

ClockOn Master Services Agreement

This Agreement set out the contractual arrangements between you and ClockOn Pty Limited (ABN 83 095 696 049) (us) for the use of the Products you have selected. By signing this Agreement or completing our application process and installing the Software or accepting the Product, as applicable, you agree to be bound by this Agreement. Schedules which relate to Products you have not selected do not apply to you. We may vary this Agreement from time to time by notice.

1 Definitions

In this Agreement:

- 1.1 **Agreement** means the main body of this document together with the Schedules applicable to the Products you are acquiring from us.
- 1.2 **ATO** means the Australian Taxation Office.
- 1.3 **Clearing Service** means a third party service provider engaged by us to process and transfer the applicable payments or data being the Employee Payments Clearing Service, the STP Data Clearing Service or the Superannuation Contributions Clearing Service, as applicable to the particular Product.
- 1.4 **ClockOn GO** means the mobile application available as an optional accessory for communication between ClockOn employers and employees.
- 1.5 **ClockOn Website** means the website at www.clockon.com.au or www.clockon.com.
- 1.6 **Cloud Services** means provision of access to the Software via our cloud-based hosting service in accordance with this Agreement including Schedule 6.
- 1.7 **Date and Time Security** means maintenance of correct dates, time and text formatting in your system, including Daylight Saving Time changes with the language, date and time settings.
- 1.8 **Documentation** means the Administrator's Guide, the ClockOn Help file, video training guides, technical literature and other related materials in human-readable form, for assisting in the use and understanding of the Software and the Hardware.
- 1.9 **Employment Conditions** means the individual employment conditions applicable to each of your staff (including, where applicable, award rates and allowances) which are configurable in the Software via the components of the payroll engine for the Software known as the Rule Manager, the Rates Manager and the Allowances Manager.
- 1.10 **Employee Payments Clearing Service** means the third party gateway we use to transmit your payroll payments to your personnel as part of the Managed Payroll Service.
- 1.11 **Enhancement Pack** means one or more revision or build releases of the Software indicated by changes in the third or fourth digits of the Version Number (including the End of Financial Year release) provided by us to improve or enhance the performance of the Software excluding defect fixes.
- 1.12 **Establishment Fee** means the Fee payable by you prior to commencement of the supply of the applicable Product, if specified in the Sales Order.
- 1.13 **EULASA Product** means access to and use of the Software in respect of your Permitted Users in accordance with this Agreement including Schedule 1.
- 1.14 **Fees** means fees payable by you in connection with the Products in accordance with the initial Sales Order and any subsequent Sales Orders. We may vary the Fees at any time by 30 days notice and the new Fees will apply from the start of the next renewal term for your Product.
- 1.15 **Go Live** means that moment at which the Software is permanently activated for your use. Assistance with Go Live can be provided as a Professional Service.
- 1.16 **Hardware** means all hardware you order from us, including biometric scanners.
- 1.17 **Intellectual Property Rights** mean all intellectual property rights, including but not limited to patents, trade marks 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.
- 1.18 **Major Releases** mean those Software releases identified by a change in the first digit of the Version Number.
- 1.19 **Managed Payroll Service** means our provision of assistance to your Permitted Users in managing your payroll processing requirements in accordance with this Agreement including Schedule 3.
- 1.20 **Managed STP Service** means the service in which your STP Data is transmitted to the ATO using the STP Data Clearing Service in accordance with this Agreement including Schedule 4.
- 1.21 **Managed Superannuation Service** means the service in which payment of the Superannuation Contributions using the Superannuation Contributions Clearing Service is managed in accordance with this Agreement including Schedule 5.
- 1.22 **Media Elements** mean Microsoft Word templates, ClockOn generated reports or tutorials, 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 .csv or SAFF format.
- 1.23 **Minor Releases** mean those Software releases identified by a change in the second digit of the Version Number.
- 1.24 **Parallel Payroll** means a test of ClockOn Payroll to compare with your pre existing payroll system for accuracy, prior to Go Live. This trial involves the provision of chargeable Professional Services by us to you.

- 1.25 **Payment Authority** means a credit card or direct debit authority from you authorising payment of the applicable Fees and charges.
- 1.26 **Permitted Users** means the number of your personnel in respect of whom 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 10.5 and 10.6), as varied from time to time by written agreement between you and us.
- 1.27 **Privacy Policy** means the ClockOn Privacy Policy in respect of the collection, handling, use, transmission and disclosure of personal information available at www.clockon.com.au and as amended from time to time.
- 1.28 **Product Support** means assistance, during Service Hours via telephone, email or chat line, with the day-to-day use of the Products, not being assistance falling within Professional Services (which we will determine in our discretion). Product Support is a chargeable item unless you have a Subscription Service which includes ClockOn Enterprise, in which case it is included in the Fees for your Subscription Service.
- 1.29 **Product Support Credit** means a prepaid credit for the provision of Product Support. Product Support Credits cost less than Professional Service Credits, reflecting the simpler nature of Product Support matters. Product Support Credits are non-cancellable and non-refundable.
- 1.30 **Products** mean the ClockOn products or services you have selected in a Sales Order which comprise one or more of the following: (a) the EULASA Product (Schedule 1); (b) the Subscription Service (Schedule 2); (c) the Managed Payroll Service (Schedule 3); (d) the Managed STP Service (Schedule 4); (e) the Managed Superannuation Service (Schedule 5); (f) the Cloud Services (Schedule 6); (g) supply of Hardware (clause 6); (h) supply of Professional Services (clause 8); and (i) Enhancement Packs (Schedule 1 and Schedule 2) (EULASA Product and Subscription Service only). You may order one or more different Products using a Sales Order. However, we only offer the EULASA Product to existing customers who already use this Product via a prior Agreement with us. Different parts of this Agreement apply to the different Products as indicated in the Terms.
- 1.31 **Professional Services** mean assistance, during the Service Hours via telephone, email or chat line, with training, Go Live assistance, Parallel Payroll assistance, project management, consultancy on employee terminations, assistance with payroll reconciliations and adjustments, end of financial year reconciliations, version upgrade support, specialised industrial relations advice, assistance with Employment Conditions updating, data reconfiguration, Enhancement Pack support (EULASA Product only) and any other services other than Product Support or Technical Support. Professional Services are chargeable items.
- 1.32 **Professional Service Credit** means a prepaid credit for the provision of Professional Services. Professional Service Credits are non-cancellable and non-refundable.
- 1.33 **Registration Code** means a code we issue to you which enables you to use the Software. 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.
- 1.34 **Sales Order** means a form which sets out the details of Products you are acquiring from us. The name and form of the Sales Order will vary depending on the Products you select and may be referred to as a sales order, a proposal, a renewal form, an online subscription form or an application form. It may be completed online or in hard copy, at our option, depending on the Products you are selecting.
- 1.35 **Service Hours** means 9.00am to 5.00pm (AEST/AESST) Monday to Friday, excluding national and NSW public holidays.
- 1.36 **Software** means one or more of the software products known as ClockOn Enterprise, ClockOn Rostering, ClockOn Time and Attendance, ClockOn Payroll, ClockOn Combo Pack #1 – Accord and ClockOn Combo Pack #2 – Premium, ClockOn GO, the Web Portal and the Establishment Wizard (if provided separately) as indicated in a Sales Order including any Enhancement Packs you acquire in the case of the EULASA Product. Each of the software products is described on the ClockOn Website.
- 1.37 **STP Data** means your payroll details including your company or business name, ABN, employee names and tax file numbers (where required), salaries and wages information the pay as you go (PAYG) income tax withholdings and superannuation payment information.
- 1.38 **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 Managed STP Service.
- 1.39 **Subscription Service** means access to and use of the Software in respect of your Permitted Users in accordance with this Agreement including Schedule 2.
- 1.40 **Superannuation Contributions** means superannuation contributions for your employees in accordance with the details you have notified to us including Superannuation Guarantee Contributions and salary-sacrifice superannuation contributions.
- 1.41 **Superannuation Contributions Clearing Service** means the third party gateway used to transmit the Superannuation Contributions to the relevant superannuation funds.
- 1.42 **Support** means Product Support, Professional Services or Technical Support, as the context requires.
- 1.43 **Technical Support** means assistance, during Service Hours via email or chat line, with Product-related issues of a technical nature, not being assistance falling within Product Support or Professional Services (which we will determine in our discretion), subject to clauses subject to clauses 12 and 14.1(c). ClockOn Enterprise customers may also request Technical Support by telephone.
- 1.44 **Term** means for the period for which this Agreement is in force as specified in clause 17, unless terminated earlier in accordance with this Agreement.

- 1.45 **Trial Period** means a period of 30 days from the date on which you first access or download the Software, if applicable to the Product and specified in the Sales Order. Trial Periods are available only for the following Products: ClockOn Rostering, ClockOn Time and Attendance and ClockOn Payroll, and only if we agree.
- 1.46 **Upgrade** means a revision or build release of the Software.
- 1.47 **Web Portal** means the optional ClockOn online employee self-service system offered as part of the Software.
- 1.48 **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 agree to supply and you agree to acquire the Products specified in a Sales Order during the Term in accordance with this Agreement including any Schedule applicable to the Products you are acquiring from us.
- 2.2 The features for each Product are set out on the ClockOn Website. We may vary those features periodically by updating the ClockOn Website and those varied features will then constitute the relevant Product for the purposes of this Agreement from the date of the 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. It is 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 the Employment Conditions remain correct.
- 3.2 If you are acquiring the EULASA Option, when we provide you with the Product, you must use the Setup Wizard to configure the Employment Conditions for each employee. You must manually update the Employment Conditions from time to time as changes apply when new employees start.
- 3.3 If your Product is the Subscription Service or the Managed Payroll Service, you must use the Setup Wizard to notify us of the Employment Conditions for each employee and we will configure the Software to reflect those Employment Conditions. You must notify us as Employment Conditions for existing employees change and to provide Employment Conditions for any new employees.
- 3.4 Without limiting 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 This clause applies where your Products include the EULASA Product or the Subscription Service.
- 4.2 You may use the Software only on computers used for work purposes that meet our minimum technical specifications. You must only use the Software in respect of the number of staff in respect of whom you are paying Fees as specified in the Sales Order. You may configure the Software for use in your business using the Establishment Wizard we supply. Alternatively, we may agree to provide configuration and Go Live assistance for additional Fees as part of the Professional Services we provide.
- 4.3 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 use within your registered organisation.

5 Restrictions on Use

Except as expressly permitted in this Agreement, you must:

- a) not copy or reproduce in any way part or all of the Software without acquiring from us one additional licence per copy, other than a single copy maintained for archival purposes;
- 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, or permit to be copied, the Documentation within your registered organisation;
- e) not rent, lease, lend or provide commercial Cloud Services to third parties with the Software, other than in the capacity as a payroll bureau, in which instance an additional Fee must be paid for each client to whom you supply payroll bureau services;
- 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 is 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; or

- h) not permit any third party to distribute copies of the Media Elements except where permitted by this Agreement.

6 Hardware

- 6.1 We agree to supply to you the Hardware you order from us via a Sales Order in accordance with this Agreement, subject to full and timely payment of the applicable charges and Fees for that Hardware. This clause 6 only applies where you order Hardware from us.
- 6.2 All Hardware is covered by a manufacturer's twenty four month warranty. We will endeavour to give you the benefit of any applicable manufacturer's warranty as our sole responsibility.
- 6.3 Risk of loss or damage to the Hardware passes to you on delivery to you. Title to the Hardware passes to you on full payment for the Hardware or completion of a hire purchase agreement, if applicable. Until title passes to you, you hold the Hardware as our bailee. At our option, we may register our security interest in the Hardware on the Personal Property Securities Register. By opening the relevant packaging you are taken to have accepted the Hardware.

7 Supply of other optional Products

- 7.1 If included in your Sales Order, subject to payment of the applicable Fees, we will:
 - a) provide the Cloud Services to you as your means of access to the Software;
 - b) give you access to the Web Portal;
 - c) give you access to ClockOn GO;
 - d) provide the Managed STP Service to you; and
 - e) provide the Managed Superannuation Service to you, during the Term.
- 7.2 If we are providing ClockOn GO to you, you consent to us using ClockOn GO to promote additional goods and services directly to your employees which may be of interest to them personally. Promotion and provision of these additional goods and services may involve use of specific ClockOn data relating to the particular employee contained in your records and you consent to that use. Such data will remain confidential with that employee in accordance with our existing privacy policy. Employees using ClockOn GO will have the right to both Subscribe and Unsubscribe to these promotions.

8 Product Support, Professional Services and Technical Support

- 8.1 We will provide you with Product Support or Professional Services (or both) as agreed with you in a Sales Order, subject to payment of the applicable Fees. You may acquire Product Support Credits and Professional Services Credits from us from time to time which you may use to satisfy Fees for Product Support or Professional Services, respectively. We generally sell Product Support Credits and Professional Services Credits at a discount to our standard hourly rates for Product Support and Professional Services.
- 8.2 We will provide Technical Support in accordance with this Agreement. If you have the EULASA Offering, annual Fees apply to Technical Support. For other customers, Technical Support is included in your periodic Fees.
- 8.3 We may arrange for the supply of some or all of the Support through distributors or agents.
- 8.4 The availability of Support may occasionally vary from the stated hours due to downtime for systems and server maintenance.
- 8.5 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.
- 8.6 Technical 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 Product Support or Professional Services, as applicable. We may agree to provide such assistance for an additional Fee.

9 Backup and Time Security

- 9.1 You are solely responsible for data backup if the Software is locally deployed on your computer system. We do not accept responsibility, and exclude all liability, for data loss due to failure of your local backup procedures.
- 9.2 Where we are providing Cloud Services, we will back up your data on a nightly basis. Each backup is saved for 3 days and then overwritten.
- 9.3 We accept no responsibility for inaccurate or inappropriate data resulting from subversion or other factors adversely impacting the system time on your computer system or network and exclude liability to you which may result from such action to the maximum extent permitted by law.
- 9.4 You are responsible for Date and Time Security in your computer network. Without limitation, it is your responsibility to periodically check your Windows Server Time for accuracy and for any disparity between that time and times recorded by your finger scanners as displayed in the ClockOn Time

Sheets. If such a disparity is identified, assistance can be sought from the ClockOn Help Desk to make the necessary adjustment. Fees will apply.

10 Fees

- 10.1 In consideration of us agreeing to supply or provide access to the Product, you agree to pay in respect of the Product:
 - a) the Establishment Fee, if applicable;
 - b) recurring Fees for the applicable Products as specified in the Sales Order; and
 - c) any other applicable Fees for the Products, Technical Support, Product Support and Professional Services.
- 10.2 Except for Fees applying to a EULASA Product (if applicable to you), you authorise us to direct debit you for any recurring Fees on a monthly basis in accordance with this Agreement. For a EULASA Product (if applicable), you authorise us to direct debit you for the recurring Fees on an annual basis 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.
- 10.3 You must pay any invoice issued by us within 7 days of the date of invoice when payment for a Product or service under this Agreement for any reason is not direct debited.
- 10.4 A Schedule may contain other Fee provisions applying to the relevant Product.
- 10.5 Recurring Fees charged by reference to your staff numbers (Permitted Users) will automatically and immediately increase if there is an increase in your staff numbers beyond the number covered by your current service. If you are a Subscription Service customer, you may request a reduction in the applicable Fees due to a decrease in your staff numbers no more than four times in each 12 month period.
- 10.6 Our Products are subject to Fees calculated in accordance with the number of Permitted Users, as indicated in the Sales Order. Those Fees are charged on a per Permitted User per month basis. We generally calculate the number of Permitted Users each month at the time your payroll is processed.
- 10.7 Professional Service Credits can be applied to 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.
- 10.8 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.
- 10.9 All fees and charges are non-refundable.
- 10.10 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.
- 10.11 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.

11 Online Services

We use 3rd party services and tools including but not limited to the Clearing Services, Zoom Conferencing, Screen Connect, Skype for Business, Eureka Conferencing and *Thinsoft* 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.

12 Third Party Products

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 Third Party 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).

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 and to 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; and
- c) any Hardware we supply will be substantially free from defects in materials and workmanship under normal use and service for a period of two years from the date you receive it, subject to clause 12.

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, the Support or other services. We do not exclude any Condition which by law cannot be excluded.

15.2 Subject to clause 3, while we have used our best efforts to ensure that the information contained in and accessed through the Product in accordance with your instructions, 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, 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 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

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 This Agreement remains in effect for the initial Term being the term defined in the Sales Order. For the EULASA Product, the initial Term and each renewal term is generally 12 months from the date we issue the Registration Code unless the Sales Order provides otherwise. For the Managed STP Service, the initial Term and each renewal term can be 3, 6 or 12 months, in accordance with the Sales Order. For all other Products apart from the EULASA Product, the Managed STP Service and Professional Services, the initial Term and each renewal Term is 30 days from the date we issue the Registration Code unless the Sales Order provides otherwise.

17.2 Unless you give us notice at least 30 days 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.

17.3 Either party may terminate this Agreement by at least 30 days notice at any time. This clause does not apply to the EULASA Offering or the Managed STP Service. Refer to Schedule 1 for termination by

notice for the EULASA Offering. For the Managed STP Service, you may terminate this Agreement by at least 30 days notice expiring on the next renewal date.

- 17.4 Subject to this 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 7 days after notice from us.
- 17.5 If you fail to pay the applicable Fees within the time required by this Agreement, a new Registration Code will not be issued and you will be unable to continue 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.
- 17.6 On termination of this Agreement, you must cease using the Software, subject to the limited access rights specified in section 1.6 of Schedule 6, if applicable, where you have a Subscription Service, Managed Payroll Service or are otherwise using the Cloud Services.
- 17.7 Additional termination events in respect of particular Products may be specified in the Schedule applicable to that Product.
- 17.8 Termination of this Agreement does not affect any accrued rights or remedies of either party.
- 17.9 Clauses 15, 16, 17.8 and 17.9 survive termination of this Agreement.

18 Transfer

You are not permitted to transfer this Agreement to a third party.

19 Privacy Policy

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 in the Privacy Policy) as set out in the Privacy Policy.

20 Severance

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

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

This Agreement including the applicable Schedules and your Sales Orders set out the entire written agreement between the parties, except as otherwise provided in this Agreement. If there is any conflict between the documents comprising this Agreement, the conflict is to be resolved by giving priority to the Schedules, then to the main body of the Terms 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 the main body of this Agreement. References to "section" refer to clauses in the relevant Schedule.

23 Governing Law

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 – EULASA Product

This Schedule relates only to the EULASA Product and only applies if your Sales Order specifies that you are acquiring this Product from us. This Schedule overrides the other parts of this Agreement to the extent of any inconsistency. If you acquire other Products from us, the general body of this Agreement and other Schedules (as applicable) may apply to those Products.

- 1.1 Subject to payment of the applicable Fees, including annual Fees, we grant you a non-exclusive, personal licence to use the Software (including the Web Portal but only if specified in the applicable Sales Order) during the Term in accordance with this Agreement. Where specified in the Sales Order, this licence to use the Software occurs via the Cloud Services and not via installation on your own computer systems.
- 1.2 We will give you an initial Registration Code on full payment of the initial Fees (under clause 10.1 above) and a new Registration Code annually, upon and subject to ongoing receipt from you of the Fees for Technical Support, Enhancement Pack and Web Portal (if applicable), payable in advance as provided in clause 10.1 above). Pending the issue of a full Registration Code, we may at our option, give you a temporary Registration Code which enables use of the Software for a limited period for a specified purpose. The Software will not function without a valid Registration Code.
- 1.3 We will provide you with Technical Support and with the Enhancement Pack (as and when available), subject to payment of the applicable Fees.
- 1.4 We will provide Technical Support and the Enhancement Pack for the current major release of the Software only. If for any reason support is required for unsupported software releases, special conditions and additional charges will apply. We are not required to provide Technical Support or the Enhancement Pack for superseded or terminated releases of the Software.
- 1.5 Technical Support and Enhancement Packs will not be provided for archival copies of the Software, unless a separate support Agreement is maintained by you in relation to that or other licensed copies of the Software.
- 1.6 You may download Enhancement Packs and other software releases from the ClockOn Website during the Term if and when they become available.
- 1.7 We warrant that there will be at least one Enhancement Pack during the term for End of Financial Year, defects and Software enhancement.
- 1.8 By downloading, or otherwise installing an Enhancement Pack or other software release, you agree that the Enhancement Pack or other software release becomes part of the Software and your use of the Enhancement Pack or other software release will be on the terms of this Agreement.
- 1.9 We do not accept any responsibility, and exclude all liability to the maximum extent permitted by law, for data corruption or financial loss resulting from any download or installation of any Enhancement Pack or other software release by other means.
- 1.10 Major Releases and Minor Releases are not included in Technical Support or the Enhancement Pack.
- 1.11 We may elect to make Major Releases and Minor Releases available to you upon payment of additional Fees.
- 1.12 Upon your payment of the additional Fees, Major Releases and Minor Releases will be covered by Technical Support.
- 1.13 Unless you give us notice at least 30 days before the end of the initial Term (or any renewal Term), this Agreement then continues for a further period of 12 months (renewal Term) in respect of the EULASA Product, subject to your payment of the annual Licence Fee, Enhancement Pack Fee, Technical Support Fee and, if applicable the Web Portal Fees and the Cloud Services Fees for the renewal Term.
- 1.14 Either party may terminate this Agreement in respect of the EULASA Product with effect from the conclusion of the current Term by at least 30 days notice in writing.

Schedule 2 – Subscription Service

This Schedule relates only to the Subscription Service and only applies if your Sales Order specifies that you are acquiring this Product from us. This Schedule overrides the other parts of this Agreement to the extent of any inconsistency. If you acquire other Products from us, the general body of this Agreement and other Schedules (as applicable) may apply to those Products.

The features of the Subscription Service are set out on the ClockOn Website. We may vary those features periodically by updating the ClockOn Website.

- 1.1 The Sales Order indicates whether we are providing the Subscription Service to you via the Cloud Services or if you are hosting the Software yourself or through a third party. If you are using the Cloud Services, Schedule 6 also applies and you must pay the Fees for Cloud Services.
- 1.2 We will give you a Registration Code when you first subscribe for the Subscription Service, subject to payment of the Establishment Fee, if applicable, and receipt of your Payment Authority if you proceed with the Subscription Service. We will deactivate your Registration Code if you do not pay the applicable Fees on a timely basis. The Software will not function without a valid Registration Code.
- 1.3 Subject to payment of the applicable Fees, we grant you a non-exclusive, personal licence to use the Software (including the Web Portal but only if specified in the applicable Sales Order) during the Term in accordance with this Agreement. Your use of the Software is free during the Trial Period, if applicable, unless you require Hardware or assistance from us, in which case some Fees may apply. You are only allowed one free Trial Period. At the end of the Trial Period, your Subscription Service lapses unless you complete our registration process to obtain an ongoing paid licence to use the Software and pay the applicable Fees.
- 1.4 We will provide you with Technical Support and with the Enhancement Pack (as and when available).
- 1.5 We will provide Technical Support and the Enhancement Pack for the current major release of the Software only. If for any reason support is required for unsupported software releases, special conditions and additional charges will apply. We are not required to provide Technical Support or the Enhancement Pack for superseded or terminated releases of the Software.
- 1.6 Technical Support and Enhancement Packs will not be provided for archival copies of the Software, unless a separate support Agreement is maintained by you in relation to that or other licensed copies of the Software.
- 1.7 You may download Enhancement Packs and other software releases from the ClockOn Website during the Term if and when they become available.
- 1.8 We warrant that there will be at least one Enhancement Pack during the term for End of Financial Year, defects and Software enhancement.
- 1.9 By downloading, or otherwise installing an Enhancement Pack or other software release, you agree that the Enhancement Pack or other software release becomes part of the Software and your use of the Enhancement Pack or other software release will be on the terms of this Agreement.
- 1.10 We do not accept any responsibility, and exclude all liability to the maximum extent permitted by law, for data corruption or financial loss resulting from any download or installation of any Enhancement Pack or other software release by other means.
- 1.11 Major Releases and Minor Releases are not included in Technical Support or the Enhancement Pack.
- 1.12 We may elect to make Major Releases and Minor Releases available to you upon payment of additional Fees.

Schedule 3 – Managed Payroll Service

This Schedule relates only to the Managed Payroll Service and only applies if your Sales Order specifies that you are acquiring the Managed Payroll Service from us. This Schedule overrides the other parts of this Agreement to the extent of any inconsistency. If you acquire other Products from us, the general body of this Agreement and other Schedules (as applicable) may apply to those Products.

The features of the Managed Payroll Service are set out on the ClockOn Website. We may vary those features periodically by updating the ClockOn Website.

1 Definitions

In this Schedule:

- 1.1 **Agreed Times** means the times by which you must submit your payroll data to us as notified by us from time to time such that your payroll can be processed through your bank during our Service Hours.
- 1.2 **Application Form** means your written application for the Managed Payroll Service which you must complete and return to us with your signed Sales Order and which specifies your name and ABN, the number of payrolls, payroll dates, your Authorised Payroll Representatives and any other information required by us to provide the Managed Payroll Service.
- 1.3 **Interactive Payroll Service** is a Service which is part of the Managed Payroll Service under this Agreement in which we remotely manage and process your payroll in addition to which you have independent access to the databases in which the data is stored and from which you can choose selected functions as specified in the Sales Order.
- 1.4 **Payroll Package** means the type of Managed Payroll Services to be supplied by us to you under this Agreement as specified in the Sales Order (refer to section 2).

2 Payroll Package

- 2.1 Subject to payment of the Fees for the Payroll Package, we agree to provide the Payroll Package to you during Service Hours and for the Term in accordance with and subject to the terms of this Agreement and the Sales Order, as applicable.
- 2.2 The Payroll Package consists of us:
 - a) managing your data and the Software on servers provided and maintained by us or our sub-contractors;
 - b) giving you access to the Software based on the number of Permitted Users, if the Payroll Package includes the Interactive Payroll Service and/or the Web Portal;
 - c) accessing the Software hosted by us or our sub-contractor and providing the Payroll Package on the dates and at the times during Service Hours as defined in the Application Form;
 - d) using the Software to email payslips to individual employees, if requested by you in writing; and
 - e) providing the following database management services: (i) installing revision and build level Upgrades, (ii) nightly backup; (iii) restoration of data from last backup if required; (iv) performing scheduled server maintenance and (vi) disaster recovery relating to the systems or premises used to provide the Payroll Package,all on and subject to the terms of this Agreement.
- 2.3 We will charge you the applicable Fees for the Payroll Package based on the number of Permitted Users as at the time each payroll is processed.
- 2.4 We are not required to provide the services under this Agreement in respect of any employee whose electronic timesheet is invalid, incomplete or displays warning conditions.
- 2.5 You:
 - a) must submit the initial Application Form to us at least 14 business days prior to the date of the first payroll specified in the Application Form;
 - b) must, without limiting section 2.3, validate all completed employee timesheets prior to Agreed Time 2 (see sections 2.6 to 2.8);
 - c) are responsible for importing payroll journal entries to third party accounting systems;
 - d) are responsible for distributing printed payslips to your employees, unless otherwise agreed;
 - e) must give us correct employee email addresses, system or administrator passwords and other data for the purpose of enabling us to email employee payslips when required, no later than one working day prior to the Agreed Times;
 - f) are responsible for processing employee payments, unless otherwise agreed in writing by us;
 - g) authorise us or a third party Clearing Service to process and transfer your employee payments and/or superannuation contributions (as applicable) and agree to provide us with the authorisations and other information required by us or the Clearing Service, in the form required, for the purpose of this Agreement; and

- h) warrant that you have obtained all necessary consents to you disclosing to us and any Clearing Service all employee personal information required by us or the 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 Clearing Service (as applicable) accessing and using such information for those purposes. You consent to us providing information we receive from you to the Clearing Service as necessary for the purposes of this Agreement and to the Clearing Service using that information for those purposes.
- 2.6 Agreed Time 1: You must submit any payroll adjustments (including recurring or non-recurring allowances, deductions, bonuses, travel reimbursements etc.) that need to be included in the payroll to us by email no later than the Agreed Time 1 of 16:00 AEST/AESST on the day preceding payroll.
- 2.7 Agreed Time 2: You must validate all completed employee timesheets by no later than the Agreed Time 2 of 13:00 AEST/AESST on your nominated payroll day; failure to meet this Agreed Time may result in delayed delivery to you of your provisional payroll.
- 2.8 Agreed Time 3: You must forward final approval of the provisional payroll sent to you by us no later than the Agreed Time 3 of 15.30 AEST/AESST on Payroll Day. Your failure to meet this Agreed Time will result in your reports and .ABA files being delivered on the next business day.
- 2.9 You acknowledge that for us to be able to provide the Payroll Package, 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.
- 2.10 With each payroll we process for you under the Payroll Package, we will give you a rate summary report for each employee as reflected in the Software. That rate summary is based solely on the Employment Conditions for each employee contained in the Software. If the Employment Conditions are not correct, the rate summary will not be correct. Refer to clause 3 in the Terms above for additional provisions relating to Employment Conditions.

3 Use of the Interactive Payroll Service

- 3.1 Subject to payment of the applicable Fees and your compliance with the other terms of this Agreement, if the Payroll Package includes the Interactive Payroll Service, we grant you a non-exclusive licence to use the Software during the Term solely in accordance with this Agreement.
- 3.2 You may use the Software only on computers that meet our minimum technical specifications. These rights are subject to any variation to the Sales Order or any additional Sales Orders entered into between us from time to time and to payment of the appropriate Fees where applicable. You must ensure that the Software is not used in respect of more than the authorised number of Permitted Users.
- 3.3 If you use the Interactive Payroll Service and/or the Web Portal, you must not use, copy or modify the Media Elements.

4 Additional Fees and Professional Services

- 4.1 We will charge you additional Fees as specified by us from time to time in the following situations:
 - a) if you request us to process a new employee at payroll time;
 - b) if you request us to configure in advance the data for a new employee to be added to your payroll; and
 - c) for corrections made after payroll processing which require immediate payment to an employee.
- 4.2 We will provide Professional Services for EOFY processing at the cost of one additional payroll run.

Schedule 4 – Managed STP Service

This Schedule relates only to the Managed STP Service and only applies if your Sales Order specifies that you are acquiring the Managed STP Service. We offer the Managed STP Service as an option to customers who are acquiring the EULASA Offering, the Subscription Service and the Managed Payroll Service. We also offer the Managed STP Service on a standalone basis without any other Product.

This Schedule overrides the other parts of this Agreement to the extent of any inconsistency. If you acquire other Products from us, the general body of this Agreement and other Schedules (as applicable) may apply to those Products.

The features of the Managed STP Service are set out on the ClockOn Website. We may vary those features periodically by updating the ClockOn Website.

1 Definitions

In this Schedule:

1.1 **Application Form** means your written application for the Managed STP Service which you must complete and return to us with your signed Sales Order and which specifies your name and ABN, your Authorised Payroll Representatives and any other information required by us to provide the Managed STP Service.

2 Provision of Managed STP Service

2.1 Subject to payment of the Fees for the Managed STP Service, we agree to provide the Managed STP Service to you during the Term in accordance with and subject to the terms of this Agreement and the Sales Order.

2.2 The Managed STP Service consists of us giving you access to the Managed 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 Managed STP Clearing Service has been successful.

2.3 We will charge you the applicable Fees for the Managed STP Service as specified in your Sales Order, as varied from time to time. The Fees comprise a one-off registration fee and then a Fee per employee per year based on a fixed number of STP Data transfers to the ATO (being 56 transfers per year (weekly payroll), 28 transfers per year (fortnightly payroll) and 14 transfers per year (monthly payroll)). The Fees are payable quarterly, half yearly or annually, as specified in your Sales Order.

2.4 You:

- a) must submit the initial Application Form to us at least 14 business days prior to the date of the first STP Data transfer specified in the Application Form;
- b) if you are a Managed Payroll Service customer, you must transfer your STP Data to the ATO using the STP Data Clearing Service soon after we notify you of the completion of the payroll run and at other times as specified by the ATO;
- c) if you are not a Managed Payroll Service customer, 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 run and at other times as specified by the ATO; and
- d) warrant that you have obtained all necessary consents to you 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) accessing 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.

2.5 You acknowledge that for us to be able to provide the Managed 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.

3 Additional Fees

3.1 We will charge you additional Fees as specified by us from time to time for additional STP Data transfers to the ATO (above the standard number of data transfers included in the Managed STP Service) and for any special audit reports you require.

Schedule 5 – Managed Superannuation Service

This Schedule relates only to the Managed Superannuation Services and only applies if your Sales Order specifies that you are acquiring the Managed Superannuation Service from us. We offer the Managed Superannuation Service as an option to customers who are acquiring the EULASA Offering, the Subscription Service and the Managed Payroll Service. We also offer the Managed Superannuation Service on a standalone basis without any other Product.

This Schedule overrides the other parts of this Agreement to the extent of any inconsistency. If you acquire other Products from us, the general body of this Agreement and other Schedules (as applicable) may apply to those Products.

The features of the Managed Superannuation Service are set out on the ClockOn Website. We may vary those features periodically by updating the ClockOn Website.

1 Definitions

In this Schedule:

1.1 **Application Form** means your written application for the Managed Superannuation Services which you must complete and return to us with your signed Sales Order and which specifies your name and ABN, your Authorised Payroll Representatives, Superannuation Contribution details for your employees, access details for the superannuation transfer file and any other information required by us to provide the Managed Superannuation Service.

2 Provision of Managed Superannuation Service

2.1 Subject to payment of the Fees for the Managed Superannuation Service, we agree to provide the Managed Superannuation Service to you during the Term in accordance with and subject to the terms of this Agreement and the Sales Order.

2.2 The Managed Superannuation Service consists of us processing your Superannuation Contributions for payment to the relevant superannuation funds using the Managed Superannuation Clearing Service. If you are not a Managed Payroll Services customer, our provision of the Managed Superannuation Service is subject to you providing us with the required Superannuation Contributions data file (SAFF file) on a timely basis or giving us access to your computer systems to enable us to generate and retrieve the SAFF file.

2.3 The frequency with which we process each run of Superannuation Contributions is specified in your Sales Order (generally monthly or quarterly) but at a minimum will be in accordance with the timing required by the ATO provided we have access to the required Superannuation Contributions data.

2.4 After we process each run of Superannuation Contributions, we will charge you the applicable Fees for the Managed Superannuation Service on the basis specified in your Sales Order as varied from time to time. The Fees are payable in respect of each run of Superannuation Contributions we process and are calculated based on the greater of the number of Software licences you hold and the number of payment transactions processed in each run (generally equating to one transaction per employee).

2.5 You:

- a) must submit the initial Application Form to us at least 14 business days prior to the date of the first Superannuation Contributions payment specified in the Application Form;
- b) authorise us to process and transfer your Superannuation Contributions to the relevant superannuation funds using the Superannuation Contributions Clearing Service and agree to provide us with the authorisations and other information required by us or the Superannuation Contributions Clearing Service, in the form required, for the purpose of this Agreement; and
- c) warrant that you have obtained all necessary consents to you disclosing to us and the Superannuation Contributions Clearing Service all employee personal information required by us or the Superannuation Contributions 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 Superannuation Contributions Clearing Service (as applicable) accessing and using such information for those purposes. You consent to us providing information we receive from you to the Superannuation Contributions Clearing Service as necessary for the purposes of this Agreement and to the Superannuation Contributions Clearing Service using that information for those purposes.

2.6 You acknowledge that for us to be able to provide the Managed Superannuation 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.

3 Additional Fees

3.1 We will charge you additional Fees as specified by us from time to time for any superannuation reconciliation requests and for other requests for services.

Schedule 6 –Cloud Services

This Schedule relates only to the Cloud Services and only applies if your Sales Order specifies that you are acquiring this Product from us. If you acquire other Products from us, the general body of this Agreement and other Schedules (as applicable) may apply to those Products.

The features of the Cloud Services are set out on the ClockOn Website. We may vary those features periodically by updating the ClockOn Website.

- 1.1 If your Sales Order specifies that you wish to receive Cloud Services, we will provide the Cloud Services to you in accordance with this Agreement including this Schedule. The parties agree that where we are providing Cloud Services, the Terms are to be read as follows:
 - a) references to you installing or loading the Software on your computers are limited to any applicable workstation software and the other references to downloading the Software do not apply;
 - b) references to the Software and to use of the Software mean use solely via the Cloud Services; and
 - c) the rights in clause 4.3 of this Agreement in relation to Media Elements do not apply.
- 1.2 The Cloud Services consist of us:
 - a) hosting your data and the Software offsite on servers provided and maintained by us or our sub-contractors;
 - b) giving you access to the Software in accordance with this Agreement including this Schedule;
 - c) providing the following database management services: (i) installing enhancement packs and other Software releases, as available; (ii) nightly backup on the terms of clause 9.2 of this Agreement; (iii) rollback of data from last backup if required; (iv) performing scheduled server maintenance; and (v) disaster recovery affecting the systems or premises used to provide the Cloud Services; and
 - d) if you have the EULASA Product, subject to payment of the Enhancement Pack Fee and Technical Support Fee, giving you use of any Software releases made during the Term with the exception of Major Releases or Minor Releases which attract separate Fees.
- 1.3 You acknowledge that for us to be able to provide the Cloud Services, 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.
- 1.4 You must not use any device, software or routine or engage in any work practice (including uploading excessive amounts of data or undertaking processing routines) which interferes or attempts to interfere with the proper working of the ClockOn Website including by uploading or transmitting through the ClockOn Website any viruses, worms, trojans or other potentially destructive programs.
- 1.5 We do not warrant that your access to the Software via the Cloud Services will be uninterrupted or error free or that information received or accessed by you when using the Cloud Services will be complete, accurate, current or secure. You acknowledge and agree that access to the Software via the Cloud Services is subject to scheduled and unscheduled maintenance periods and server downtime and that you are solely responsible for any reliance or use of information received or accessed by you or supplied by us when using the Cloud Services.
- 1.6 Subject to payment of all outstanding Fees and as soon as reasonably practicable after termination of this Agreement, you may access the Software solely to obtain the following reports to enable transition to an alternate system, and not for the purpose of ongoing use of the Software:
 - a) Payroll Summary report year to date;
 - b) Superannuation Payment summary report year to date;
 - c) PAYG Summary Report year to date; and
 - d) Employee Balance of Entitlements Report year to date.
- 1.7 You acknowledge that we may delete all your data at any time after a period of 90 days from termination or expiry of this Agreement has elapsed.