aussiepay

Australian Payroll Professionals Holdings Pty Ltd Client Service Agreement

BETWEEN

Australian Payroll Professionals Holdings Pty Ltd ABN 54 619 830 223 (**"Aussiepay", "we"**)

and

………..(**"Client", "you"**)

This Client Service Agreement together with the Aussiepay Proposal, the Fee Structures and the New Client Registration Form together constitute a single agreement (**"Agreement"**) containing all of the contractual terms upon which we will provide payroll management outsourcing services to you, the Client.

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

"Charges" means the service fees payable to Aussiepay by the client for the provision of the Services by Aussiepay under this Agreement which are exclusive of GST.

"Intellectual Property" means (without limitation) any registered or unregistered plans, software, reports, data or other intangible assets including copyrights, patents, trademarks, and trade secrets in respect to the services, or technology and any other tangible or intangible property capable of being intellectual property.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act* 1999 (as amended). **"GST"** has the same meaning given to that term in the GST Act.

"New Client Registration Form" means the Aussiepay electronic or written form completed by the Client containing Client details and setting out the type and scope of Services to be provided by Aussiepay to the Client.

"Services" means the provision of payroll services by Aussiepay as a result of the provision by the Client of its own financial information, calculations, data, extracts, reports and any other additional information requested by Aussiepay from time to time.

"Bank" means the APRA registered financial institution used by AussiePay for fulfilment of funds transfers at any point in time.

1.2. Headings are for convenience and shall not affect interpretation.

1.3. Where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning.

2. PROVISION OF SERVICES

2.1. Aussiepay will provide the Services as set out in the *New Client Registration Form* (or as requested in writing from time to time by the Client).

2.2. This Agreement will be for an initial fixed term of 12 months (**"Initial Term"**) unless it is terminated pursuant to clause 9. After the Initial Term and subject to clause 9, either party can terminate this Agreement by giving the other party not less than 3 months' written notice.

2.3. At the expiration of the Initial Term, this Agreement will be automatically extended for a further period of 12 months unless either party provides the other party with at least 90 days' written notice in writing prior to the expiry of the Initial Term.

3. CHARGES

3.1. In consideration of Aussiepay performing the Services, the Client must pay the Charges.

3.2. The Charges do not include any GST. GST is payable by the Client in addition to and at the same time as the Charges.

4. PAYMENT OF CHARGES

Payroll Set Up and Implementation:

4.1. Aussiepay provides implementation services to clients. The Client acknowledges and agrees that the fees and charges payable to Aussiepay for all implementation services are not included in the Charges under this Agreement and will be charged to the Client separately. It is a condition precedent to the performance by Aussiepay of the Services that any charges invoices for implementation services be paid by the Client in full, without set-off and within the terms of Aussiepay's implementation fee tax invoice. The Client agrees that, because Aussiepay's implementation services are a 'one-off', all implementation fees payable to Aussiepay are strictly non-refundable in the event of termination or non-renewal of this Agreement for any reason whatsoever. This is an essential term of this Agreement.

4.2. Aussiepay will invoice the client 75% of stated implementation charges upon receipt of this Agreement signed by you. The balance 25% of the implementation charge will be invoiced to you at the completion of the 2*nd Parallel Payroll* during the implementation process and you agree that 7 day payment terms are applicable to the payment by you of the implementation fee. Aussiepay reserves the right, in its sole and absolute discretion, to suspend or withdraw the provision of services to you if any implementation charges are not paid within our payment terms.

4.3. **Ongoing Services**: Aussiepay will invoice the Client monthly for all Services provided and not previously invoiced during the Initial and any additional terms.

4.4. Unless otherwise stipulated in this Agreement, all Aussiepay tax invoices must be paid by the Client by direct deposit within 14 days of receipt. In the event that any Aussiepay tax invoices are not paid in accordance with their payment terms and in addition to its right to withdraw or suspend the provision of the Services, Aussiepay will be entitled to charge the Client an administration fee of fifty dollars ($50) for each 14 days or part thereof that any invoice is overdue for reasonable Aussiepay's late payment administration costs.

4.5. **Software Development Requests**: If, during the Term and provided the Client is not otherwise in breach of its obligations in this Agreement, it gives Aussiepay a written request for the provision of software development services (with complete, unambiguous details, documents and scope) and Aussiepay agrees to provide such services, Aussiepay will submit to the Client an invoice totalling 75% + GST of Aussiepay's estimated or actual development charge(s) for the services. The remaining 25% of the development charge will be invoiced to the Client on the first to occur of the Client approving the development in writing (acting reasonably and promptly at all times) or 30 days after the completion of the services by Aussiepay.

4.6. All Aussiepay invoices must be paid on 14 day terms as a condition precedent to Aussiepay continuing to provide additional Services.

4.7. The Client's obligation to pay Aussiepay's invoices is an essential term of this Agreement, a breach of which will entitle Aussiepay to either withhold or withdraw the provision of Services to the Client until full payment is received, or to immediately and without notice terminate this Agreement, such decision to be in the sole and absolute discretion of Aussiepay..

4.8. If this Agreement is terminated by Aussiepay, the Client irrevocably and unconditionally agrees to indemnify and hold harmless Aussiepay from and against all claims, losses, costs

and any other liabilities (including legal costs) incurred or suffered by Aussiepay arising from such termination.

5. AUSSIEPAY'S OBLIGATIONS

5.1. In the event of an error caused by the negligence, error or omission of Aussiepay, we will correct the error as soon as possible at no additional cost to the Client.

5.2. In the event of an error caused by the negligence, error or omission of the Client, we will correct the error as requested by the Client at the standard charges.

5.3. Aussiepay must advise the Client as soon as practicable of it becoming aware of the unavailability of Services.

5.4. The Client acknowledges and agrees that, where it has authorised or directed Aussiepay to pay third parties using the Bulk Electronic Clearing System (BECS), Aussiepay will not release any electronic payment files to BECS prior to receiving written authorisation and verification from the Client.

5.5. Aussiepay undertakes to keep confidential and not disclose, to any person other than:-

(a) The parties on the Bulk Electronic Clearing System (BECS);

(b) The Australian Tax Office;

(c) The Client's employee's superannuation fund administrators;

(d) Aussiepay's or the Clients financial institution; and;

(e) Any third party in accordance with an order of a court, tribunal or in compliance with any legislation or regulation

all information in relation to the Client, its payroll structure, company details, contact details and employee details including rates, accounts and other details unless authorised by the Client in writing.

5.6. If for any reason Aussiepay is aware of a data breach of confidential information of the client or its employees, it will take all steps required of it under the **Privacy Act** 1988 and/or the Office of the Australian Information Commissioner (OAIC).

5.7. In the event that the Client or Aussiepay terminates this Agreement in accordance with clause 9, Aussiepay will make available to the Client (at a cost equivalent to the cost of a Year End CD) all records of the Client's payroll, provided that the Client has paid all amounts then outstanding to Aussiepay in accordance with this Agreement.

6. THE CLIENT'S OBLIGATIONS

The Client will: -

6.1. provide to Aussiepay two recent payroll inputs and transaction reports to assist in the conduct of two parallel payrolls.

6.2. supply all information required by Aussiepay to enable it to provide the Services in a clear and unambiguous electronic format.

6.3. ensure that, any information required by Aussiepay is received by:-

(a) for weekly and fortnightly pays, 10.00am on the working day prior to the due date for the payment

(b) for monthly pays 10.00am, two (2) working days prior to the due date for the payment.

if any information is not provided by the Client as required by subparagraphs (a) and (b) of this clause, the Client agrees to pay, in addition to the Charges, a twenty per cent (20%) "express processing charge"

6.4. If an additional parallel payroll is requested by the Client during the Implementation phase, a service fee equivalent to the processing charge plus 15% will be charged for a third parallel pay run.

6.5. If, during implementation, the scoping of the Services is varied by the Client, or if the Client requests additional steps or the Services are changed, Aussiepay will be charge the Client in accordance with the Service Proposal and will be entitled to vary the 'go live' date to accommodate such changes at its discretion without any liability to the Client..

6.6. Provide Aussiepay with written verification and a written authorisation or amendment of employee payments within two (2) hours of a Verification Report being emailed to the Client.

6.7. be solely responsible for reviewing, checking and verifying the completeness, accuracy and suitability of purpose of all payroll data provided to Aussiepay and if it fails to do so for any reason, the Client irrevocably acknowledges and agrees that it will be and remain solely responsible for all costs, taxes, fines, imposts and charges (including additional Aussiepay charges) levied or imposed on the Client or on Aussiepay and the Client will not make any claims, demands or commence any court or other action against Aussiepay arising from or in relation to the Client's failure to comply with this clause..

6.8. When the facility is available have all new employees complete the on-boarding wizard or send all relevant details of new employees to Aussiepay prior to the new employees' payroll being processed.

6.9. Will notify Aussiepay immediately if there is a breach in the security of the client's email or network system.

6.10. Future legislative changes may impose additional responsibilities on clients. In such circumstances, the Client agrees that it will do all acts and things necessary to comply with any legislative changes. For Single Touch Payroll obligations, when the Client has approved their payroll but is unable to make the "declaration" required by law for that payroll, the Client authorises Aussiepay to make such declaration the on behalf of the Client and the Client agrees that it will, in such cases, be and remain solely responsible for the making of such declaration and for checking, vetting and verifying the actual payroll.

7. LIMITATION OF LIABILITY

7.1. *Except as expressly provided to the contrary i*n this Agreement and to the maximum extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise, relating in any way to the provision of the Services under this Agreement, are excluded.

7.2. To the extent that the warranties implied under *The Competition and Consumer Act 2010 ("ACL")* and *Fair Trading Acts ("FTA")* apply to the Services, Aussiepay's maximum liability to the Client for any loss suffered by from a breach of those warranties, is limited as follows:-

(a) In the case of goods:-

(i) The replacement of the goods or the supply of equivalent goods;

(ii) The repair of goods;

(iii) The payment of the cost of replacing or repairing the goods or of acquiring equivalent goods; or

(b) In the case of services:-

(i) The supply of the services again;

(ii) The payment of the cost of having the services supplied again.

7.3. Neither Party will be liable in any circumstances for any consequential or indirect loss or damage (including loss of profits) however caused.

8. INTELLECTUAL PROPERTY

8.1. The Client acknowledges that Aussiepay is and remains the owner of all Intellectual Property.

8.2. The Client must not without Aussiepay's prior written consent use the Intellectual Property for any purpose other than referred to in this Agreement.

9. TERMINATION

9.1. Either Party may terminate this Agreement after the expiry of the Initial Term without reason and after giving the other party not less than three (3) months prior written notice. Notice from the Client must come from the Principal Contact in the Client's New Client Registration Form or any other person exercising the Client's authority.

9.2. Either Party may immediately terminate this Agreement by written notice to other party if:-

(a) Any payment due from either party to the other party pursuant to the Agreement remains unpaid for a period of fourteen (14) days;

(b) The Client or Aussiepay breaches any clause of this Agreement and such breach is not remedied within fourteen (14) days of written notice of the breach;

(c) The Client or Aussiepay threatens or ceases to conduct its business;

(d) The Client or Aussiepay materially breaches this Agreement and the breach is incapable of remedy;

(e) Any step is taken to appoint a receiver, a controller, a liquidator, a provisional administrator or other like person of the whole or any part of the Client's or Aussiepay's assets, undertakings or business;

(f) The Client or Aussiepay becomes insolvent or is otherwise unable to pay its debts as and when they become due;

(g) The Client ceases using the Services for a period of 45 days.

9.3. If notice is given to either party pursuant to clause 9.1 or 9.2, either party may, in addition to terminating the Agreement:-

(a) Retain any moneys paid to it by the other party;

(b) Charge a reasonable sum for Services provided in respect of which no such amount has previously been charged;

(c) Demand immediate repayment of all credit then outstanding;

(d) Retake possession of all property in the possession of other party;

(e) Be regarded as discharged from any further obligations under this Agreement; and

(f) Pursue additional or alternative remedies provided by law

(g) Withhold the provision of further Services, or any outstanding elements of the Service or return of data until payment of all outstanding amounts owed to either party is made by or on behalf of the other party.

9.4. If this Agreement is terminated in breach of either clause 2.1 or 9.1 then the Client must pay to Aussiepay the *Minimum Charge*. The Parties acknowledge and agree that the *Minimum Charge* is a genuine pre-estimate of the loss that will be suffered by Aussiepay as a result of early termination of this Agreement and the Minimum Charge will be calculated as the greater of:

(a) If this Agreement is terminated during the Initial Term, an amount equal to average monthly Charge (multiplied by 3); or

(b) if this Agreement is terminated after the Initial Term, the projected average monthly Charge for a three month period in accordance with the Aussiepay Proposal submitted during the pre-sale process.

9.5. If this Agreement is terminated by the Client after the expiry of the Initial Term, but the Client fails to provide Aussiepay with the period of notice required by clause 9.1, the Client agrees to pay Aussiepay an amount, calculated based on the average monthly fees for the preceding 3 months (excluding the period in which the Client did not use the Services) multiplied the number of months remaining on the relevant term.

10. DISPUTE RESOLUTION

10.1. The Parties will use their best endeavours to resolve any disputes arising under this Agreement (**"Dispute"**) in good faith and in accordance with this clause before commencing any formal legal proceedings.

10.2. In the event the Dispute cannot be resolved within fifteen (15) Business Days of written notice of a Dispute being given by one party to the other, the Parties irrevocably agree to submit the Dispute to mediation. In the absence of agreement as to the mediator,, the mediator will be nominated by the President of the Law Council of Australia (or his or her nominee) and the mediation will be conducted in accordance with the Australian Commercial Disputes Centre Guidelines for Commercial Mediation. The parties agree to be bound by the determination of the mediator.

10.3. Nothing in this clause 10 prevents a party from applying to a court for urgent equitable or interlocutory relief.

11. NOTICES

11.1. Notices under this Agreement may be delivered by hand, by registered mail, by e-mail or by facsimile to the address of the parties specified in or notified pursuant to this Agreement.

11.2. Notice will be deemed given: -

(a) In the case of hand delivered or registered mail, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;

(b) In the case of e-mail, upon return receipt; and

(c) In the case of facsimile, upon proof of completion of transmission.

12. AMENDMENT

This Agreement may only be amended in writing signed by the "Senior Authority" of the client and the General Manager of Aussiepay.

13. GENERAL

13.1. If you employ one of our personnel directly within six (6) months of the last occasion that you use our Services you will be liable to pay us a placement fee in the sum of 20% of the annual salary (including superannuation) that we last paid to that person, plus GST.

13.2. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

13.3. These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

13.4. by entering into this Agreement, the Client consents to Aussiepay using the Client's logo's name and style in marketing material used for Aussiepay's benefit. If the Client directs Aussiepay to cease using client identifiers as contemplated by this clause, it will do so within 7 days of any such written direction.

13.5. Aussiepay may license or sub-contract all or any part of its rights and obligations under this Contract.

13.6. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

13.7. The failure by one party to enforce any provision of the Agreement shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.

13.8. This Agreement may be executed in a number of counterparts, in which case each counterpart will be electronically exchanged and form the one Agreement.

14. BANKING SERVICES

14.1. The client by requesting (Transaction Negotiation Authority) TNA or Transaction Activity Cap (TAC) services agrees to the *Service Agreement* of AussiePay's bank in providing such services. A copy of the current service agreement can be found in Schedule 1 attached.

Schedule 1
Service Agreement Standard Clauses required by the Bank

1 USERS' INSTRUCTIONS

1.1That unless the Bank agrees otherwise, a User's instructions in respect of TNAs will always be given by the Bureau, and by the medium of Files. It agrees that if Files are received by the Bank after the relevant Cut Off Time they will be processed the following Business Day unless other arrangements are made and agreed between the Bureau and the Bank.

1.2 If a File exceeds the amount authorised under the relevant TNA, then:

1.2.1 The Bank will contact the User's Financial Institution to obtain approval to process the amount of the excess. If the approval is obtained, the Bank will process the File; and

1.2.2 Processing delays may occur and the current Excess TNA Limit Fee will be levied for processing such a file.

2 DUPLICATED FILES

2.1 That if a duplicated file is received and released into BECS:

2.1.1 Generally, responsibility for recovery of funds rests with the Bureau and/or Users because the Bank has no authority or obligation to reverse value transactions from recipient's accounts; but the Bank can assist in the following circumstances.

2.1.2 (If the duplicate File is brought to the attention of the Bank's responsible officer before any part of the File is released), using its best endeavours to delete the electronic file prior to release into BECs.

2.1.3 (If the Bank duplicates a file where only one file was received from the Bureau), the Bank will be responsible for the recovery of funds.

2.1.4 (If the duplicate File is brought to the attention of the Bank's responsible officer within 5 Business Days of its release into BECS) to initiate the reversal of transactions credited to recipient's accounts, on the basis that they were paid by mistake. (Though the Bank cannot guarantee that a reversal will be honoured by the financial institution of the recipient, even where that institution is the Bank. For example, the recipient may have already withdrawn the funds.)

3 RECALLS

3.1 Users must advise requests not to process particular Transactions or Files (**Recalls**) to the Bureau. The Bureau will then make a request for a Recall to the Bank. The Bank will not deal directly with the User in relation to Recall requests.

3.2 The User must provide to the Bureau the User's reference point (as advised to the Bureau from time to time) name and telephone details of the User's personnel who will be acting as the User's reference points in relation to its instructions both during business and non-business hours. If at any time these details are changed the User must notify the Bureau of the changes as soon as possible.

3.3 The manner in which the User will receive the Recall amount will be determined by the Bank and notified to the User by the Bureau.

3.4 The Bank will only Recall Transactions or Files if the request is received on or before the day of processing under the following conditions:

3.4.1 The File has been received by the Bank.

3.4.2 No part of the File has already been released.

3.4.3 Where Files are lodged prior to the nominated processing day, Recalls will only be accepted if the Recall is requested before the relevant Cut Off Time on the day before the processing day.

3.4.4. Where Files are lodged on the processing day, Recalls will only be accepted if received before the next Release on that day.

3.5 Where special arrangements have been made for early processing of Files, Recall facilities will not be available.

4 USER NAMES

4.1 The designated User Name (appearing in the "0" record of a File) must not be amended, altered or varied by a User or Bureau without the Bank's prior written consent.

4.2 In the event that any file lodged has a different User Name a fee may be levied for processing such a file and processing delays may occur.

5 PROCESS DATA DAY (PD DAY)

5.1 The Bank does not check that nominated PD Days (the day a File is to be released) are accurate or valid. The only dates that the Bank cannot process are weekends, and recognised national holidays. Accordingly a File that (erroneously) nominates a State holiday as a PD Day will usually be processed on that day.

5.2 If Files lodged specify a PD Day on which the Bank does not process then, unless the error is noticed by the Bank before the Cut Off Time, it will be processed on the next Business Day.

6 RESPONSIBILITY FOR ACTIONS OF BUREAU

The User acknowledges that the Bureau is its agent with authority to make arrangements with the Bank to carry out the Users instructions and that the terms agreed by the Bureau in those arrangements will bind the User. Failure by the Bureau to satisfy any of the conditions of its arrangements with the Bank may result in the Bank refusing to process instructions received through the Bureau, and/or seeking indemnity for its loss. the Bank need not give prior notice of a decision to cease processing instructions received through the Bureau and is not responsible for any loss resulting from the cessation. the Bank is not liable for any fraud or errors committed by the User, or its servants or agents including the Bureau. The accuracy of Files lodged by the Bureau is entirely a matter as between the Bureau and the User.

Schedule 1
Service Agreement Standard Clauses required by the Bank

7 THE BANK IS NOT RESPONSIBLE FOR EVENTS BEYOND THE BANK'S CONTROL

7.1 If Events beyond the Bank's control occur, or the Bureau or a User have not satisfied any of these conditions, and the Bank's ability to process Files is affected, the Bank must use all reasonable endeavours to ensure that affected Files are processed as soon as possible. In the event that the Bank is unable to process Files (for any reason) it shall advise the Bureau as soon as possible so that the Bureau can make alternative processing arrangements if necessary. (Note: "Events beyond the Bank's control" is a term defined in Part 3.)

7.2 While the Events continue the Bank will have no liability to the Bureau or any User for any non-performance or delays in the performance of the User's instructions; and the Bank's obligations to process Files will be suspended for as long as the events or circumstances continue.

8 THE BANK'S LIABILITY HAS A DOLLAR LIMIT

If a Transaction created by the Bank from a File lodged by the Bureau cannot be accounted for by the Bank within its own system, then any liability of the Bank is limited to the face value of that Transaction plus interest and associated costs.

9 THE BANK IS NOT RESPONSIBLE FOR TRANSACTIONS AFTER EXCHANGE

The Bank has no liability whatsoever for Transactions properly exchanged with other financial institutions except where the Bank has, through its negligence or breach of contract, caused loss or damage to the Bureau or Users.

10 TO KEEP TRANSACTION DETAILS CONFIDENTIAL

10.1 Except as set out in the next Clause, the Bank agrees to treat as confidential all Transaction details contained in Files.

10.2 The Bank may disclose the Transaction details:

10.2.1 in general statistical information for its own purposes provided that the statistical information does not disclose the identity of the User or the recipients of Transactions;

10.2.2 where required to do so by law;

10.2.3 if the Transaction details are in the public domain through no fault of the Bank,

10.2.4 if the Transaction details are already lawfully known to the Bank, or becomes lawfully known by the Bank without any restriction as to its use or disclosure;

10.2.5 to other financial institutions pursuant to its obligations as a participant in the clearing system. (For example, tracing enquiries.); or

10.2.6 to the Bureau.