



STANDARD TERMS AND CONDITIONS

SERVICES AND LICENCE AGREEMENT

THIS AGREEMENT between CRYSTAL PAYROLL LIMITED ("Crystal Payroll") and the CUSTOMER specified in the 'Registered Name' field ("Customer", "you", "your" or "user") of the 'Customer Registration Form' {at <https://crystalpayroll.co.nz/secure/CustomerRegistration.aspx>} ("Customer Registration Form") is considered to be executed as follows:

- The submission of the Customer Registration Form by the Customer or its duly authorised representative to Crystal Payroll through the Crystal Payroll Website shall signify the Customer's acceptance of and interest to be bound by the provisions of this Agreement and shall constitute and be deemed to be proper and lawful execution of this Agreement by the Customer.
- Crystal Payroll's acceptance of the terms of this Agreement, and assumption of obligations to the Customer, shall be deemed upon Crystal Payroll's commencing the provision of the Services, and the granting of access to the Software, to the Customer and shall constitute and be deemed to be proper and lawful execution of this Agreement by Crystal Software.

IT IS HEREBY AGREED that Crystal Payroll will provide to the Customer the services and a licence to the software described in this Agreement on the following terms and conditions.

1. DEFINITIONS

In this Agreement:

Crystal Payroll Website means www.crystalpayroll.co.nz and www.crystalpayroll.com.

Documentation means the documents, information, explanatory written materials and/or files relating to the Software provided to the Customer by Crystal Payroll from time to time.

Effective Date means the date on which the Customer's first 'live' Payrun is run.

Fees means Crystal Payroll charges including licence fees, account set-up and training fees, per-person set-up fees on all Service Options, and per-person per-Payrun processing fees and per-Payrun data input fees on "Full Bureau" and "Basic Bureau" Service Options on the "Pricing" page of the Crystal Payroll Website, as may be amended from time to time in accordance with this Agreement.

Minimum Period means the 12 months period commencing on the Effective Date.

Payrun means the running of a 'live' payroll run, as triggered by the Customer approving the 'Take-home pay' page on the Crystal Payroll Website.

Service Option means the service option (e.g. Full Bureau, Basic Bureau, PAYE Service or Self Service – as defined on the Crystal Payroll Website) as selected in the "Service Level Preferred" field of the Customer Registration Form or as may be subsequently selected or amended by mutual agreement of Crystal Payroll and the Customer.

Services means the services to be provided by Crystal Payroll to Customer under this Agreement and as further defined for the applicable Service Option on the Crystal Payroll Website, and includes, if applicable, Taxation Services.

Software means all of the contents of the files, software, program or other media provided to the Customer by Crystal Payroll or by which the Services are provided remotely, including but not limited to:

- (a) Crystal Payroll or third party computer information or software;
- (b) Documentation.

Taxation Services means the processing of tax payments of the Customer to the Inland Revenue Department including PAYE, Student Loans, Child Support payments, Specified Superannuation Contributions Withholding Tax and Withholding Tax by Crystal Payroll (not applicable for Self Service accounts).

Tax Invoice means a tax invoice issued by Crystal Payroll to the Customer for Fees.

Trial Period means a period of 30 days from the Effective Date.

Use or Using means to access, install, download, copy or otherwise benefit from using the functionality of the Software in accordance with the Documentation.

Working Day means any day on which registered banks are open for business in Auckland, New Zealand, except Saturday, Sunday or public holidays, and "Working Days" will be construed similarly.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the Effective Date and shall initially continue for the Minimum Period.
- 2.2 If this Agreement has not been terminated, or notice of termination pursuant to sub-clause 3.1 has not been given by either party by the end of the Minimum Period, then this Agreement shall be automatically renewed for further successive 12 monthly periods upon the same standard terms and conditions as then exist between Crystal Payroll and its customers as shall be specified or exhibited on the Crystal Payroll Website until this Agreement is terminated in accordance with clause.
- 2.3 Notwithstanding clause 2.1, the Customer may cancel this Agreement at any time before the end of the Trial Period by notice in writing. Upon such termination, neither party will have any further obligation to each other, except that the Customer must pay all outstanding Tax Invoices. After all invoices are paid the online account will remain accessible by the Customer on a 'Read-Only' basis for a reasonable period or as otherwise required by law.

3. TERMINATION

- 3.1 Either party may terminate this Agreement, effective on or after the last day of the Minimum Period by giving not less than one (1) calendar month's prior written notice to the other party.
- 3.2 Either party may terminate this Agreement immediately if the other party breaches this Agreement and the party in breach fails to remedy the breach within ten (10) Working Days after notice in writing has been given to the party in breach requiring such breach to be remedied.
- 3.3 Upon termination of this Agreement:
 - (a) Crystal Payroll shall be entitled to deduct all outstanding Tax Invoices (subject to the provision of a detailed GST Invoice) from funds held, with all residual monies (if any) being returned to the Customer;
 - (b) If Crystal Payroll does not exercise its rights under paragraph (a), or the funds held by Crystal Payroll are insufficient to cover outstanding Tax Invoices, the Customer will pay Crystal Payroll all outstanding balances on Tax Invoices under this Agreement up to and including the date of expiry or termination of this Agreement; and
 - (c) The Customer shall immediately cease using the Services and Software.

4. SERVICES

- 4.1 Crystal Payroll shall provide the Services to the Customer in a good and professional manner and in accordance with current New Zealand legislation and government regulations as amended from time to time.
- 4.2 In relation to the Taxation Services provided by Crystal Payroll to the Customer:
- (a) Crystal Payroll shall debit gross payroll at the time of Payrun (for Full and Basic Bureau Services) or tax amount between three (3) to five (5) working days before the due date (for PAYE Services) from the Customer and pay the Customer's employee tax payments to Inland Revenue Department ("IRD") in accordance with the submitted Payrun by the due date as long as Crystal Payroll receives all required tax payments from the Customer within a sufficient time for Crystal Payroll to make such payments to the IRD by their due date.
 - (b) Subject to paragraph (a), Crystal Payroll shall indemnify the Customer for the direct costs of any late payment to the IRD caused solely by Crystal Payroll failing to submit amounts to the IRD in the prescribed timeframes, including any assessed penalty payments.
- 4.3 Subject to clause 4.4, Crystal Payroll shall provide a robust hardware, software and network environment to enable provision of Services to the Customer via the Crystal Payroll Website.
- 4.4 The Customer shall be responsible for:
- (a) maintaining the confidentiality of its user identification and password codes and shall not permit or allow other persons to have access to its user identification and password codes;
 - (b) its connection to the internet at its own costs;
 - (c) its own hardware, software and systems for accessing and using the Services, including appropriate internet browsers;
 - (d) ensuring that unauthorised third parties do not have access to its systems;
 - (e) where Crystal Payroll have submitted the details of that Payrun to the Customer, checking and approving those details and ensuring it is free from errors and omissions; and
 - (f) ensuring that its hardware, software and systems are secure and virus free, have up to date and correctly patched operating systems and have industry standard anti-virus software and firewalls that are regularly updated.
- 4.5 If the Customer believes there is a calculation error on a Payrun, the Customer will notify Crystal Payroll immediately who will then promptly attempt to resolve the issue. The Customer will assist Crystal Payroll in resolving the issue, including providing Crystal Payroll with the Customer's data files or other supporting information.
- 4.6 The Services and/or Software may allow the Customer access to third party websites ("Third Party Sites"). The Customer acknowledges that its access of Third Party Sites, including any goods, services or information made available from such sites, is governed by the terms and conditions found at each Third Party Site, if any. Third Party Sites are not owned or operated by Crystal Payroll. Customer's use of Third Party Sites is at its own risk. Crystal Payroll makes no warranties, conditions, indemnities, representations or terms, express or implied, whether by statute, common law, custom, usage or otherwise as to any other matters, including but not limited to non-infringement of third party rights, title, integration, accuracy, security, availability, satisfactory quality, merchantability or fitness for any particular purpose with respect to the Third Party Sites.
- 4.7 In providing the Services and access to the Software, the parties acknowledge and agree, for the avoidance of doubt, that Crystal Payroll is not acting as the Customer's agent or fiduciary and nothing in this agreement gives rise to any joint venture or partnership relationship.

5. **OWNERSHIP AND LICENCE**

5.1 Subject always to the Customer's compliance with this Agreement, Crystal Payroll grants to the Customer a limited, non-exclusive and non-transferable license to Use the Software solely for the purposes described in the Documentation from the Effective Date until termination of this Agreement in accordance with its terms. In using the Software, the Customer shall not:

- (a) attempt to access any other Crystal Payroll systems, programs or data that are not made available for its use;
- (b) copy, reproduce, republish, upload, post, transmit, resell or distribute in any way the material from the Crystal Payroll online site; or
- (c) attempt any actions that would prevent the use of Software by other Users.

5.2 The Customer acknowledges that:

- (a) ownership of the Services and Software, and all rights, including but not limited to intellectual property rights in the Services and Software and related materials are and shall remain the exclusive property of Crystal Payroll and/or its licensors and the Customer shall have no right, title or interest in them, except as expressly set out in this Agreement.
- (b) the structure, organization and code of the Software are the valuable trade secrets and confidential information of Crystal Payroll and its suppliers and the Software is protected by copyright, trade secret and other intellectual property laws.
- (c) this Agreement does not grant the Customer any rights to trademarks or service marks of Crystal Payroll.

5.3 The Customer shall not:

- (a) remove any proprietary or copyright notices, labels or marks from the Services or Software;
- (b) use the Services and Software other than for its own internal business purposes;
- (c) sell, rent or provide any form of access to the Services and Software to any unauthorised third party;
- (d) use the Services and Software in a manner prohibited by any governmental agency or any applicable laws, restrictions or regulations;
- (e) use the Services and Software in any manner that violates the rights of any person or other than for the purpose for which it is intended to be used;
- (f) modify or create any derivative work of the Software;
- (g) decompile, disassemble, translate or otherwise reverse engineer or attempt to derive source code ((or the underlying ideas, algorithms, structure or organisation) of the Software;
- (h) rent, transfer, assign, lease, sub-licence or grant any rights in the Software to any person without our prior written consent; or
- (i) remove any proprietary notices, branding, labels, or marks on the Software or any Documentation.

6. **CHARGES**

6.1 Periodically Crystal Payroll will issue a Tax Invoice for applicable Fees to the Customer online via the Customer's secure section of the Crystal Payroll Website.

6.2 The Customer will pay the Tax Invoice issued by Crystal Payroll 7 days after its issuance by Crystal Payroll. If the Tax Invoice has not been paid the Customer will not be obliged to run subsequent Payruns until the Tax Invoice is paid.

6.3 Crystal Payroll may vary its Fees from time to time by giving notice on the Crystal Payroll Website, effective from the next anniversary or Payrun as applicable after such notice is given.

7. **DEFAULT & CONSEQUENCES OF DEFAULT**

- 7.1 Interest on overdue payments shall accrue daily from the date when payment becomes due, until the date of payment, at the rate of two and one half percent (2.5%) per calendar month (and at Crystal Payroll's sole discretion such interest shall compound monthly) after as well as before any judgment.
- 7.2 If the Customer defaults in any payment when due, the Customer shall indemnify Crystal Payroll from and against all costs and disbursements incurred by the Customer in pursuing the debt including legal costs on a solicitor and own client basis and the Customer's collection agency costs.
- 7.3 The Customer shall guarantee to take full responsibility for any overdue payment and relevant costs.

8. **WARRANTIES**

- 8.1 Crystal Payroll warrants that it will use all reasonable skill, care and diligence in the provision of the Services.
- 8.2 The Software and Services are provided "as-is" and, to the maximum extent permitted by applicable law, Crystal Payroll, its affiliates, licensors, participating financial institutions, third- party content or service providers, retailers, distributors, dealers and suppliers (collectively, "Suppliers") disclaim all guarantees and warranties, regarding the Software or Services, other than those explicitly provided for in this Agreement, including any warranty of fitness for a particular purpose, title, merchantability, and non-infringement. Crystal Payroll does not warrant that software or services are secure, free from bugs, viruses, interruption, errors, or other program limitations. The Customer acknowledges that it has entered into this Agreement relying on its own judgment and not upon any warranty or representation made by Crystal Payroll.
- 8.3 All warranties or guarantees given or made by Crystal Payroll with respect to Software or Services are for the benefit of the Customer only and are not transferable, and shall be null and void if the Customer breaches any terms or conditions of this Agreement.
- 8.4 Customer warrants to Crystal Payroll that it is in trade (as defined in section 2(1) of the Consumer Guarantees Act 1993. Customer acknowledges and agrees that the Software and Services are being supplied by Crystal Payroll and purchased by Customer in trade and that, pursuant to:
- (a) section 43 of the Consumer Guarantees Act 1993, the provisions of that Act are expressly excluded; and
 - (b) section 5D of the Fair Trading Act 1986, sections 9, 12(a) and 13 of that Act are expressly excluded, and

all implied terms, conditions and warranties under the Sale of Goods Act 1908 are also expressly excluded to the maximum extent permitted by law.

9. **INDEMNITIES AND LIMITATION OF LIABILITY**

- 9.1 Crystal Payroll shall not be liable to the Customer or any other party in any manner whatsoever whether direct or indirect arising out of:
- (a) the Customer's connection to the internet or the Customer's hardware, software or systems;
 - (b) the Customer's late payment or late Payrun;
 - (c) the Customer's acts or defaults in relation to errors in input or statistical misinformation;
 - (d) a default or malfunction in the systems or services of any third party utilised by the Customer; or
 - (e) the Customer's use of third party services or a defect or fault due to a third party unrelated to Crystal Payroll.

- 9.2 To the maximum extent permitted by applicable law, neither Crystal Payroll nor its Suppliers is liable for any indirect, special, incidental, or consequential damages or loss (including damages relating to loss of business, telecommunication failures, loss, corruption, security or theft of data, viruses, spyware, loss of profits or investment, tax positions taken by you, inability to file your return, or the like), whether based on breach of contract, breach of warranty, tort (including negligence), strict liability, product liability or otherwise, even if Crystal Payroll or its Suppliers have been advised of the possibility of such damages and even if a remedy set forth herein is found to have failed of its essential purpose. In no event does Crystal Payroll assume any liability to any party other than the Customer arising out of the Customer's use or inability to use the Software or Services. Furthermore, Crystal Payroll shall not be liable to the extent such loss or damage was contributed to, or exacerbated by, the actions of the Customer or the Customer's use or reliance on third parties or the services or software provided by such third parties; In particular, to the maximum extent permitted by law, Crystal Payroll shall have no liability to the Customer in respect of any errors in a Payrun, where the details of that Payrun have been submitted to, and approved by, the Customer (as contemplated by clause 4.4(e)) and the Customer approved that Payrun notwithstanding the inclusion of those errors.
- 9.3 Unless otherwise required by law, an action or proceeding by the Customer enforcing an obligation, duty, or right arising under this Agreement must be commenced within one year after the cause of action accrues, and, notwithstanding any provision in this Agreement whether express or implied (excepting only the indemnity provided in sub-clause 4.2(b)), the Customer's exclusive remedy and the entire liability of Crystal Payroll in any circumstances or event shall not exceed an amount equal to twice the average monthly Fees charged to the Customer for the immediately preceding 12 month period (or pro-rated if less than 12 months processing has been undertaken).
- 9.4 The Customer indemnifies, holds harmless and must defend Crystal Payroll from and against all direct expense, cost, loss or liability arising from any claim, demand, suit, action or proceeding for an infringement, or an alleged infringement, which occurred because of Crystal Payroll's use of any material which the Customer has provided to Crystal Payroll in relation to the Services, the Customer's improper use of the Software or Services or any other breach of this Agreement by the Customer.
- 9.5 The Customer acknowledges that it is fully responsible, financially and legally, for all use of the Services and Software enabled through the use of its access codes and passwords and that such codes and passwords should be kept confidential to the Customer at all times. The Customer must notify Crystal Payroll immediately that it becomes aware of any unauthorised use of its access codes and passwords.
10. **FORCE MAJEURE**
- 10.1 Crystal Payroll shall not be liable to the Customer or any other party claiming through the Customer in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of force majeure, namely, circumstances beyond the control of Crystal Payroll which prevent or limit Crystal Payroll's ability to perform its obligations pursuant to this Agreement. Circumstances which constitute force majeure shall include (but shall not be limited to) acts of God, fire, flood, earthquake, explosion, sabotage, accident, embargo, riot, civil commotion, computer virus, breakdown of equipment, and failure of electrical supply or telecommunications links.
11. **CONFIDENTIALITY**
- 11.1 Both parties, shall keep confidential the terms of this Agreement and all data and other information, which shall come into their possession pursuant to or in the performance of this Agreement, except:
- (a) where either party is required by law;
 - (b) in good faith and for the purposes of this Agreement;
 - (c) to either party's professional advisers who shall be under the same confidentiality restrictions under this agreement;
 - (d) to either party's employees, agents and subcontractors to the extent necessary for the performance of their duties and who shall be under the same confidentiality restrictions under this agreement; or
 - (e) information that is already public.

11.2 Crystal Payroll shall operate its business in accordance with its Privacy Statement at the Crystal Payroll Website and as required by law.

12. **SECURITY**

12.1 Crystal Payroll shall provide a comprehensive and secure environment to protect the integrity and security of the Website, and of the Customer's and Crystal Payroll's information in accordance with Crystal Payroll's Security Profile at the Crystal Payroll Website (as may be modified from time to time).

12.2 The Customer will not attempt to compromise Crystal Payroll's security environment or service availability through hacking, denial of service attacks or similar actions. The Customer will be responsible for the actions of its employees, agents, sub-contractors and any other person who in breach of this Agreement.

12.3 The Customer shall take reasonable steps to protect the information on its computers and system, including installing anti-virus software, regularly updating its software, password protecting its files, and not permitting third party access to its computers and system. The Customer must comply with the terms of any applicable third party licence arrangements when using the Software.

13. **LAW**

13.1 This Agreement shall be governed by the laws of New Zealand and each party irrevocably submits to the exclusive jurisdiction of the New Zealand Courts.

14. **ENTIRE AGREEMENT**

14.1 This Agreement constitutes the entire agreement between the parties. Crystal Payroll may amend the terms of this Agreement by one month's written notice in writing to the Customer.