

Crystal Payroll™

Crystal Payroll Service and Licence Agreement

THIS AGREEMENT is executed this [] or the date it has been signed.

BETWEEN CRYSTAL PAYROLL LIMITED ('Crystal Payroll')

AND the customer specified in Item 1 of the Schedule (Customer')

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.

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

"Fees" means Crystal Payroll charges including Company set-up and training fees, per-person set-up fees, per-person per-Payrun processing fees and per-Payrun data input fees 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 minimum period set out in Item 3 of the Schedule.

"Payrun" means the running of a live payroll run, as triggered by the Customer confirming the payroll in the "Confirm this Payroll" page.

"Service Level" means the service level (eg Bureau Service, Agency Service or Full Self-Service) specified in Item 2 of the Schedule or as may be subsequently selected at the request of 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 Level on the Crystal Payroll Website.

"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:

- (i) Crystal Payroll or third party computer information or software;
- (ii) related documents, explanatory written materials or files.

"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.

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

"Trial Period" means a period of 60 days from the Effective Date.

"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 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 a 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 3.
- 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 and may request the return or destruction of its data or information submitted to Crystal Payroll.

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 If prior to the termination date the Customer ceases paying staff on the Crystal Payroll system, then Crystal Payroll shall be entitled to charge Fees from the date of the last 'live' Payrun until the termination date calculated on the average monthly fees received for the immediately preceding twelve (12) month period (or pro-rated if less than twelve (12) months processing has been undertaken).
- 3.4 Upon termination of this Agreement:
 - 3.4.1 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;
 - 3.4.2 Either party may ask for the return or destruction of its confidential information and/or data submitted to and/or held by the other party;
 - 3.4.3 If Crystal Payroll does not exercise its rights under clause 3.4.1, or the funds held by Crystal Payroll are insufficient to cover outstanding Tax Invoices, 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
 - 3.4.4 Customer shall 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:

- 4.2.1 Crystal Payroll shall debit gross payroll at the time of Payrun or tax amount at 5 working days before the due date 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.
- 4.2.2 Subject to clause 4.2.1, Crystal Payroll shall indemnify the Customer against all direct costs of any late payment to the IRD caused by Crystal Payroll 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:
- 4.4.1 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;
- 4.4.2 its connection to the Internet at its own costs;
- 4.4.3 its own hardware, software and systems for accessing and using the Services, including appropriate internet browsers;
- 4.4.4 Ensuring that unauthorised third parties do not have access to its systems; and
- 4.4.5 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 Customer believes there is a calculation error on a Payrun, Customer will notify Crystal Payroll immediately who will then promptly attempt to resolve the issue. Customer will assist Crystal Payroll in resolving the issue, including providing Crystal Payroll with Customer's data files or other supporting information.
- 4.6 The Services and/or Software may allow Customer access to third party websites ("Third Party Sites"). 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.

5 Ownership and Licence

- 5.1 The Customer acknowledges that 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 Customer shall have no right, title or interest in them, except as expressly set out in this Agreement.
- 5.2 Customer is granted a limited, non-exclusive, non-assignable and non-transferable licence to use the Services and Software and related materials strictly in accordance with the terms and conditions set out in this Agreement.

5.3 Customer shall not:

- 5.3.1 attempt to access any Crystal Payroll systems, programs or data that are not expressly made available to the Customer;
- 5.3.2 copy, reproduce, republish, upload, post, transmit, resell or distribute in any way the Services or Software or any materials from the Crystal Payroll Website, or attempt any actions that would prevent the use of the Services or Software by Crystal Payroll's other customers;
- 5.3.3 remove any proprietary or copyright notices, labels or marks from the Services or Software;
- 5.3.4 use the Services and Software other than for its own internal business purposes;
- 5.3.5 sell, rent or provide any form of access to the Services and Software to any unauthorised third party;
- 5.3.6 use the Services and Software in a manner prohibited by any governmental agency or any applicable laws, restrictions or regulations; or
- 5.3.7 use the Services and Software in any manner that violates the rights of any person.

6 Charges

- 6.1 At the time of each Payrun Crystal Payroll will issue a Tax Invoice 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 cannot 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 Payrun after such notice is given.

7 Warranties

- 7.1 Crystal Payroll warrants that it will use all reasonable skill, care and diligence in the provision of the Services.
- 7.2 Notwithstanding sub-clause 4.1, 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 that the Services specified in clause 4 are suitable or adequate for the Customer's particular business or purpose.
- 7.3 EXCEPT AS EXPRESSLY PROVIDED ABOVE, 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, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE OR SERVICES, 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
- 7.4 All warranties or guarantees given or made by Crystal Payroll with respect to Software or the Services:

7.4.1 are for the benefit of the Customer only and are not transferable, and

7.4.2 shall be null and void if the Customer breaches any term or condition of this Agreement.

8 Indemnities and Limitation of Liability

8.1 Crystal Payroll shall not be liable to the Customer or any other party in any manner whatsoever whether direct or indirect arising out of:

8.1.1 the Customer's connection to the Internet or the Customer's hardware, software or systems;

8.1.2 the Customer's late payment or late Payrun;

8.1.3 the Customer's acts or defaults in relation to errors in input or statistical misinformation;

8.1.4 a default or malfunction in the systems or services of any third party utilised by the Customer; or

8.1.5 the Customer's use of third party services or a defect or fault due to a third party unrelated to Crystal Payroll.

8.2 Notwithstanding any provision in this Agreement whether express or implied (excepting only the indemnity provided in sub-clause 4.2.3) 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).

8.3 To the maximum extent permitted by applicable law, Crystal Payroll and its suppliers are not liable for any indirect, special, incidental, or consequential damages (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.

8.4 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 Customer has provided to Crystal Payroll in relation to the Services or Customer's improper use of the Software or Services.

8.5 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 Customer at all times. Customer must notify Crystal Payroll immediately that it becomes aware of any unauthorised use of its access codes and passwords.

9 Force Majeure

9.1 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.

10 Confidentiality

- 10.1 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:
- 10.1.1 where either party is required by law;
 - 10.1.2 in good faith and for the purposes of this Agreement;
 - 10.2 to either party's professional advisers who shall be under the same confidentiality restrictions under this agreement;
 - 10.3 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
 - 10.4 information that is already public.
- 10.5 Crystal Payroll shall operate its business in accordance with its Privacy Statement at the Crystal Payroll Website and as required by law.

11 Security

- 11.1 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).
- 11.2 The Customer will not attempt to compromise Crystal Payroll's security environment or service availability through hacking, denial of service attacks and the like. 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 Law

- 12.1 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.

13 Entire Agreement

- 13.1 This Agreement constitutes the entire Agreement between the parties. No amendment to the Agreement shall be effective unless it is in writing and signed by both parties.

For and on behalf of:

Company:

Full Name:

Position:

Signature:

Date: / /

For and on behalf of:

Company:

Full Name:

Position:

Signature:

Date: / /

Schedule to Software Licence and Service Agreement

Item 1	Customer	Legal name: Trading name: Address: Phone: Facsimile: Email:
Item 2	Service Level	Crystal Payroll / Customer to delete as appropriate <ul style="list-style-type: none">• Full Bureau Service• Bureau-Basic Service• Agency Service• Self-Service All the above as set out at www.crystalpayroll.co.nz
Item 3	Software License	Minimum period 12 months, renew yearly
Item 4	Agreement Policy	2 Months notification for early termination