conditions for each employee are properly and correctly configured in the software initially and are updated from time to time as required due to changes in applicable law or awards or an employee's circumstances. The software does not make changes to the employment conditions automatically.
- 3.2 It is therefore your responsibility to ensure that the employment conditions for each employee are

accurate and up to date at all times. We recommend that you check with your industry association that your employment conditions are correct prior to using the software and ensure that these continue to remain correct over time. You acknowledge and agree that we have no liability to you or any other person for any claims, damages, losses, liabilities, costs or expenses of any kind arising out of or relating to your failure to ensure that the employment conditions for each employee are kept accurate and up to date at all times.

- 3.3 Without limitation of clause 3.1, we may agree to supply you with professional services to assist you with changes to the employment conditions from time to time.

#### **4 Use of the Software**

- 4.1 You must only use the software in respect of the Licence Count in respect of which you are paying fees as specified in the sales order or subsequent agreements. It is your responsibility to accurately configure employment conditions for each employee in the software before going live and to update these conditions from time to time, as required due to changes in applicable law or awards or an employee's circumstances. Alternatively, we may agree to provide configuration and Go Live assistance as part of the professional services we provide for an additional fee.
- 4.2 If the software includes media elements, you may: (a) use, copy and modify the media elements; and (b) distribute copies of the media elements (including your modifications) as a part of the software, but solely for your internal business use.

#### **5 Restrictions on Use**

- 5.1 Except as expressly permitted in this Agreement, you must only use our software, products and services for lawful purposes, for your own internal business purposes and in accordance with this Agreement and following our reasonable directions. Without limitation, you must:
- a) not copy or reproduce in any way part or all part of the software, except for your internal business use;
  - b) not convert the software into another electronic medium;
  - c) not modify, adapt, translate, tamper with, reverse engineer, disassemble, decompile, circumvent any copy protection technology or otherwise attempt to create or generate or derive any code for or in respect of the software, except as permitted by applicable law;
  - d) only copy the Documentation for your internal business use within your registered organisation
  - e) not rent, lease, lend or provide commercial software as a service to third parties with the software, other than in the capacity as a payroll bureau, in which instance your proposed purposes must be declared to ClockOn, approved by ClockOn and an additional fee may be payable before you are permitted to use the software for payroll bureau purposes;
  - f) not sell, licence or distribute copies of the media elements on a stand-alone basis or as part of any compilation, software or service where the primary values of the software or service are the media elements;
  - g) not use or distribute any media elements that include trademarks or logos of any third party for any commercial purpose without the permission of that third party;
  - h) not permit any third party to distribute copies of the media elements except when permitted by this Agreement;
  - i) not do anything that may or will undermine, impair or interfere with the security or integrity of our computing systems or networks;
  - j) not use our products or services in any way that might impair functionality or interfere with other people's use of our products or services;
  - k) not access any system without permission or gain, attempt to gain or assist or request any person to gain unauthorised access to the ClockOn website, software, systems or networks connected to the ClockOn website or software, including through hacking, password mining or other means;
  - l) not introduce or upload anything to our software, products, services, systems or networks that may include viruses, Trojan horses, malicious codes or any other software, codes or components which may damage or interfere with our software, products, services, systems or networks;
  - m) not share or do anything that may be offensive, violates any law, or infringes on the rights of others;
  - n) not commit fraud or other illegal acts through use of our products or services; and
  - o) not act in a manner that is abusive or disrespectful to a ClockOn employee or contractor. We will not tolerate abuse or bullying of our employees or contractors in any situation and including interaction with our support teams.

## **6 ClockOn SaaS Subscription**

- 6.1 The sales order will indicate if we are providing the ClockOn SaaS as a subscription service under this Agreement.
- 6.2 We may at our discretion refuse to accept a subscription for the ClockOn SaaS for any reason. We will enable your Registration Code for the ClockOn SaaS only after and subject to our acceptance of your subscription, payment of the Establishment fee if applicable and receipt of your payment authority. We will deactivate your registration code if you do not pay the applicable fees in a timely basis as required in the invoice. The software will not function without a valid registration code.
- 6.3 Subject to payment of the applicable fees, we grant you a non-exclusive licence to access and use the ClockOn SaaS via your subscription in respect only of the licence count during the term in accordance with this Agreement.
- 6.4 You agree that as part of onboarding your authorised employee with administration rights to the ClockOn system will have the responsibility to maintain the confidentiality and management of the password to access the system and security permissions within the ClockOn system.
- 6.5 We will provide upgrades to the software automatically in the hosted service as and when they become available. We will not make available earlier versions of the software for your use or provide support or training for superseded or terminated releases or versions of the software.
- 6.6 You agree that the upgrades or other software releases become part of the software and your use of these upgrades or other software releases will be on the terms of this Agreement.
- 6.7 ClockOn SaaS consist of us:
  - a) hosting your data and the software offsite on servers provided and maintained by us or our sub-contractors;
  - b) granting you access to this software in accordance with this Agreement;
  - c) providing the following management services: (i) installing enhancement packs and other software releases as available; (ii) offering disaster recovery and backup on terms of clause 6.8 of this Agreement; and (iii) performing scheduled server maintenance.
- 6.8 **Data Use:** We do not own the data that you enter or update in our system. However you grant us a licence to use, copy, transmit, store, analyse, and back up all data you submit to us using our products, software and hosting services, including any personal information relating to yourself or others, to: enable us to provide you with and you to use our products, software or services, provide security to our products and services, allow us to improve and develop our products and services, create new services and communicate with you about your subscription.
- 6.9 **Disaster Recovery and Backup:** As part of ClockOn SaaS, ClockOn disaster recovery is in place, including back up of all data automatically and in real time. This will ensure that the latest version of the data backup will be used to restore the services in case of a disaster.
- 6.10 You acknowledge that for us to be able to provide the ClockOn SaaS, your computer and communications systems must meet our minimum technical specifications. You must keep all passwords secure and not disclose them to any third party. You are solely responsible for the listing, distribution and use of your passwords, whether authorised or not.
- 6.11 We do not warrant that your access to the software will be uninterrupted or error free or that information received or accessed by you when using the software will be complete, accurate, current or secure. You acknowledge and agree that access to the software is subject to scheduled and unscheduled maintenance periods and server downtime and that you are solely responsible for any reliance on or use of information received or accessed by you or supplied by us when using the software.

## **7 ClockOn FMSTP**

- 7.1 We may offer you ClockOn FMSTP at our discretion. If we offer you ClockOn FMSTP then clause 7 applies to the ClockOn FMSTP. ClockOn FMSTP functionality and the rights for you to access and use ClockOn FMSTP are the same as for ClockOn Single Touch Payroll subject to the exceptions, limitations and exclusions outlined in Clause 7 below or otherwise notified to you in the sales order or separately by us from time to time.
- 7.2 ClockOn grants you a non-exclusive, personal licence to access ClockOn FMSTP during the Term in accordance with this Agreement and the sales order, free of cost.
- 7.3 You agree to accept sole responsibility for acquiring and maintaining the environment, including but not limited to PC's, operating systems, servers, internet access and local area networks to access ClockOn FMSTP.
- 7.4 You agree to accept sole responsibility for set up and operation of ClockOn FMSTP using the free online support materials, including the ClockOn Knowledge Base accessible via the ClockOn website. You acknowledge and agree that these materials describe the features and functionalities of the

standard paid version of ClockOn Single Touch Payroll (and our other products) and not specifically the ClockOn FMSTP product, which has limitations and exclusions as outlined in clauses 7.5 and 7.6.

- 7.5 ClockOn FMSTP will allow customers to process payrolls without any usage limitations. However, access and use of ClockOn FMSTP will be limited to a maximum number of 27 annual STP transfers to the ATO and the use of a single ABN.
- 7.6 In the event of non-usage of the product (either by not processing any payroll or by non-submission of STP within a 12 month period) your ClockOn FMSTP will be deemed to be inactive and your data purged. In comparison to the standard paid ClockOn Single Touch Payroll, ClockOn FMSTP excludes some features including (but not limited to) integration with third party products and access to the full suite of reports.
- 7.7 You may use ClockOn FMSTP only for the ABN you registered with ClockOn at the time of your subscription.
- 7.8 If you require the full functionality provided by the standard ClockOn Single Touch Payroll (without the limitations and exclusions that apply to ClockOn FMSTP), you should email sales@clockon.com.au for a proposal, including transfer of existing data to the standard ClockOn Single Touch Payroll paid version.
- 7.9 Clauses 6.4 to 6.11 apply to ClockOn FMSTP.

## **8 STP Service**

- 8.1 We provide the STP Service to you during the term in accordance with and subject to the terms of this Agreement and the sales order.
- 8.2 The STP Service consists of us giving you access to the STP Clearing Service to enable you to transfer your STP Data to the ATO promptly after completion of each payroll run and at other times specified by the ATO. We will notify you as to whether or not your transfer of the STP Data to the ATO via the STP Clearing Service has been successful.
- 8.3 You must submit the initial STP Application Form to us at least 3 business days prior to the date of the first planned STP Data transfer, indicating the Registered Business Name, Australian Business Number (ABN) and confirmation that the Business Name and ABN are correct and that you are the person in the business authorised to confirm the ABN and request the STP Service.
- 8.4 You warrant that you have obtained all necessary consents to your disclosing to us and the STP Data Clearing Service all employee personal information required by us or the STP Data Clearing Service (as applicable) for the purposes of this Agreement and that you consent to and have obtained all necessary consents to us and the STP Data Clearing Service (as applicable) and using such information for those purposes. You consent to us providing information we receive from you to the STP Data Clearing Service as necessary for the purposes of this Agreement and to the STP Data Clearing Service using that information for those purposes.
- 8.5 ClockOn will enable the STP Service in the software after validation of the details provided.
- 8.6 You must prepare the STP Data File and submit it to the ATO using the STP Data Clearing Service immediately after you complete your payroll and at other times as specified by the ATO.
- 8.7 You acknowledge that for us to be able to provide the STP Service, your computer and communications systems must meet our minimum technical specifications. You must keep all passwords secure. You are responsible for the listing, distribution and use of your passwords, whether authorised or not.
- 8.8 We will charge you additional fees as specified by us from time to time for (a) each additional ABN and (b) additional STP data transfers to the ATO (above the standard number of payroll runs) and for any special audit reports you require.

## **9 Fees**

- 9.1 In consideration of us agreeing to supply access to the software, support, training and/or professional services, you agree to pay as specified in the sales order:
  - a) the establishment fee;
  - b) recurring fees for the applicable products; and
  - c) any other applicable fees for support and/or professional services as agreed between you and us.
- 9.2 Payments under this Agreement must be made by credit card or direct debit. We will charge an additional service charge for processing credit card payments.
- 9.3 You authorise us to direct debit your bank account or charge your credit card for any recurring fees on a monthly or yearly basis or any other approved charges for additional services requested by you in accordance with this Agreement. You agree to complete and sign all consent and authorisation forms as required by us or the financial institution used by us to process the direct debit to your bank account or charge to your credit card.



- 9.4 You need to ensure that there are sufficient funds available in your bank or credit card account to enable us to process the fees at all times. If for any reason the payment is declined by your bank or credit card provider, you may have to pay dishonour charges.
- 9.5 You must pay any invoice issued by us within seven days after the date of invoice when payment for a product or service under this Agreement for any reason is not direct debited to your bank account or charged to your credit card.
- 9.6 Our products are subject to fees calculated in accordance with the Licence Count, as indicated in the sales order or any subsequent requests for change in the Licence Count. Those fees are charged on a per licence per month basis in advance.
- 9.7 Recurring fees charged will automatically and immediately increase if there is a request to increase the Licence Count beyond the number covered by your current service. Similarly, you can request to decrease the Licence Count below the number covered by your current service. A reduction in the applicable fees due to a decrease in your Licence Count will be applied from the next billing cycle.
- 9.8 Professional Service Credits can be applied towards payment for any service or combination of chargeable professional services requested. Travel costs, meal costs and accommodation costs will apply to the provision of onsite professional services.
- 9.9 All fees and charges are non-refundable.
- 9.10 You are liable to pay all taxes, stamp duty and other government charges which may apply to this Agreement or to the supply of the products or services under it. You must promptly pay or reimburse us for all such taxes, duties and charges. Unless otherwise specified, all fees and other charges are inclusive of GST.
- 9.11 Without limiting our other remedies, your use of or access to the relevant products will be automatically and immediately suspended if any fees are overdue. We may also charge interest on overdue amounts at the overdraft rate our principal bank charges us until full payment is made.
- 9.12 We may vary the fees at any time by giving you at least 30 days prior notice and the new fees will apply from the start of the next renewal term for your product.

## **10 Online Services**

- 10.1 We use third party services and tools including but not limited to Cloud Hosting Services, Clearing Services, Remote Connections to your systems to facilitate installation, remote desktop support, training and professional services. Those services and tools are provided by third parties and are not under our control. Your use of those services and tools is subject to the terms and conditions of the service provider and nothing in this Agreement gives you any rights in or to those services.

## **11 Third Party Products**

- 11.1 You acknowledge that we are not the owner or manufacturer of any software and hardware sourced from third parties and forming part of the product (third party materials). Where we supply any third party materials, you agree that we have no liability whatsoever for any defects or other failures in or delayed or non-supply of such materials except as expressly set out in this Agreement. In our absolute discretion, we may notify the relevant third party of any defect or issue and request the third party to investigate. If we or you find a reproducible defect in any third party materials forming part of the product, as your sole remedy, where commercially reasonable to do so, we may exercise any rights we may have in respect of the replacement or modification of that third party material, under warranties granted to us by the manufacturer of the third party material (if any).

## **12 Product Support, Professional Services and Technical Support**

- 12.1 We will provide you with product support, technical support or professional services as agreed with you in a sales order.
- 12.2 We will provide professional services and or technical support in accordance with this Agreement for additional fees at our prevailing rates for the requested service (unless other rates are agreed with you).
- 12.3 You may acquire professional service credits from us from time to time which you may use towards payment of fees for professional services or technical support. We generally offer professional service credits at a discount to our standard hourly rates.
- 12.4 We may arrange for the supply of some or all of the Support through distributors or agents.
- 12.5 The availability of support may occasionally vary from the stated hours due to downtime for systems, server maintenance and in extreme cases due to non-availability of staff as result of sickness.
- 12.6 While we will endeavour to provide support in a timely manner, we do not make any representation or warranty in relation to response times. Response times will be determined by the availability of consultants, the demand for support at any given time and other factors.
- 12.7 Product support, technical support and phone product support does not include Go Live assistance, responding to queries reflecting a lack of training in the products, assisting with operating the

software (including report generation), updating employment conditions, adding employees or month or year-end processing, investigating issues caused by your network, by software or products we did not supply, offsite computers, environmental factors or other operational problems. These matters fall within the definition of professional services or training. We may agree to provide such assistance for an additional fee.

- 12.8 If you require professional services, consultancy, training, technical support, telephone product support, email support or phone support, you can arrange to purchase such support or services in advance by requesting the same through our website. If you have queries on this, you can send an email with your requirements to support@clockon.com.au.

### **13 Intellectual Property Rights**

- 13.1 All Intellectual Property Rights in and to the software are owned by Tupalek Pty Limited and used under licence by us.
- 13.2 No intellectual property rights in or to any part of the product are transferred to you under this Agreement.
- 13.3 All intellectual property rights in content that you may access through use of the software, but is not contained in the software, are the property of the respective content provider. Such content or sites are not under our control and this Agreement does not grant you any rights to use that content.
- 13.4 This Agreement does not grant you a licence or right of use of trademarks or logos of ClockOn, our endorsing organisations or our suppliers.

### **14 Warranties**

- 14.1 We warrant that:
- a) we have the legal right to grant you the licence or supply the relevant product in accordance with this Agreement;
  - b) the software will perform substantially in accordance with the relevant documentation.
- 14.2 You warrant that you have the power and authority to enter into this Agreement and perform your obligations under this Agreement.
- 14.3 You acknowledge that, except for the warranties contained in clause 14.1, you have not relied on any representation, warranty, promise, forecast or statement made by us in deciding to enter into this Agreement.

### **15 Disclaimer and Limitation of Liability**

- 15.1 Other than the warranties contained in clause 14.1, to the maximum extent permitted by law, we exclude all express and implied warranties, conditions, guarantees and liabilities (Conditions), including but not limited to, liability as to negligence and implied warranties of merchantability and fitness for a particular purpose in respect of the product, software, the support or other goods or services. We do not exclude any condition which by law cannot be excluded.
- 15.2 Subject to clause 3 and without limiting clause 15.1, we make no representations or warranties that the product will assure compliance with any industrial relations laws or awards and we do not accept responsibility for any error, omission or defect in that information. Without limiting the preceding, you are solely responsible to ensure that the employment conditions are correct and legally compliant for your staff at all times.
- 15.3 Our liability for breach of any condition in respect of any product, software, the support or other goods or services we provide which cannot be excluded is limited, at our option, to:
- a) in the case of services, the supply of the services again or the payment of the cost of having the services supplied again; or
  - b) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or acquiring equivalent goods or the payment of the cost of having the goods repaired.
- 15.4 To the maximum extent permitted by law, we will not be liable for any indirect, incidental, special or consequential damages or for any loss of profits or revenue or loss of data arising from any use of the software, the products, the provision of the support or other goods or services, from any act or omission or otherwise arising out of the relationship between you and us and whether in contract, tort (including negligence) or otherwise.
- 15.5 Unless this Agreement otherwise provides a lower level of liability, our total aggregate liability under or in connection with this Agreement (including any sales order) or otherwise arising out of the relationship between you and us and whether in contract, tort (including negligence) or otherwise, will not exceed the fees actually received by us from you in the 12 months preceding the claim.

### **16 Indemnity**

- 16.1 You indemnify us against liability, losses, damages, expenses or costs incurred by us as a result of

any act, default or omission by you under this Agreement or from your use of the products. You are solely responsible for checking the accuracy of your first and subsequent payrolls.

## **17 Term and termination**

- 17.1 Subject to clause 17.2, this Agreement remains in effect for the initial term ending one calendar month after the date of Go Live or after the date of the initial sales order, whichever is earlier. After the initial term, the renewal term will be one year or one calendar month depending upon the annual or monthly payment respectively.
- 17.2 In the case of ClockOn FMSTP, this agreement remains in effect for the initial term ending upon 27 STP transfers to the ATO. After the initial Term, the customer will have the option to sign up for an upgrade to a paid subscription in which case Clause 17.1 will apply.
- 17.3 Unless you give us notice of at least one calendar month before the end of the initial term (or any renewal term), this Agreement then continues for a further term of the same length as the previous term (renewal term), subject to your payment of the applicable fees for the renewal term and or clause 17.2, if applicable. This clause does not apply to ClockOn FMSTP.
- 17.4 Either party may terminate this Agreement by at least one calendar months' notice any time before the expiry of the initial or renewal term.
- 17.5 Subject to clause 17, including clause 17.5, this Agreement terminates immediately and automatically if you are in breach of any obligation under this Agreement and fail to correct that breach within seven days after notice from us.
- 17.6 If you fail to pay the applicable fees within the time required by this Agreement, we may cancel your Registration Code and a new Registration Code will not be issued and you will be unable to continue accessing and using the software and the product. In this circumstance, we will contact you to determine your intentions and if desired, restore the product with the least possible delay, subject to payment of the outstanding fees. If the product is not renewed within 14 days, this Agreement will automatically terminate.
- 17.7 Subject to payment of all outstanding fees and as soon as reasonably practicable after termination of this Agreement, we will provide you with a single user licence for a period of one month solely for you to access the data and reports so as to enable transition to an alternate system or for your own audit purposes, and not for the purpose of ongoing use of the software.
- 17.8 You acknowledge that we may delete all your data at any time after a period of 30 days from termination or expiry of this Agreement subject to Clause 17.9.
- 17.9 At the time of termination, you can request continued access to the data and reports only. In this instance we may provide you a single user licence to access the data and reports. This will be a chargeable service.
- 17.10 On termination of this Agreement, you must cease accessing and using the software, subject to the limited access rights specified in Clause 17.7, 17.8 and 17.9.
- 17.11 Termination of this Agreement does not affect any accrued rights or remedies of either party.
- 17.12 Clauses 15, 16, 17.11 and 17.12 survive termination of this Agreement.

## **18 Transfer**

- 18.1 You are not permitted to transfer or sub-licence this Agreement to a third party. We may novate, assign or transfer our right and obligations under this Agreement and, to the extent required, you consent to the novation, assignment or transfer.

## **19 Privacy Policy**

- 19.1 You acknowledge that you have read and understood our Privacy Policy and that you agree to be bound by our Privacy Policy and consent to us collecting, handling, using, transmitting and disclosing personal information (as defined) and set out in the Privacy Policy.
- 19.2 You:
  - a) warrant that any personal information you disclose or transmit to us in connection with this Agreement, or when using the software, has been collected in accordance with the Privacy Act 1988 (Cth) and that we are authorised to collect, store, disclose and use the Personal Information you disclose or transmit to us;
  - b) warrant that you have the right to, or have otherwise obtained all licences, consents, authorisations and approvals and made all disclosures necessary to collect, store, disclose, use, upload and reproduce, and to permit us to collect, store, disclose, use, reproduce and/or transfer, all personal information that you enter into or update in our system or provide to us via use of the Software, the ClockOn website or any of our products or services; and
  - c) consent to us collecting, disclosing and using such Personal Information, for the purposes contemplated by this Agreement, including: (a) to enable us to provide you with and



to enable you to use our products, software or services; (b) to enable you and us to disclose personal information to the STP Data Clearing Service for the STP Data Clearing Service to use and process it for the purpose of the STP Service; and (c) to enable us to disclose personal information to sub-contractors and third parties we may engage and for them to use and process it to provide support, maintenance, hosting or other services which enable us to provide you with the products, Software or services.

- 19.3 You warrant that the processing and use of personal information that you enter into our system or provide to us in connection with your use of the products, including via your use of the software or the ClockOn website, by you or us will not place us in breach of any laws (including data protection or privacy laws).

**20 Severance**

- 20.1 If the whole or any part of any clause in this Agreement is illegal or unenforceable, it is to be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

**21 Force Majeure**

- 21.1 We are not liable for any delay in or for any failure to perform our obligations under this Agreement due to events, causes or circumstances beyond our reasonable control.

**22 Entire Agreement**

- 22.1 This Agreement and your sales orders constitute the entire agreement between the parties, except as otherwise provided in this Agreement. If there is any conflict between the documents comprising this Agreement and any sales order, the conflict is to be resolved by giving priority to the terms of this Agreement and then to any sales order except where a later document is explicitly expressed to override an earlier one. References to "clause" in this Agreement refer to clauses in this Agreement.

**23 Governing Law**

- 23.1 This Agreement is governed by and construed in accordance with the laws of New South Wales, Australia and you agree to submit to the jurisdiction of the courts of New South Wales.