

1 Application

- 1.1 This document sets out the contractual arrangements between you and ClockOn for the use of the ClockOn Online Software and related Professional Services and Support.
- 1.2 You accept the terms of this Agreement after having received them (and the Agreement takes effect and will apply) when the earlier of the following occurs:
 - (a) you return to us a signed or initialed copy of the Agreement;
 - (b) you complete and submit a Sales Order in which you accept this document; and/or
 - (c) you access or use the Software.
- 1.3 We may vary this Agreement from time to time by giving you prior notice of the variation under this clause (other than in respect of the Fees which is governed by clause 11.2). The notice will specify the date from which the variation takes effect.
- 1.4 You may terminate the Agreement in accordance with clause 20.4 if you do not agree to our variations made pursuant to clause 1.3. You agree that by continuing to use the ClockOn Software you will be deemed to have accepted and agreed our variations.

2 Definitions

In this Agreement:

- 2.1 **Agreement** means the binding agreement between you and us, comprising:
 - (a) this document including the Schedule; and
 - (b) each Sales Order.
- 2.2 **ATO** means the Australian Taxation Office.
- 2.3 **Bookkeeping Service** means the provision of bookkeeping services including export of payroll journals to Xero, preparation of BAS and PAYG calculations and ATO lodgements, bank statement reconciliation to Xero, invoiced uploads to Xero and Xero account set-up and data transfer, as further described in paragraph 6 of the Schedule.
- 2.4 **Claim** means allegation, claim, demand, action, suit or proceeding that may be made or brought by any person against us or our Personnel.
- 2.5 **Clearing Service** means a third-party service provider engaged by us to process and transfer the superannuation contributions of the employees to their nominated superannuation accounts.
- 2.6 **ClockOn** means ClockOn Pty Limited (ABN 83 095 696 049).
- 2.7 **ClockOn Pro** means the specific 'Pro' version of the Software package containing HR modules as described on the ClockOn Website and the Schedule which may form part of the Software offered by us and may be replaced, updated or varied by us from time to time.
- 2.8 **ClockOn Starter** means a free version of ClockOn (which excludes some features and is subject to limitations when compared to the Standard or Pro version) which may be offered to customers with up to 20 employees as part of the ClockOn Online Software if specified in the sales order and subject to this Agreement.
- 2.9 **ClockOn Standard** means the specific Software package as described on the ClockOn Website and the Schedule which may form part of the Software offered by us and may be replaced, updated or varied by us from time to time.
- 2.10 **ClockOn Add-ons** means the additional functionality and/or features as described on the ClockOn Website and the Schedule which may form part of the Software offered by us and may be replaced, updated or varied by us from time to time.
- 2.11 **ClockOn Online Software** means the Software specified in the Sales Order offered to you as a service and accessible via the ClockOn Website.
- 2.12 **ClockOn Website** means the website www.clockon.com.au 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.
- 2.13 **Confidential Information** means information that is proprietary or confidential and is either clearly labelled as such, identified as Confidential Information or is by its nature confidential.
- 2.14 **CPI** means the Consumer Price Index (All groups) published by the Australian Bureau of Statistics or its successor.
- 2.15 **Customer Data** means:
 - (a) data or information belonging to you or your Related Bodies Corporate; or
 - (b) data relating to you or your Related Bodies Corporate's business or Personnel which is inputted

by you or your authorised user(s) (or by ClockOn on your behalf) for the purpose of obtaining the benefit of the Products, services or Software.

2.16 **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.

- 2.17 **Employment Conditions** means the individual conditions applicable to each of your Personnel (including, where applicable, but not limited to, the terms of an individual's employment contract, the National Employment Standards as set out in the *Fair Work Act 2009* (Cth), EBA and award rates and allowances) which are generally configurable in the Software.
- 2.18 **EBA** means an enterprise bargaining agreement made in accordance with the *Fair Work Act 2009* (Cth).
- 2.19 **Fees** means fees payable by you to us in connection with this Agreement, including the amounts payable for supply of the Products in accordance with the initial Sales Order and any subsequent Sales Orders.
- 2.20 **Go Live** means that moment at which the Software is activated for your use or upon completion of the implementation process, if applicable.
- 2.21 **Intellectual Property Rights** means all forms of intellectual property rights (whether registered or unregistered) including but not limited to patents, trademarks and designs, copyright, know-how and trade secrets and any application or right to apply for registration of any of those rights.
- 2.22 **Licence Count** means the number of active employees for which the Product may be used, as specified in this Agreement and/or the Sales Order (subject to clauses 11.8 and 11.9).
- 2.23 **Loss** means all losses, damages, liabilities, Claims, demands, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of any kind, including legal fees (on an indemnity basis).
- 2.24 **Media Elements** mean ClockOn-generated reports or tutorials or webinars, files for export as journal entries or timesheets with or without interpreted hours to accounting software packages, electronic fund transfer banking files (in the .aba file format) and superannuation export files (in the SAFF format).
- 2.25 **Outsourced Payroll Service (OPS)** means the provision of assistance to your permitted users in managing your payroll processing requirements as further described in paragraph 5 of the Schedule.
- 2.26 **Packages** means a version of ClockOn that comprises a combination of features as described on the ClockOn Website which may form part of the Software offered by us and may be replaced, updated or varied by us from time to time.
- 2.27 **Parallel Payroll** means a test of ClockOn functionality to compare with your pre-existing system for accuracy, prior to Go Live. This trial may involve the provision of chargeable professional services.
- 2.28 **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.
- 2.29 **Personal Information** has the meaning given to that expression in the *Privacy Act 1988* (Cth) and includes personal information described in our Privacy Policy.
- 2.30 **Personnel** means the employees, officers, contractors and agents of a party.
- 2.31 **Privacy Laws** means all laws, legislation, principles, industry codes, determinations, guidelines, interpretative explanations and policies relating to the collection, use, disclosure, storage or granting of access to the Personal Information, including the Privacy Act and (to the extent applicable to Client Data) the General Data Protection Regulation (EU) 2016/679.
- 2.32 **Privacy Policy** means our privacy policy available here:
<https://cdn2.hubspot.net/hubfs/4545898/ClockOn%20Privacy%20Policy.pdf>
- 2.33 **Product Support** means assistance with the day-to-day use of the product during Service Hours via email only, not falling within the definition of Technical Support, Training or Professional Services (which we will determine at our discretion).
- 2.34 **Products** mean the Software or services specified in a Sales Order which may comprise:
- (a) supply of access to one or more of the Packages comprising the Software;
 - (b) Support; and/or
 - (c) supply of Professional Services.
- 2.35 **Professional Services** means assistance given during the Service Hours via telephone, email or remote desktop tools, including but not limited to 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.
- 2.36 **Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).
- 2.37 **Sales Order** means the order issued by you to purchase Products and services from us. This may be in the form of a formal sales order or an online order acknowledgement via the ClockOn Website or otherwise. It may be completed online or by email or in hard copy, at our option.
- 2.38 **Service Hours** means 8.30am to 5.30pm (AEST/AEDT) Monday to Friday, excluding national and NSW public holidays.
- 2.39 **Software** means all or any of the ClockOn Starter, ClockOn Standard, ClockOn Pro or Add-Ons software solutions that may be offered or provided by us via the internet on a software-as-a-service basis from time to time.
- 2.40 **Starter Help Session** means help sessions provided by ClockOn designed to assist the user in getting started with the system. They are limited to 10-minutes in duration will focus on basic location setup, adding of an employee, and the process of generating a payroll and submitting STP. A more extensive implementation service is available on a chargeable basis.
- 2.41 **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 Contributions. The data included in the STP may change based on the requirements of the ATO.
- 2.42 **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.
- 2.43 **STP Service** means the service in which your STP Data is transmitted to the ATO using the STP Data Clearing Service as described in the Schedule.
- 2.44 **Subscription** means an authority to access and use the Software in respect of your Licence Count in accordance with this Agreement.
- 2.45 **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.
- 2.46 **Support** means Product Support, Telephone Product Support or Technical Support as the context requires.
- 2.47 **Technical Support** means assistance during Service Hours via email, telephone or remote desktop tools, with product-related issues of a technical nature, not falling within product support, telephone product support or training (which we will determine at our discretion). This is a chargeable service.
- 2.48 **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.
- 2.49 **Term** means the period for which this Agreement is in force, commencing on the date this Agreement takes effect pursuant to clause 1.2 and ending on the date specified in clause 20 (unless terminated earlier in accordance with this Agreement, in which case until that date).
- 2.50 **Third Party Products & Services** means any software, hardware or services sourced from third parties for which we are not the owner or manufacturer as defined in clause 13.
- 2.51 **Training** means providing guidance or teaching you to acquire the required skills and knowledge in specific areas of the Software.
- 2.52 **Upfront Fee** means the Fee payable by you prior to our authorising access to the Software, if specified in the Sales Order.
- 2.53 **Upgrade** means a revision or build release of the Software.
- 3 Interpretation**
- 3.1 Except where the context otherwise provides or requires:
- (a) the terms **we, us** or **our** refers to ClockOn; and
 - (b) the terms **you** or **your** refers to the person who has entered into a Sales Order and is a party to this Agreement.
- 3.2 In this Agreement:
- (a) references to "clause" in this Agreement refer to clauses in this Agreement;

- (b) headings of this Agreement are included for ease of reference and do not form part of or affect their interpretation;
- (c) the words such as, **including, particularly** and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (d) a reference to a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
- (e) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced; and
- (f) a reference to a party includes its successors and permitted assigns

4 Agreement to Supply

- 4.1 Subject to the remainder of this clause 4, we shall use commercially reasonable efforts to provide you access to the Software to which you have subscribed (on a non-exclusive basis) as specified in the Sales Order during the Term and in accordance with this Agreement.
- 4.2 The description for each Product and Package is set out in the ClockOn Website. We may vary the scope and features of the Products and Packages 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.
- 4.3 The rights granted by us to you pursuant to clause 4.1 are subject to you:
 - (a) paying all applicable Fees under this Agreement; and
 - (b) you and your Personnel complying with the restrictions set out in clause 7 and the other terms of this Agreement.
- 4.4 Time will not be of the essence in our obligation to provide of Products, services and/or Software under or in connection with this Agreement.

5 Employment Conditions

- 5.1 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 and are updated from time-to-time as required by applicable law, EBAs, awards and each employee's circumstances. The Software does not make changes to the Employment Conditions automatically.
- 5.2 You acknowledge and agree that:
 - (a) it is solely your responsibility to ensure that the Employment Conditions for each employee are accurate and up-to-date and compliant with all applicable laws, EBAs and awards at all times; and
 - (b) we have no liability to you or any other person for any error or inaccuracy in the Employment Conditions entered into the Software for any employee during the Term.

We recommend that you seek legal advice to ensure that your Employment Conditions are correct prior to using the Software and ensure that these continue to remain correct over time.
- 5.3 You indemnify us and our Personnel against all damages, Losses, demands and expenses (including legal costs) incurred by us or our Personnel arising out of or in connection with any Claim relating to any error or inaccuracy in, or your breach of, the Employment Conditions and any other applicable legislation (including but not limited to workplace health and safety legislation, superannuation and anti-discrimination legislation) applicable to any of your employees during the Term.
- 5.4 Without limiting clause 5.2, we:
 - (a) may agree to supply you with Professional Services to assist you with changes to the Employment Conditions from time to time; and
 - (b) are not required to check or confirm the accuracy of the Employment Conditions prior to performing the Outsourced Payroll Service in connection with those Employment Conditions.

6 Use of the Software

- 6.1 You agree that the number of users you authorise to access and use the Software must not exceed the Licence Count, as specified in the Sales Order or as otherwise agreed in writing between the parties.
- 6.2 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.
- 6.3 Nothing in this Agreement gives you any right in, or to view, the source code of the Software.

- 6.4 You acknowledge that for us to be able to provide the ClockOn Online, your computer and communications systems must meet our minimum technical specifications.
- 6.5 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.
- 6.6 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.
- 6.7 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 the Software.
- 6.8 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.
- 6.9 You acknowledge that the Software may require us to:
 - (a) manage your data and the Software on servers provided and maintained by us or our subcontractors;
 - (b) manage the database by: installing revision and build level upgrades, backing up the database, restoring the database from the backup if required and performing disaster recovery.

7 Restrictions on Use

- 7.1 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 in accordance with our reasonable directions. Without limitation, you must:
 - (a) not attempt to copy, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, distributed or reproduce in any way part or all of the Software, except as permitted by an applicable law;
 - (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 or grant any sub-licence of any of your rights under this Agreement, other than in the capacity as a third-party payroll processing 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 (at ClockOn's sole and absolute discretion);
 - (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;
 - (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 access, store, distribute, transmit, 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 material or do anything in connection with the Software that:
 - (i) may be unlawful, offensive, violates any law, threatening, defamatory, obscene, harassing, or infringes on the rights of others;
 - (ii) facilitates illegal activity;

- (iii) depicts sexually explicit images;
 - (iv) promotes unlawful violence;
 - (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
 - (vi) causes damage or injury to any person or property;
 - (n) not commit fraud or other illegal acts through use of our Products or services; and/or
 - (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.
- 7.2 You must use your best endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, notify us as soon as practicable. ClockOn reserves the right to disable or suspend your access to the Software and the Service in the event of a breach of the provisions of this clause 7.

8 ClockOn Online Software Subscription

- 8.1 The Sales Order will indicate if we are providing the ClockOn Online Software as a subscription service under this Agreement.
- 8.2 We may at our discretion refuse to accept a Subscription for the ClockOn Online Software for any reason. We will activate your access to the Software only after and subject to our acceptance of your Subscription, payment of the Upfront Fee (if applicable) and receipt of your Payment Authority (if applicable). We will deactivate your access to the Software if you do not pay the applicable Fees in a timely basis in accordance with the invoice terms.
- 8.3 You agree that as part of onboarding your authorised user(s) with administration rights to the ClockOn Software will have the responsibility to maintain the confidentiality and management of passwords to access the system and security permissions within the ClockOn system.
- 8.4 We will provide Upgrades automatically 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.
- 8.5 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.
- 8.6 ClockOn Online Software consists 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 within the ClockOn Software and implementing other software releases as available; (ii) offering disaster recovery and backup on terms of clause 10.3 of this Agreement; and (iii) performing scheduled maintenance on our servers to support your access to the ClockOn Software.

9 Products and Packages

- 9.1 You agree that the terms of the Schedule to this Agreement will apply to your access and use of our Products and Packages.
- 9.2 The Schedule will apply as provisions of this Agreement in accordance with its terms.

10 Customer Data

- 10.1 We do not own the data that you enter or update in our system. You have sole responsibility for the legality, reliability, integrity, accuracy of the Customer Data.
- 10.2 Without prejudice to clause 22, you grant us a licence to use, copy, transmit, store, analyse, and back up all Customer Data, including any personal information relating to yourself or others, to:
- (a) enable us to provide you with and you to use our Products, Software or services;
 - (b) provide security to our Products and services;
 - (c) allow us to improve and develop our Products and services; and
 - (d) create new services and communicate with you about your Subscription.
- 10.3 As part of ClockOn Online, ClockOn implements disaster recovery procedures, 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. ClockOn will use its best endeavours to restore lost or damaged Customer Data from the latest back-up of such Customer Data maintained by ClockOn in accordance with its back up and disaster recovery procedure.

11 Fees

11.1 In consideration of us agreeing to supply access to the Software, support, training and/or Professional Services pursuant to this Agreement, you agree to pay as specified in the Sales Order:

- (a) the Upfront 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.

We may vary the Fees under this Agreement from time to time by giving you prior notice of the variation, provided that we will only be permitted to increase the Fees in each 12-month period. We may set and adjust minimum charges based on license count for all subscription customers or fixed minimum charges for Outsourced Payroll Service customers at our discretion on a yearly basis.

11.2 The notice issued under clause 11.1 will specify the date from which the variation takes effect.

11.3 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.

11.4 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 Products or services requested by you in accordance with this Agreement. You agree to complete and sign all consent and authorisation forms and/or a Payment Authority 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.

11.5 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.

11.6 You must pay any invoice issued by us within seven days after the date of invoice, if 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.

11.7 Our Fees are 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.

11.8 You may request an increase or reduction in your Licence Count at any time during the Term. If you request:

- (a) an increase in your Licence Count, the recurring Fees charged will automatically and immediately increase to reflect your request; or
- (b) a decrease in the Licence Count, the reduction in Fees will apply from the next billing cycle.

11.9 All fees and charges are non-refundable.

11.10 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.

11.11 Without limiting our other remedies, your use of or access to the relevant Products, services and/or Software will be automatically and immediately suspended if you do not pay any of our Fees by the due date set out in our invoice. We may also charge interest at a rate of 8% on overdue amounts until full payment is made.

11.12 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. You may terminate the Agreement in accordance with clause 20.4 if you do not agree to the varied Fees.

12 Online Services

12.1 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.

13 Third Party Products & Services

13.1 You acknowledge that we are not the owner or manufacturer of any software and hardware sourced

from third parties and forming part of the Products or services we offer to you, including the Software **(Third Party Products & Services)**.

The Third Party Products & Services we offer include optional services and platforms provided by:

- (a) Flare HR Pty Ltd, Flare Financial Services Pty Ltd and/or Spark Leasing Pty Ltd (**Flare**).

If you choose to use Flare's services and/or platforms the following terms apply:
<https://www.flarehr.com/platform-terms>.

- (b) Skybridge Financial Pty Ltd (**Skybridge**)

If you choose to use ClockOn's Bookkeeping Service, you agree to the provision of certain aspects of those Bookkeeping Service being provided by Skybridge, as further described in paragraph 6 of the Schedule.

- 13.2 Where we supply any Third Party Products & Services, you agree that, subject to clause 18 and applicable laws and except as expressly set out in this Agreement, we have no liability whatsoever for any defects or other failures in, or delay in or non-supply of, such Third Party Products & Services.

You acknowledge and agree that the terms and conditions of use available at the links set out in clause 13.1 (where identified) apply to your use of the relevant Third Party Products & Services.

- 13.3 In our absolute discretion, we may notify the relevant third party of any defect or issue in the Third Party Products and request that the third party to investigate. If we or you find a reproducible defect in any Third Party Products or any part forming part of the Third Party 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 Product, under warranties granted to us by the manufacturer of the third party material (if any).

14 Product Support, Professional Services and Technical Support

- 14.1 We will provide you with Product Support, Technical Support or Professional Services as agreed with you in a Sales Order.

- 14.2 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).

- 14.3 We may arrange for the supply of some or all of the Support through distributors or agents.

- 14.4 The availability of Support may occasionally vary from the stated hours due to downtime for systems, server maintenance and non-availability of staff as result of sickness.

- 14.5 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.

- 14.6 Product Support, Technical Support and Phone Support do 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 services for an additional fee.

- 14.7 If you require Professional Services, consultancy, Training, Technical Support, Telephone Product Support, email support or phone support, you can arrange to purchase such Support and/or services in advance by making a request through our website. Alternatively you can send an email with your requirements to sales@clockon.com.au.

15 Intellectual Property Rights

- 15.1 All Intellectual Property Rights in and to the Software, the Documentation and the Media Elements are owned by Tupalek Pty Limited and used by us under licence.

- 15.2 You must notify us in writing if you become aware of any infringement of any of our or Tupalek Pty Limited's Intellectual Property Rights.

- 15.2 You shall acquire no rights whatsoever in or to any Intellectual Property Rights in the Software or Documentation except as expressly provided by this Agreement or as otherwise expressly agreed in writing by the parties.

- 15.3 All Intellectual Property Rights in content that you may access through use of the Software, but is not contained in the Software, is 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.

- 15.4 This Agreement does not grant you a licence or right of use of trademarks or logos of ClockOn, our

endorsing organisations or our suppliers.

- 15.5 Subject to the provisions of this Agreement, all rights, including but not limited to all Intellectual Property Rights, related to or arising in respect of or concerning the Products and services provided by ClockOn, the Software and the business of ClockOn (collectively, **Relevant Rights**), are expressly reserved to ClockOn and its licensors and you must not use the Relevant Rights (except in accordance with this Agreement) without our prior written consent. You acquire no Relevant Rights under this Agreement and must not claim ownership of or a right to use any Relevant Rights (except in accordance with this Agreement) in any form or manner.

16 Confidentiality

- 16.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement.
- 16.2 Each party shall hold the other party's Confidential Information in confidence and not make the other party's Confidential Information available to any third party or use, disclose, publish or permit the disclosure or publication of the other party's Confidential Information for any purpose other than the implementation of this Agreement, unless:
- (a) the disclosure is required by law, a stock exchange or other regulator;
 - (b) the disclosure is to the party's personnel or advisors, provided the personnel or advisors are subject to an obligation of confidence in relation to the Confidential Information that is no less onerous than the obligations under this clause 16; or
 - (c) the other party consents in writing to the disclosure.
- 16.3 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party except where an applicable law provides otherwise.
- 16.4 You acknowledge that:
- (a) the details of the Products and services, the Software and the results of any performance tests of the Software constitute our Confidential Information; and
 - (b) any advice or deliverables supplied by us pursuant to any Professional Services for which you engage us under this Agreement is your Confidential Information. You should keep such Confidential Information secure and not disclose it to third parties.
- 16.5 The parties acknowledge that Personal Information submitted to the Software is your Confidential Information but that the performance of the Services by us requires us to disclose certain Customer Data to our suppliers and subcontractors. You hereby consent to such disclosure for the purposes of clause 16.2(c).
- 16.6 This clause does not apply to any part of the Confidential Information that:
- (a) is generally known or enters the public domain other than as a result of a breach of this Agreement or an obligation of confidence;
 - (b) is provided to a party (without restriction as to its use or disclosure) by a third party whom the recipient knows is legally entitled to possess the Confidential Information and provide it to the recipient; or
 - (c) a party is required to disclose by any applicable law or legally binding order of any court, government, or authority acting within its powers.
- 16.7 This clause 16 shall survive termination or expiry of this Agreement.

17 Warranties

- 17.1 We warrant that:
- (a) we have the legal right to grant you the licence or supply access to the relevant Products, services and Software in accordance with this Agreement; and
 - (b) the Software will perform substantially in accordance with the relevant Documentation.
- 17.2 You warrant that you have the power and authority to enter into this Agreement and perform your obligations under this Agreement.
- 17.3 You acknowledge and agree that:
- (a) you have relied on your own skill and judgment or that of your advisers in relation to its decision to acquire the Products, services and to procure access to the Software and to enter into this Agreement;
 - (b) you have and will make your own assessment of the fitness for purpose and suitability of the Software supplied pursuant to this Agreement; and
 - (c) ClockOn, its Personnel or its agents have made no representations to you about the Products, services or the Software on which you have relied in deciding to acquire them or to enter into this

Agreement, except for the warranties contained in clause 17.1.

18 Disclaimer and Limitation of Liability

- 18.1 Certain provisions of the *Competition and Consumer Act 2010* (Cth) (including, without limitation, the Australian Consumer Law) and other State, Territory or Commonwealth laws in Australia, as amended or replaced from time to time (collectively, **ACL**) provide consumers (as that expression is used in the ACL) and others with certain rights (collectively, the **consumer guarantees**) in relation to goods or services purchased by consumers.
- 18.2 Other than the warranties contained in clause 17.1 and any consumer guarantees, to the maximum extent permitted by law, we exclude all express and implied warranties, conditions, guarantees and liabilities with respect to the supply by ClockOn of any Products or services in connection with this Agreement including the supply of Third Party Products & Services (**Conditions**), including but not limited to, liability as to negligence and implied warranties of merchantability and fitness for a particular purpose (known to us or otherwise) in respect of the Products, Software, the support or other goods or services. We do not exclude any condition which by law cannot be excluded.
- 18.3 Subject to clause 5 and without limiting clause 18.2, we make no representations or warranties that the Products, services or Software will assure compliance with any industrial relations laws, EBAs or awards and we do not accept responsibility for any error, omission or defect in that information. Without limiting the preceding, you agree that you are solely responsible for ensuring that the Employment Conditions are correct and legally compliant for your Personnel at all times.
- 18.4 Subject to clauses 18.1, 18.2 and 18.7, the aggregate liability of ClockOn for breach of any Conditions is limited (at our option) to the value of the following remedy or amount:
- (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.
- 18.5 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.
- 18.6 Unless this Agreement otherwise provides a lower level of liability, the aggregate liability of ClockOn for breach of, or liabilities under, in respect of and in connection with, this Agreement (including any Sales Order) as well as our duties at law and in equity (however arising) and whether in contract, tort (including without limitation negligence), under statute, under indemnities or otherwise arising out of the relationship between you and us will not exceed the fees actually received by us from you in the 12 months preceding the claim.
- 18.7 If section 23 of the ACL applies to any provisions in this Agreement, any such provision(s) shall be void to the extent they are unfair within the meaning of section 24 of the ACL.
- 18.8 ClockOn is not licensed to provide:
- (a) financial advice or financial services; or
 - (b) any legal advice, HR or industrial relations advice including but not limited to advice in relation to payroll, awards, EBAs or employee entitlements,
- and you acknowledge and agree that nothing in this Agreement includes or contemplates the provision of such advice or services.

19 Indemnity

- 19.1 Subject to clause 19.2, 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 Software. You are solely responsible for checking the accuracy of your first and subsequent payrolls.
- 19.2 Your liability to indemnify us under this clause shall be reduced proportionately to the extent that any negligent act or negligent omission of us or our Personnel contributed to the loss or liability.

20 Term, termination and reactivation

- 20.1 For the ClockOn Standard or ClockOn Pro package, this Agreement remains in effect for the term ending in one month or one year from the date of conversion to ClockOn Standard or ClockOn Pro Product (as applicable), depending upon the annual or monthly payment respectively.
- 20.2 In the case of ClockOn Starter, this agreement remains in effect for the term ending upon 27 STP submissions to the ATO or 12 months from the date of registration of the Software whichever happens

- first. After the Term, the customer will have the option to sign up for an upgrade to a paid Subscription in which case clause 20.1 will apply.
- 20.3 Unless you give us notice of at least one month before the end of the term, this Agreement then continues for a further term of the same length as the previous term, subject to your payment of the applicable fees. This clause does not apply to ClockOn Starter.
- 20.4 Either party may terminate this Agreement by at least one month notice any time before the expiry of the term.
- 20.5 This Agreement terminates immediately and automatically if either party is in breach of any obligation under this Agreement and the breaching party fails to correct that breach within seven days from receiving notice from the other party specifying the breach and the termination date if not remedied, unless otherwise agreed between the parties.
- 20.6 If you fail to pay the Fees within the time required by this Agreement, we may suspend your access to the Software and you and your authorised user(s) will be unable to continue accessing and using the Software and our Products and services. In those circumstances, we will contact you to determine your intentions and if desired, restore the Product with the least possible delay, subject to your payment of the outstanding Fees. If the outstanding Fees are not paid within 14 days of us contacting you, this Agreement will automatically terminate.
- 20.7 In the event that you default on any obligations under this Agreement, ClockOn shall have the right to recover all reasonable legal fees, court costs, and any other expenses incurred. This provision shall apply to all collection efforts initiated by ClockOn, including but not limited to third-party collections and legal actions.
- 20.8 You acknowledge that we may delete all the Customer Data held in ClockOn systems at any time after a period of 30 days from termination or expiry of this Agreement subject to clause 20.8.
- 20.9 At the time of termination or expiry of this Agreement, you can request continued access to the Customer Data held in ClockOn systems and reports only. In this instance we may provide you a single user licence to access that data and reports. This will be a chargeable service.
- 20.10 You may reactivate a terminated or expired Agreement by requesting and completing a new electronic sales order and payment of a once-off reactivation charge, new subscription charges in advance and any outstanding fees accrued or payable prior to the original termination or expiry date. Once reactivated all terms of this Agreement including future termination or expiry of the reactivated agreement continue to apply.
- 20.11 On termination or expiry of this Agreement:
- (a) you must cease accessing and using the Software, subject to the limited access rights specified in clauses 20.7 and 20.8; and
 - (b) each party shall return and make no further use of any Confidential Information, Intellectual Property Rights, equipment, property, documentation and other items (and all copies of them) belonging to the other party.
- 20.12 Termination of this Agreement does not affect any accrued rights or remedies of either party.
- 20.13 Clauses 2, 3, 5, 11, 13, 15, 16, 18 to 29 survive termination of this Agreement.

21 Transfer

- 21.1 You are not permitted to transfer or sub-licence this Agreement or any of your rights under it to a third party.
- 21.2 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. There will be a fees associated with this service.

22 Privacy Policy

- 22.1 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.
- 22.2 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,



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ClockOn Online Software Master Services Agreement

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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:

- (i) to enable us to provide you with and to enable you to use our Products, Software or services (including the Third Party Products & Services);
 - (ii) 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
 - (iii) 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.
- 22.3 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 and services, 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).
- 22.4 If ClockOn is required by relevant laws to disclose, delete, amend, render anonymous or otherwise process Personal Information for the purposes of the *Privacy Act 1988* (Cth) or other relevant Privacy Laws (notwithstanding that the same may be Confidential Information and or Customer Data), then it may do so and in such circumstances you must pay to us our reasonable costs of compliance at applicable professional services standard rates.

23 Severance

- 23.1 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.

24 Force Majeure

- 24.1 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, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, your acts or omissions, accident, breakdown of plant or machinery, fire, flood, storm or a default under, termination or variation of an agreement by or with a supplier or sub-contractor of ClockOn, pandemics, cyber-attacks, governmental actions, or any other similar events ('Force Majeure Events'). During such Force Majeure Events, our obligations are suspended, and we shall not be deemed in breach of this Agreement.

25 Entire Agreement

- 25.1 This Agreement constitutes the entire agreement between the parties, except as otherwise provided in this Agreement.
- 25.2 If there is any conflict between the documents comprising this Agreement, the conflict is to be resolved by giving priority to the terms of the main body of this Agreement, then to the schedules to this Agreement (if any) and then to each Sales Order (in order they were entered into) except where a later document is explicitly expressed to override an earlier one.

26 Waiver

- 26.1 Any failure or delay by one party to compel performance by another party of any of the terms and conditions of this Agreement does not constitute a waiver of those terms or conditions, nor does it affect or impair the right of the first party to enforce them against the other party at a later time or to pursue remedies it may have for any subsequent breach of those terms or conditions.
- 26.2 A waiver by a party of a provision or of a right under this Agreement is only binding on the party granting the waiver if it is given in writing signed by that party and is only effective in the specific instance and for the specific purpose for which it is given.

27 Relationship of the parties

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

28 Counterparts

- 28.1 This Agreement may be executed in one or more counterparts executed by one or more of the parties, each of which counterparts will constitute the one agreement which will be binding on all the parties when one such counterpart has been executed by each party.
- 28.2 Subject to applicable laws, the parties may execute and witness this Agreement, and any document

entered into under it, electronically (including through an electronic platform). The Parties agree that this Agreement may be signed electronically in accordance with the *Electronic Transactions Act 2000* (NSW).

29 Governing Law

- 29.1 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.

Schedule

1 ClockOn Starter

- 1.1 We may offer you ClockOn Starter at our discretion. If we offer you ClockOn Starter then this paragraph 1 applies to your use and access to ClockOn Starter. ClockOn Starter functionality and your rights to access and use ClockOn Starter are subject to the exceptions, limitations and exclusions outlined in paragraph 1.4 and 1.5 below or otherwise notified to you in the Sales Order or separately by us from time to time.
- 1.2 ClockOn grants you a non-exclusive, personal licence to access ClockOn Starter during the Term in accordance with this Agreement, free of charge.
- 1.3 You agree to accept sole responsibility for set up and operation of ClockOn Starter using the free Starter Help Session and 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 or ClockOn Pro paid version of ClockOn (and our other Products) and not specifically the ClockOn Starter product, which has limitations and exclusions as outlined in paragraphs 1.4 and 1.5.
- 1.4 ClockOn Starter will allow customers to record timesheets and process payrolls without any usage limitations. However, use of ClockOn Starter for STP submissions will be limited to a maximum number of 27 STP submissions to the ATO or 12 months of STP submissions from the date of registration, whichever occurs first.
- 1.5 In the event of non-usage of the product (either by not recording timesheets, processing any payroll or by non-submission of STP within a 12 month period) your ClockOn Starter will be deemed to be inactive and your data purged. In comparison to ClockOn Standard or ClockOn Pro, ClockOn Starter excludes some features including (but not limited to) ClockOn GO, integration with third party products and access to the full suite of reports.
- 1.6 If you require the full functionality provided by the ClockOn Standard or ClockOn Pro (without the limitations and exclusions that apply to ClockOn Starter), you may transition to ClockOn Standard or ClockOn Pro upon payment of the applicable fees.

2 ClockOn Standard

- 2.1 You may opt to upgrade from ClockOn Starter to ClockOn Standard upon your request. If you upgrade to ClockOn Standard then this paragraph 2 applies.
- 2.2 ClockOn grants you a non-exclusive, personal licence to access ClockOn Standard during the Term in accordance with this Agreement.
- 2.3 You agree to accept sole responsibility for set up and operation of ClockOn Standard using the online support materials, including the ClockOn Knowledge Base accessible via the ClockOn website.

3 ClockOn Pro

- 3.1 Upon request, you may opt to upgrade to ClockOn Pro from either ClockOn Starter or ClockOn Standard or add on ClockOn Pro to the Outsourced Payroll Service. If you upgrade to ClockOn Pro then this paragraph 3 applies.
- 3.2 ClockOn grants you a non-exclusive, personal licence to access ClockOn Pro during the Term in accordance with this Agreement.
- 3.3 You agree to accept sole responsibility for set up and operation of ClockOn Pro using the online support materials, including the ClockOn Knowledge Base accessible via the ClockOn website.
- 3.4 You acknowledge and agree that you retain sole responsibility for ensuring that the HR data and records you submit to ClockOn Pro are compliant with each individual's Employment Conditions and all applicable laws and regulations (including, but not limited to, work health and safety laws, superannuation laws, migration laws, gender equality and anti-discrimination laws).

4 STP Service

- 4.1 We provide the STP Service to you during the term in accordance with and subject to the terms of this Agreement.
- 4.2 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 submission of the STP Data to the ATO via the STP Clearing Service has been successful.
- 4.3 You warrant 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.
- 4.4 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.

- 4.5 ClockOn will enable the STP Service in the Software after validation of the details provided. 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.

5 Outsourced Payroll Service

5.1. Application and precedence

This Schedule item 5 applies only to the Outsourced Payroll Service and only if the relevant Sales Order states that you are acquiring the Outsourced Payroll Service from us.

5.2 Your acquisition of the Outsourced Payroll Service is conditional upon:

- (a) your agreement to this Agreement, this Schedule and the Sales Order;
- (b) our acceptance of the Sales Order;
- (c) payment of any applicable upfront, establishment or implementation fees; and
- (d) receipt of any payment authority, direct debit authority, credit card authority, clearing service authority or other authorisation reasonably required by us.

5.3 In relation to the Outsourced Payroll Service, this Schedule is supreme and prevails over any inconsistent term in:

- (a) the main body of this Agreement except items 18 & 19 in respect of Limitation of Liability and Indemnity ;
- (b) any other Schedule;
- (c) any Sales Order, quote, proposal or other service description; and
- (d) any website content, support material, marketing material or other document incorporated by reference.

5.4 A Sales Order, quote, proposal or other document will only override this Schedule if it expressly identifies the clause of this Schedule to be overridden and expressly states that it is intended to prevail over that clause.

5.5 The Sales Order may specify the operational elections and commercial settings for the Outsourced Payroll Service, including payroll frequency, payroll dates, pricing, minimum charges, superannuation processing frequency, report recipients and included options, without overriding this Schedule unless clause 5.4 is satisfied.

5.6 Definitions

In this Schedule:

5.6.1 Agreed Time 1 means **11:00 am, New South Wales time, on the payroll day.**

5.6.2 Agreed Time 2 means **3:30 pm, New South Wales time, on the payroll day.**

5.6.3 Authorised Payroll Representative means any person nominated by you in the Sales Order or otherwise notified by you to us in writing as authorised to provide payroll instructions, approvals and confirmations on your behalf.

5.6.4 Clearing Service means any third party clearing house, payment gateway, transmission service or similar provider used in connection with payroll payments, superannuation contributions, payroll files or related payroll data.

5.6.5 Normal Processing Rate means the standard charge applicable to the relevant payroll run, additional payroll run or payroll event under the Sales Order or, if not stated there, our then current rate for that payroll event.

5.6.6 OPS Fees means the fees payable for the Outsourced Payroll Service as set out in the Sales Order,

including any setup fee, minimum monthly charge, per employee fee, per payslip fee, per payroll fee or other pricing metric stated in the Sales Order.

5.6.7 Professional Service Rate means our standard hourly or time-based professional services charge rate in effect from time to time, as notified by us or published in our pricing schedule.

5.6.8 Payroll Data means all timesheets, payroll instructions, payroll lockdowns, employee data, employment conditions, pay changes, banking details, superannuation details, approvals and any other information required by us to process payroll.

5.6.9 Standard Reports means the standard payroll report set included with the Outsourced Payroll Service, being up to **11 payroll reports per pay run**, comprising up to **4 preview reports** and up to **7 final reports**.

5.6.10 Validity Checks means reasonable operational checks carried out by us on Payroll Data for obvious incompleteness, missing fields, duplicate entries, warning conditions or other face-value validation matters. Validity Checks do not include correction, amendment, interpretation, re-keying, reconstruction, cleansing or data entry work.

5.7. Scope of service

5.7.1 Subject to this Agreement and payment of the applicable Fees, we will provide the Outsourced Payroll Service for the Term.

5.8 The Outsourced Payroll Service includes:

- (a) processing payroll using the Software and related systems maintained by us or our subcontractors;
- (b) configuration of initial employee pay details as part of implementation;
- (c) access to the Software for the functions specified in the Sales Order;
- (d) provision of an ABA file for you to upload to your bank for each payroll, unless otherwise agreed in writing;
- (e) emailing payslips to employees through the Software, where requested by you and supported by the Software;
- (f) processing superannuation, subject to clause 5.25;
- (g) delivery of the Standard Reports for each pay run;
- (h) access for your nominated accountants or bookkeepers to reports, where requested by you and supported by the Software's access controls;
- (i) help desk support from our payroll team by email and telephone during Service Hours in relation to payrolls being processed under the Outsourced Payroll Service;
- (j) database management, backup, restoration from backup if required, maintenance and disaster recovery in relation to the systems used to provide the Outsourced Payroll Service; and
- (k) data security, backup and disaster recovery policies that meet required standards.

5.9 The Outsourced Payroll Service includes Validity Checks only. Data entry amendments are excluded.

5.10 We are not required to provide the Outsourced Payroll Service in respect of any employee or pay event where the relevant Payroll Data is invalid, incomplete, inconsistent, unapproved, late, missing or displays warning conditions.

5.11 Customer responsibilities

5.11.1 You must provide to us, in the form reasonably required by us:

- (a) payroll frequency and payroll dates;
- (b) details of your Authorised Payroll Representatives;
- (c) all employee data, employment conditions and other Payroll Data required for setup and payroll processing;
- (d) all required banking, superannuation and clearing service details and authorities;
- (e) report recipients, payslip delivery preferences and access requests; and
- (f) any other information reasonably required by us to commence or continue the Outsourced Payroll Service.

5.12 You must ensure that employment conditions are correctly entered initially.

- 5.13** You must inform us in writing of any changes required to employment conditions from time to time, with sufficient time for us to action those changes before the relevant payroll.
- 5.14** To ensure prompt payroll processing, you must ensure that all payroll lockdowns and additional payroll instructions are completed and submitted to us no later than Agreed Time 1. This includes allowances, backpays, new employees, terminations, rate changes and any other payroll adjustments required for that payroll.
- 5.15** Any substantial changes, including bulk bonus payments or large-volume amendments, must be communicated to us as soon as reasonably practicable.
- 5.16** You must provide final approval of the provisional payroll report, or any other approval notification required by us, no later than Agreed Time 2.
- 5.17** Delays in complying with clause 5.14 or clause 5.16 may result in the payroll being shifted to the following business day.
- 5.18** You are responsible for ensuring that all relevant timesheets, approvals, payroll inputs and payroll instructions are finalised in sufficient time to allow compliance with Agreed Time 1 and Agreed Time 2.
- 5.19** You are responsible for processing employee payments, unless otherwise expressly agreed in writing.
- 5.20** You are responsible for importing payroll journal entries into any third party accounting system, unless otherwise expressly included in the Sales Order or another service acquired from us.
- 5.21** You are responsible for distributing printed payslips to employees unless payslips are delivered electronically through the Software or otherwise by us under the Sales Order.
- 5.22** You must provide and maintain correct employee email addresses, access credentials and other information reasonably required for us to provide the Outsourced Payroll Service.
- 5.23** You warrant that you have obtained all necessary consents to disclose to us, and to any relevant Clearing Service, all employee personal information required for the purposes of this Agreement and this Schedule.
- 5.24 Employment conditions and compliance**
- 5.24.1** You acknowledge that the Software used for payroll does not automatically update employee pay conditions in accordance with industry-controlled compliance changes, award changes, legislative changes, enterprise agreement changes or other external compliance changes.
- 5.24.2** We may, but are not obliged to, notify you if we become aware of an apparent inconsistency, discrepancy or possible non-compliance in the employment conditions or Payroll Data provided by you.
- 5.24.3** Whether or not we give any notice under clause 5.24.2, you remain solely responsible for ensuring compliance with all applicable awards, enterprise agreements, contracts, policies and laws.
- 5.24.4** To the extent you require us to maintain a record of employment conditions as part of the Outsourced Payroll Service, you acknowledge that our ability to do so accurately depends on you providing complete, accurate and current information and instructions.
- 5.24.5** Any setup outputs, implementation reports or approved payroll settings confirmed by you will form the basis of future payroll processing unless and until you notify us of changes in writing and we acknowledge those changes.
- 5.25 Superannuation processing**
- 5.25.1** Where superannuation processing is included in the Sales Order, we will process as specified in the Sales Order.
- 5.25.2** The included service covers one upload only to the relevant Clearing Service for each agreed superannuation processing cycle.
- 5.25.3** Any rejected, returned, reversed, corrected, amended, duplicate, replacement, late or repeat submission or resubmission to the Clearing Service is excluded from the included service and is chargeable under clause 5.32
- 5.26** You authorise us and any relevant Clearing Service to process and transmit superannuation contribution data and related payment instructions to the extent required to provide the Outsourced Payroll

Service.

5.27 You must provide all authorities, employee data, fund details and other information required for superannuation processing and clearing house submission.

5.28 Exclusions and additional professional service charges

5.28.1 Manual entry of timesheets

If you choose to record employee time records using a system other than ClockOn requiring us to add timesheets into Clockon on your behalf in order to process payroll, the manual input worked times are chargeable at the Professional Service Rate.

5.29 Data entry of new employees

If you request that we add employees on your behalf, including linking them to departments, rulesets, pay settings or other payroll structures, that work is chargeable at the Professional Service Rate

5.30 Data entry amendments

Validity Checks are included. Data entry amendments are excluded. If you ask us to amend, correct, clean, re-key, interpret, reconstruct or otherwise alter submitted Payroll Data, employee data, timesheets, banking data, superannuation data or similar information, that work is chargeable at the Professional Service Rate

5.31 Changes to payroll and reprocessing after cut-off or after payroll has been processed

Changes, reprocessing, special payrolls, additional payrolls, bonus payrolls, roll backs and similar out-of-cycle processing requested after Agreed Time 1, after Agreed Time 2, or after payroll has been processed, are chargeable at the Normal Processing Rate

5.32 Clearing House resubmissions

Any clearing house resubmission including Single Touch Payroll and Superannuation clearing house submissions, correction, reversal, retry, replacement upload or other additional submission excluded by clause 5.25.2 is chargeable at the Professional Service Rate, unless the work requires a further payroll event, in which case the **Normal Processing Rate will** also apply.

5.33 Additional reports

The Standard Reports only are included. If you request that we generate additional reports on your behalf, that work is chargeable at the Professional Service Rate

5.34 Custom report creation

If the requested report is already available in the system, or we have previously built the same custom report and can make it available without material additional work, we may make it available at no additional charge. If new report creation or customisation work is required, that work is chargeable at the Professional Charge Rate.

5.35 Professional services supplied by the OPS or Support teams

One-to-one assistance falling outside the included scope of the Outsourced Payroll Service or your normal support entitlement, including project work, consulting, training, reconciliations, bespoke exports, custom data work and similar assistance, is chargeable at the Professional Charge Rate

5.36 Fees and payment

5.36.1 You must pay:

- (a) any applicable establishment, implementation or upfront fees;
- (b) the OPS Fees;
- (c) all charges under clauses 5.28 to 5.35;

(d) any other Professional Services charges; and

(e) any other amount payable under the Sales Order or this Agreement.

5.36.2 Upfront fees may be paid by credit card or direct debit unless otherwise agreed.

5.36.3 Unless otherwise stated in the Sales Order, we may charge your credit card or direct debit arrangement each calendar month for the fees payable in respect of the Outsourced Payroll Service provided by us during that month, together with any additional charges incurred during that month.

5.37.4 If, for any reason, a service is not paid by direct debit or charged to your credit card, you must pay any invoice issued by us within **7 days** of the date of invoice.

5.37.5 No refund is payable for Software, hardware or services following payment for those items, except to the extent required by law.

5.37.6 The calculation of OPS Fees may be based on any pricing metric stated in the Sales Order, including payslips generated, employees processed, payrolls processed, minimum monthly charges or a combination of those metrics.

5.38 Support, reports and access

5.38.1 The included support under clause 5.8(i) is limited to routine operational assistance directly related to payrolls being processed under the Outsourced Payroll Service.

5.38.2 Included support does not include consulting, legal advice, industrial relations advice, taxation advice, accounting advice, custom report creation, data amendment work, project work, training or other out-of-scope services, all of which may be separately chargeable.

5.38.3 Any access provided to accountants, bookkeepers or other third parties is subject to:

(a) your written authority;

(b) the user permissions and functionality available in the Software;

(c) applicable privacy and confidentiality requirements; and

(d) any additional user, access or licence fees stated in the Sales Order, if applicable.

5.39 Technical, security and operational continuity

5.39.1 You acknowledge that, for us to provide the Outsourced Payroll Service, your systems, internet access, communications environment and data inputs must meet our minimum technical requirements from time to time.

5.39.2 You must keep all passwords and access credentials secure and are responsible for their listing, distribution and use, whether authorised or not.

5.39.3 We will maintain backup, restoration, maintenance and disaster recovery procedures in relation to the systems used to provide the Outsourced Payroll Service.

5.40. General

5.40.1 The features and inclusions of the Outsourced Payroll Service are those expressly stated in this Schedule and, where applicable, the Sales Order.

5.40.2 Website content, support content and marketing material may describe features or service elements of the Outsourced Payroll Service, but do not create binding obligations unless expressly incorporated into this Schedule or the Sales Order.

5.40.3 Nothing in this Schedule obliges us to provide legal, industrial relations, taxation, accounting or compliance advice.

5.40.4 This Schedule survives and continues to apply to any payroll work, correction work, reprocessing work, reporting work or reconciliation work requested after termination, to the extent necessary to give effect to accrued rights, payment obligations and any agreed post-termination services.