

## A. Gpayroll Services Agreement

### 1. Acceptance of Services Agreement

- 1.1 The Gpayroll Services Agreement (“**Agreement**”) covers the use of the Service provided by Gpayroll in the Territory (the “**Service**”). This Agreement contains the terms and conditions that govern the use of, and the terms and conditions, upon which Gpayroll will provide you the Service. The Service may be provided through Gpayroll's website and/or mobile applications (collectively, “**Site**”).
- 1.2 You are required to indicate your acceptance of the Agreement below in order to access and use the Service. By accessing and/or using the Service, you agree to be bound by the terms of the prevailing Agreement in force at the time of your access and/or use. If you are agreeing to these terms on behalf of a business, you represent and warrant that you have authority to bind that business to this Agreement, and your agreement to this Agreement will be treated as the agreement of the business. In that event, "you" and "your" shall refer to that business.

### 2. Definitions

**Account:** The account opened with Gpayroll for the provision of the Service.

**Administrator:** The administrator appointed by the Customer shall have full administrator rights to administer the Account and the Service, including but not limited to the right to determine the Services required by the Customer, add or delete Users, set the appropriate user access right, and upload the User's Personal Data to the Service.

**Anonymized Data:** As defined in Clause 8.5.

**Confidential Information:** All information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (collectively, “**representatives**”) to the other party and that party's representatives in connection with this Agreement which information is either labelled “Confidential” or should reasonably be considered as confidential because of its nature and the manner of its disclosure, including Personal Data and Customer Data.

**Content:** All data including Personal Data, documents, materials and information uploaded by you and/or Users to the Site.

**Customer:** The business that has entered into this Agreement with Gpayroll and/or the individual receiving the benefit of the Service from Gpayroll.

**Customer Data:** Any information that is provided by the Customer to Gpayroll as part of Customer's use of the Service, including Personal Data and any information derived from such information.

**Direct Debit Authorisation:** Authorisation given by the Customer in a GIRO application form for a Participating Bank to process Gpayroll's instructions to directly debit their account in such amounts as are necessary to fund Direct Deposits as well as to pay any fees or charges associated with the Services.

**Direct Deposit:** The option offered to the Customer at the point of purchase of the Service which involves the direct electronic payment transfer of salaries, hourly wages and/or other payments from a Customer's account into its employees' individual bank accounts.

**Electronic Banking Services:** The electronic banking and other services provided by the Participating Bank to Gpayroll for the operation of the Direct Deposit Service.

**Electronic Instructions:** Any communication, instruction, order, message, data or information provided by Gpayroll to the Participating Bank via the Electronic Banking Services that is necessary to complete Direct Deposit.

**Interbank GIRO Procedures:** A paperless system that allows a customer of a Participating Bank to transfer funds, through direct debits and credits, to the accounts of customers of any other Participating Bank.

**Participating Bank:** The financial institution that is duly authorised by the Customer and receives Electronic Instructions from Gpayroll to facilitate movement of funds from the Customers' account to Gpayroll's account and then to the individual employees' bank accounts for purposes of effecting the Direct Deposit.

**Personal Data:** Refers to any data, whether true or not, about an individual who can be identified (a) from that data; or (b) from that data and other information to which Gpayroll have or are likely to have access, including data in Gpayroll's records as may be updated from time to time. Examples of such Personal Data include name, NRIC, passport or other identification number, telephone number(s), residential address, email address, date of birth, gender, marital status, race, religion, nationality, country of residence, postal code, employment status, department, hire date, job grade, nature of employment, contract type,

salary, pay frequency, financial and bank account details and any other information relating to any individuals which the Customer has provided Gpayroll.

**Prescribed Fees:** The fees payable by to Gpayroll for the Service as set out in the Schedule of Fees which may be revised by Gpayroll from time to time by giving one month's notice to the Customer.

**Schedule of Fees:** A schedule or list of fees to be paid by the Customer upon purchasing any Service under this Agreement.

**Service or the Services:** The range of payroll administration services provided by Gpayroll to the Customer which includes but is not limited to (i) processing and production of comprehensive payroll reports (ii) statutory filings (iii) provision of electronic payslips (iv) salary payments and other services as offered by Gpayroll from time to time, such as the Direct Deposit Service.

**Site:** As defined in Clause 1.1.

**System:** Hardware, software, network and telecommunication links or any part thereof used from time to time by either party for the purpose of providing, supporting, accessing and/or otherwise referable to any of the Services provided under this Agreement.

**Territory:** The jurisdiction where the User is located.

**Third Party Service:** As defined in Clause 4.1.

**Third Party Service Provider:** Any third party service provider, which includes but is not limited to a Participating Bank, supplying services which are necessary in order for Gpayroll to provide the Services under this Agreement.

**User:** The individual receiving the benefit of the Service from Gpayroll and/or the individual authorized to use the Service.

For purposes of this Agreement, unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

### **3. Provision of the Service**

- 3.1 To access and use the Service, you are required to open an Account with Gpayroll by registering and providing Gpayroll with true, accurate, current and complete information

regarding the Customer, Administrators and Users, and details and other information that Gpayroll may reasonably require from time to time for the purpose of providing you with the Service. Depending on the type of Service you request, you must ensure that all information provided is timely, true, complete, current and accurate and complies with the relevant laws and/or regulations within the Territory.

- 3.2 You will be required to appoint an Administrator and to set the access rights for each User. Your registration constitutes consent for Gpayroll to use any Personal Data which you provide Gpayroll for the purposes of providing the Service (as set out in our **Privacy Notice [here](#)**), and for any ancillary uses for which your consent may reasonably be implied.
- 3.3 You also acknowledge and agree that in providing the Service, Gpayroll is not acting in a fiduciary capacity for you and/or your business and that using the Service does not relieve you of your obligations to obtain the necessary approvals and consents including any implied and/or express approvals and consents of your employees in connection with the collection, use and disclosure of their Personal Data required for Gpayroll to provide payroll Service to their benefit and on your behalf. You also acknowledge and agree that using the Service does not relieve you of your legal and/or statutory obligations under the relevant laws and/or regulations in the Territory, including but not limited to the obligation to pay your employees the correct amount of wages within the time period as prescribed by the relevant laws and/or regulations in the Territory.
- 3.4 As the Site contains Personal Data, access to certain areas of the Site is restricted to Users with the appropriate user access rights. For security and investigative purposes, Gpayroll has the right to:
- (a) restrict access to specific areas of the Site, or whole Site, or to suspend the Service without notice to you;
  - (b) block the delivery of the Service; and
  - (c) review your Content in order to resolve any issue.
- 3.5 The Administrator shall be authorized to administer the Services to be provided by Gpayroll which shall include the addition and deletion of Users. You are required to ensure that all Users understand that their passwords are to be kept confidential. You must notify Gpayroll in writing immediately if you become aware of any unauthorized use of your Account, the Service, the Site or any password.
- 3.6 Subject to payment of the Prescribed Fees and compliance with this Agreement, Gpayroll shall provide the Services to you until termination in accordance with this Agreement.

3.6 In addition to the Gpayroll Services Agreement, certain Customers may be required to accept and agree to additional terms and conditions depending on the types of Service purchased. For example, Customers who have opted for the Direct Deposit Service will be bound by additional terms and conditions found at **Part B** of this Term and Conditions.

#### **4. Third Party Service Providers**

4.1 You acknowledge that Gpayroll may engage and incorporate the services of Third Party Service Providers to assist in providing the Service. You hereby consent and authorize Gpayroll to delegate the authorizations you provide to Gpayroll to such Third Party Service Providers as Gpayroll deems necessary to provide the Services to you. Your purchase of certain Services may be provided by or may incorporate the services provided by Third Party Service Providers (including, but not limited to automated statutory filings or submissions to the Central Provident Fund Board and Internal Revenue Authority Singapore and/or automated salary payments)(“**Third Party Services**”). The use of Third Party Services will require your agreement to certain additional terms and conditions provided by the applicable Third Party Service Provider. These additional terms and conditions will be made available to you when, and if, you purchase and/or opt for the Third Party Services. Your purchase and use of the Third Party Services is also conditional upon your cancellation of any other prior third party services used by you.

4.2 You acknowledge that Third Party Service Providers are independent contractors as stipulated in Clause 20.2. Gpayroll does not provide, or exercise any control or oversight over the performance of Third Party Service Providers in providing the Third Party Services to you. Depending on the respective terms and conditions of a Third Party Service Provider, the Third Party Services purchased by you may be provided to you on an “as is” or on an “as available” basis. Gpayroll makes no representations and provides no warranties regarding the quality, reliability, timeliness or accuracy of such Third Party Services. You also acknowledge and accept that a Third Party Service Provider may change, modify or discontinue, temporarily or permanently, any Third Party Services purchased and/or used by you, without notice to you. Gpayroll shall use its best endeavours to provide notice to you within a reasonable period of time if and when Gpayroll becomes aware of such change, modification, suspension and/or discontinuance of Third Party Services.

#### **5. Charges and Payment**

5.1 You agree to pay Gpayroll the Prescribed Fees set out in our Schedule of Fees listed [here](#). If you purchase a Service, then the following payment terms apply.

5.2 The Prescribed Fees exclude all applicable taxes and currency exchange settlements, unless stated otherwise.

- 5.3 To pay for the Services, you will be asked to provide a payment method at the time you sign up for the Service. You can access and change your billing information and payment method on the account management website by signing into your Account. You also agree to permit Gpayroll to use any updated account information regarding your selected payment method provided by your issuing bank or the applicable payment network. You agree to keep your Account and contact information current at all times. Changes made to your Account will not take effect, including changes to the Prescribed Fees, unless Gpayroll is given sufficient notice to act on your changes made to your Account.
- 5.4 By providing Gpayroll with a payment method, you (i) represent that you are authorized to use the payment method provided by you and that any payment information provided is true and accurate; (ii) authorize Gpayroll to charge you for the Service using your payment method; (iii) authorize Gpayroll to charge you for any paid feature of the Service that you choose to purchase while this Agreement is in force and (iv) authorize Gpayroll to initiate any deductions from your account of all fees or charges associated with the Service including, without limitation to, late payment fees, interest and/or charges imposed by the Participating Bank with respect to the Direct Deposit Service. Depending on the payment method that you have chosen, Gpayroll may bill you (a) at the end of a payroll processing month or (b) on an automatic monthly recurring basis. If you opt for the payment method under Clause 5.4 (b), you are authorizing a recurring payment to be made to Gpayroll until the Service have been terminated by you, Gpayroll and/or the Participating Bank. By authorizing recurring payments, you are authorizing Gpayroll to process such payments as either electronic debits or fund transfers, or as electronic drafts from your designated account.
- 5.5 Gpayroll will provide you with an online billing statement on the Gpayroll's website, where you can view and print your statement. This is the only billing statement that Gpayroll will provide. If Gpayroll makes an error on your bill, you must inform Gpayroll within 90 days after the error first appears on your bill. Gpayroll will promptly investigate the charge. If you do not inform Gpayroll, in writing, within such time, you hereby in effect waive and release Gpayroll from all liabilities and claims of loss resulting from the error, and Gpayroll will only be liable to correct the error on the relevant bill or provide a refund (if applicable). Other than billing errors, all charges, Prescribed Fees and any service fees made under Clause 5.6 of this Agreement are final and non-refundable. If Gpayroll has identified a billing error, Gpayroll will correct that error within 90 days.
- 5.6 In the event that you made any service fees to Gpayroll (i.e. upon signing up for an annual agreement), such service fees shall be final and non-refundable. Upon termination of the

Service, you hereby agree to forfeit any service fees that you have made in advance to Gpayroll.

- 5.7 If you are taking part in any trial or promotion, you must discontinue the use of the trial or promotional Service at the end of the trial or promotional period to avoid incurring the Prescribed Fees, unless Gpayroll notifies you otherwise. If you continue to use the Services beyond the end of any trial or promotional period, Gpayroll will charge you the Prescribed Fees for the Service. The terms and conditions in this Agreement will apply during your participation in any trial or promotional period.
- 5.8 Gpayroll may change the Prescribed Fees for the Service by giving you at least one month's notice. If you do not agree to the price change, you must terminate and discontinue use of the Service before the price change takes effect.
- 5.9 If Gpayroll owes you a payment, then you agree to timely and accurately provide Gpayroll with any information Gpayroll needs in order to pay you. You are responsible for any taxes and charges you may incur as a result of this payment to you. You must also comply with any other conditions Gpayroll places on your right to any payment. If you receive a payment in error, Gpayroll may reverse or require return of the payment. You agree to cooperate with Gpayroll in our efforts to do this. Gpayroll may also reduce the payment to you without notice to set-off or adjust for any previous overpayment.
- 5.10 Except where otherwise provided in this Agreement, where you have incurred any liability to Gpayroll, whether arising from or under this Agreement or otherwise howsoever arising, Gpayroll may without notice to you set-off the amount of such liability against any liability of Gpayroll to you arising from or under this Agreement, whether either such liability is liquidated or unliquidated, present or future, accrued or contingent.

## **6. Customer's Obligations**

6.1 You warrant that:

- (a) in order for Gpayroll to provide the Service, the Content and/or any information you and/or the User provide to Gpayroll shall be true, accurate, current and complete as required by the Service which you have purchased;
- (b) each User is legally and/or lawfully employed by you;
- (c) you are responsible for all Content that you and/or any User may upload, post, email or otherwise transmit via the Site;
- (d) in order for Gpayroll to provide the Service, you have obtained all necessary approvals and consents, and will comply with and will continue to comply with all

applicable privacy legislation in connection with the collection, use and disclosure of information relating to the Content. For the avoidance of doubt, this warranty extends to the procuring of all necessary approvals and consents from employees in connection with the collection, processing, use and/or disclosure of their Personal Data by Third Party Service Providers for the relevant purpose of providing the Service;

- (d) the Content does not infringe any third party rights;
- (e) you are duly authorized to upload, submit, transmit or otherwise deal with all Content provided by you, and that all such Content is true, accurate, current and complete;
- (f) your Content will not place an unnecessary load as to affect the performance of the Service or the System;
- (g) your Content will not contain any material which is unauthorized, inaccurate, harmful, abusive, obscene, libellous, defamatory, threatening or otherwise illegal;
- (h) your Content will not contain any viruses or harmful or malicious code or devices which could damage the System, Service or any device accessing such Content;
- (i) you are solely responsible for paying the correct amount of salaries to your employees on time;
- (j) you are solely responsible for making all necessary statutory payments to the proper statutory organizations on time;
- (k) you are solely responsible for submitting any payroll returns to the proper tax agencies on time;
- (l) you are responsible for submitting all completed and executed documents Gpayroll requires for providing the Service prior to the payroll processing date;
- (m) you maintain sufficient funds in your bank account for the Participating Bank to make its authorized deductions for Direct Deposit;
- (n) you are responsible for verifying that all payments in relation to Direct Deposit have been received by the employees and are accurate;
- (o) you will fulfil all your obligations under relevant laws or regulations to retain records relating to Customer or Personal Data contained in Gpayroll's files; and
- (p) you are responsible for cancelling any prior payroll service.

6.2 You agree not to:

- (a) use the Service other than as authorized under this Agreement;



- (b) use any device, equipment, software, or routine that interferes with any application, function, or use of the Service, or is intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate the System or any data, or communication;
- (c) resell, sublicense, time-share, or otherwise share the Service with any third party;
- (d) frame or mirror the Service;
- (e) decompile, disassemble or reverse-engineer the underlying software or application that is part of the Service or otherwise attempt to derive its source code;
- (f) use the Service and/or Customer Data other than for the purposes contemplated by this Agreement or, either directly or indirectly for any activity that is illegal and/or unlawful;
- (g) access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; or
- (h) authorize any third parties to do any of the above.

6.3 Any Customer or User suspected of having information which involves fraud, embezzlement, money laundering, insider trading, support for terrorism, or any other activity proscribed by law may have their Account terminated, their financial data erased, and Gpayroll may also report the suspected activities to law enforcement officials in the appropriate jurisdictions as part of the legal compliance with the respective jurisdictions.

6.4 To enable Gpayroll to provide you the Service, you and/or the Users, grant to Gpayroll a worldwide, royalty-free and perpetual right to use the Content which shall include but not be limited to making copies of, retaining, transmitting, reformatting, displaying and distributing the Content subject to the terms and conditions set out in this Agreement and the Privacy Notice.

## **7. Gpayroll's Obligations**

7.1 Gpayroll shall provide the Service with reasonable skill and care.

7.2 The provision of the Service shall not apply to the extent of any non-conformance which is caused by use of the Service contrary to Gpayroll's instructions, or modification or alteration of the Service by any party other than Gpayroll or their duly authorized contractors or agents. If the Service cannot be substantially performed, Gpayroll will, at its expense, use all reasonable commercial endeavours to correct any such non-performance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.

- 7.3 Notwithstanding the foregoing, Gpayroll:
- (a) does not guarantee that the Customer's use of the Service will be uninterrupted or error-free; or that the Service provided and/or the information obtained by the Customer through the Service will meet the Customer's requirements; and
  - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communication networks and facilities, including the Internet, and the Customer acknowledges that the Service may be subject to limitations, delays and other problems inherent in the use of such communication facilities.
- 7.4 You are responsible for your activity on our Site arising out of any failure to keep passwords confidential and you may be held liable for any losses arising out of such a failure. Gpayroll will not be liable for any loss or damage arising therefrom.
- 7.5 This Agreement does not prevent Gpayroll from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or Service which are similar to those provided under the Agreement.
- 7.6 Gpayroll has and will maintain all necessary licences, consents, and permissions necessary for the performance of the Service.
- 8. Personal Data & Privacy**
- 8.1 Gpayroll's Privacy Notice can be reviewed [here](#). You acknowledge and agree that the provision of certain Services are handled and/or processed by our Third Party Service Providers, each of whom have their respective privacy notices. You may be required to agree to the privacy notices of such Third Party Service Providers in order for us and the Third Party Service Provider to provide the Services.
- 8.2 You agree to comply with the appropriate data protection and privacy laws when you use, access or provide the Service. Gpayroll may revise its Privacy Notice from time to time without prior notice to you. You will be notified of any revisions to the Privacy Notice.
- 8.3 Gpayroll shall:
- (a) process Personal Data only in accordance with the instructions of the Customer and to the extent, and in such a manner, as is reasonably necessary to provide the Service or as is required by any applicable law;
  - (b) in respect of Personal Data, which is in the possession or under the control of Gpayroll, implement technical and organisational measures in accordance with good

industry practice to protect Personal Data against unauthorized or unlawful processing and accidental loss, destruction, alteration or disclosure; and

- (c) respond to an access request as soon as reasonably possible and to make a correction of Personal Data processed by Gpayroll as soon as practicable.

8.4 The Customer agrees that Gpayroll may transfer Personal Data outside the Territory provided such transfer is accorded a standard of protection in the territory to which it is transferred that is comparable to the protection under data protection laws within the Territory.

8.5 The Customer agrees that Gpayroll is entitled to anonymize Personal Data so that the resulting data lacks any means to identify the Customer and Users, and does not contain any Confidential Information ("**Anonymized Data**") and to use the Anonymized Data for any commercial or non-commercial purpose including but not limited to the following:

- (a) to aggregate the Anonymized Data with other data;
- (b) to modify the Anonymized Data (whether aggregated or not) so as to create a derivative work;
- (c) to publicly publish the Anonymized Data (whether aggregated, modified or not) either directly or indirectly through third parties; and
- (d) to commercialize the Anonymized Data (whether aggregated, modified or not) by licensing, selling and/or

the Anonymized Data (whether aggregated, modified or not) to third parties.

8.6 Ownership of the Anonymized Data (including all intellectual property rights), as modified by Gpayroll, shall vest in and be owned absolutely by Gpayroll.

## 9. **Proprietary Rights**

9.1 Gpayroll owns all worldwide right, title and interest in and to the Service and the Site, applications and software platform that Gpayroll uses to provide the Service. This Agreement does not convey any proprietary interest in or to any Gpayroll intellectual property or rights of entitlement to the use thereof except as expressly set forth herein. You acknowledge and agree that the Prescribed Fees paid apply only to the use of the Service by you. Any feedback, comments and suggestions you may provide for improvements to the Service ("**Feedback**") is given entirely voluntary and Gpayroll will be free to use, disclose, reproduce, license or otherwise distribute, and exploit such Feedback as it sees fit, entirely without obligation or restriction of any kind.

## 10. **Confidentiality**

- 10.1 The provisions of this Clause 10 shall not apply to any Confidential Information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of this clause);
  - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
  - (d) was known to the receiving party before the information was disclosed to it by the disclosing party;
  - (e) the parties expressly agree is not confidential or may be disclosed; or
  - (f) is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 10.2 Each party shall keep the other party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement ("**Permitted Purpose**"); or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4 The Customer acknowledges that Gpayroll's Confidential Information includes any designs, plans, software or other materials created by Gpayroll in connection with the Service and the Customer agrees not to make use of any such material for any purpose other than receipt of Service provided by Gpayroll.
- 10.5 Gpayroll acknowledges that Customer Data is the Confidential Information of the Customer.
- 10.6 A party may disclose the other party's Confidential Information to those of its representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) at all times, it is responsible for such representatives' compliance with the confidentiality obligations set out in this clause.

10.7 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, including, without limitation, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 10.7, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

10.8 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under any applicable anti-corruption law, disclose Confidential Information to the relevant governmental authorities without first informing the other party of such disclosure.

10.9 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.

## **11. Limitation of Liability**

11.1 This Clause sets out the entire financial liability of Gpayroll (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

- (a) any breach of this Agreement, including but not limited to any data security breach;
- (b) any use made by the Customer or authorized Users of the Service;
- (c) any use of the Service and/or Customer Data by a third party; and
- (d) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Service and/or this Agreement.

11.2 Except as expressly and specifically provided in this Agreement:

- (a) The Customer assumes sole responsibility for results obtained from the use of the Service and for conclusions drawn from such use. Gpayroll shall have no liability for any damage caused by errors or omissions in any information, authorisation or

instructions provided to Gpayroll by the Customer, in connection with the Service, any failure by the Customer to comply with Clause 6, or any actions taken by Gpayroll in good faith and on the Customer's authorisation or instructions; and

- (b) it is the parties intention that all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, be excluded from this Agreement.

11.3 Nothing in this Agreement excludes or limits the liability of Gpayroll for:

- (a) death or personal injury caused by Gpayroll's negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot lawfully be excluded or limited.

11.4 Subject to Clause 11.3:

- (a) Gpayroll shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, or pure economic loss, or for any indirect or consequential loss, costs, damages, charges or expenses however arising;
- (b) Gpayroll shall not be liable, whether in contract, tort (including for negligence or breach of statutory duty) misrepresentation (whether innocent or negligent), restitution or otherwise for the acts, errors, negligence and/or omissions of any Third Party Service Provider or for faults in or failures of their apparatus, equipment or systems or for the modification, suspension or discontinuance of their Third Party Services, or for the use or reliance on the data, information, content or matter provided by any Third Party Service Provider to the Customer via the Service.
- (c) Gpayroll's total aggregate liability for contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to an amount equal to the fees paid for the Service fee in the month during which the breach occurred or up to US\$500, whichever is the lower.

11.5 Gpayroll will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect your computer

equipment, computer programs, data or other proprietary material due to your use of the Service or to your downloading of any Content on it, or on any website linked to it.

- 11.6 Gpayroll assumes no responsibility for the content of websites linked on the Site. Such links should not be interpreted as endorsement by Gpayroll of those linked websites. Gpayroll will not be liable for any loss or damage that may arise from your use of them.

## **12. Indemnity**

- 12.1 You hereby indemnify Gpayroll and our affiliates, officers, agents, partners, and employees and undertake to keep Gpayroll indemnified against any losses, damages, costs, liabilities and expenses (including, without limitation, legal expenses and any amounts paid by Gpayroll to a third party in settlement of a claim or dispute) incurred or suffered by Gpayroll arising out of the Content and/or information you submit, post to or transmit through the Service, your access or use of the Service, your violation of any terms of this Agreement and/or the additional terms and conditions at Part B, insufficient funds in your account resulting in the debiting of Gpayroll's account and/or an extension of credit from the Participating Bank to Gpayroll in order to meet your payment liabilities or your violation of any rights of another.

## **13. Termination**

- 13.1 The Service will continue until such a time as you or Gpayroll gives 30 days' prior notice to the other (which may be given by email or through the Service), unless termination is for cause or pursuant to Clauses 5.8 and 17.1. Upon termination, Gpayroll will deactivate your Account and you will no longer be able to access the Service. Upon termination, Gpayroll may retain archived copies of employee payslips and/or employer payroll reports ("**Records**") for as long as it is required by law or for other legitimate business purposes. If you wish to retrieve such Records stored in Gpayroll files, you are required to contact Gpayroll via email and/or raise a request on the account management website. Gpayroll will respond to an access request as soon reasonably possible and reserve the right to charge a reasonable fee for retrieving such Records as indicated in the Schedule of Fees.
- 13.2 Gpayroll may terminate (in which case the Account shall be terminated without notice to you) or temporarily suspend your access and/or any User's access to the Service in the event that:
- (a) you breach any material provision of this Agreement, (if it is capable of being cured) is not cured within 10 days from notice to you (5 days in the case of non-payment);
  - or

- (b) Gpayroll determines that your actions are likely to cause legal liability for Gpayroll or that you have misrepresented any data or information required by Gpayroll in connection with the Service or at any other time or
  - (c) Gpayroll reasonably believes that your account balance is insufficient to cover your Direct Deposit payment liabilities.
- 13.3 Gpayroll may immediately terminate the Account without notice to you if you shall become insolvent or unable to pay your debts as they fall due, or if any action is commenced against you for liquidation, dissolution or bankruptcy, or if any trustee or receiver shall be appointed with respect to your assets, or if any distress execution or attachment shall be levied upon or issued against any of your property or assets.
- 13.4 The termination of the Service or the Account will not affect your or Gpayroll's rights with respect to transactions which occurred before termination.
- 13.5 Gpayroll will have no liability for any costs, losses, damages, or liabilities arising out of or related to Gpayroll's termination of the Account provided such termination is made in accordance to the terms set out in clause 13 of this Agreement.
- 14. Waiver**
- 14.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 15. Severance**
- 15.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.
- 15.2 Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 16. Entire Agreement**
- 16.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.



16.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

16.3 Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

16.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **17. Changes to the Terms**

17.1 Gpayroll may change the terms and conditions of this Agreement at any time, which will be effective by a stipulated date from when Gpayroll notifies you via the Service. Gpayroll may also change the Service at any time by adding, removing, modifying or suspending the Service and such change will be effective by a stipulated date from when Gpayroll notifies you via the Service or on the Site. If you do not wish to be bound by such change, you must discontinue using the Service and terminate the Account before the change becomes effective. Your continued use of the Service after the change becomes effective, indicates your agreement to the change.

## **18. Electronic Transmission**

18.1 This Agreement, and any amendments hereto, by whatever means accepted, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effect as if it were an original signed version thereof delivered in person. Neither party hereto shall argue that a contract was not formed hereunder based on either (i) the use of electronic means to deliver a signature or to indicate acceptance of this Agreement or (ii) the fact that any signature or acceptance of this Agreement was transmitted or communicated through electronic means; and each party forever waives any related defence.

## **19. Assignment**

19.1 The Customer shall not, without the prior written consent of Gpayroll, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

19.2 Gpayroll may at any time assign, transfer, charge, subcontract or deal in any other manner, with all or any of its rights or obligations under this Agreement without the consent of the Customer.

## **20. No Partnership or Agency**

20.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorize any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

20.2 Third Party Service Providers are independent contractors and nothing in this Agreement is intended to, or shall be deemed to, establish any partnership, joint venture or principal/agent relationship between any Third Party Service Provider, on the one hand, and Gpayroll on the other. Neither Gpayroll nor any Third Party Service Provider shall have the authority to make or enter into any commitments for on behalf of each party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **21. Third Party Rights**

21.1 No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

21.2 The provisions of the Contracts (Rights of Third Parties) Ordinance (Cap. 623) of the laws of Hong Kong are hereby expressly excluded from this Agreement and/or any other documents issued pursuant thereto. No third party may enforce any term of this Agreement, the Privacy Notice or of any provision contained in any document issued under this Agreement or the Privacy Notice.

## **22. Rights and Remedies**

22.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **23. Dispute Resolution**

23.1 Any dispute, controversy, difference or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted. The law of this arbitration clause shall be Hong Kong law. The seat of arbitration shall be Hong Kong. The number of arbitrators shall be one. The arbitration proceedings shall be conducted in English. In the event that recourse to the courts shall be necessary for the purpose of determining any question of law required to be determined for arbitration, the Parties hereto hereby submit to the non-exclusive jurisdiction of the Courts of the Hong Kong Special Administrative Region.

**24. Governing Law and Jurisdiction**

- 24.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Hong Kong Special Administrative Region.

**25. Survival**

The rights and obligations of the parties as contained in the following clauses shall survive the termination or expiration of this Agreement along with any other right or legal obligation which by its nature would be reasonably expected to survive the expiration of this Agreement: Clause 8 Personal Data & Privacy; Clause 9 Proprietary Rights; Clause 10 Confidentiality; Clause 11 Limitation of Liability, Clause 12 Indemnity; Clauses 13.4 and 13.5 Termination; Clause 14 Waiver; Clause 15 Severance; Clause 16 Entire Agreement; Clause 18 Electronic Transmission; Clause 20 No Partnership or Agency; Clause 21 Third Party Rights; Clause 22 Rights and Remedies; Clause 23 Dispute Resolution and Clause 24 Governing Law and Jurisdiction and Clause 25 Survival.

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**B. ADDITIONAL TERMS AND CONDITIONS FOR SPECIFIC SERVICES**

1. Your use of the Services provided by Gpayroll is subject to the Gpayroll Services Agreement above including these Additional Terms and Conditions which govern your use of the Service indicated below. These Additional Terms and Conditions shall prevail over any conflict or inconsistency with the Gpayroll Services Agreement above.

**2. DIRECT DEPOSIT SERVICE**

- 2.1 If you purchase the Services, you may have chosen the Direct Deposit Service. Gpayroll reserves the right to delay or decline processing Direct Deposits (i) that significantly differ, in our sole opinion, from your typical payment activity or volume of payment transactions, (ii) for which sufficient funds are not available in your account, (iii) that are otherwise in violation of the Services Agreement, its additional terms and conditions and/or the terms and conditions of the Participating Bank (described below), or (iv) that, in our sole opinion, may pose a risk of loss to us.

**3. SIGN UP/ACTIVATION**

- 3.1 If you choose the Direct Deposit service, you will be directed to the Direct Debit Authorisation ('DDA') sign up page via our Site.
- 3.2 You acknowledge that your application will only be considered after you download, complete and submit the DDA GIRO Form successfully to the Participating Bank. The Participating Bank may take between 3 to 4 weeks to process your application. The Direct Deposit service is activated after Gpayroll notifies you via the Service that your application has been approved by the Participating Bank.

- 3.3 Gpayroll will not be held liable for any failure and/or delay in the payment of your employees' wages arising out of any failure and/or delay in the processing of your DDA application by the Participating Bank.
- 3.4 You warrant that all information provided by you in the DDA is accurate and complete and acknowledge that unless such information is accurate and complete, Gpayroll will be unable to perform the Direct Deposit service on your behalf.

#### **4. PROCESS AND RESTRICTIONS**

- 4.1 You acknowledge that the Direct Deposit service involves the transfer of Electronic Instructions and/or data given by Gpayroll to the Participating Bank over communications networks and facilities, including the Internet and that such service is subject to limitations, delays and other problems inherent in the use of such communication facilities.
- 4.2 You also acknowledge that there are certain security, corruption, transmission error and availability risks associated with such service and agree, to the maximum extent permitted under applicable law, to assume such risks.
- 4.3 Gpayroll cannot warrant that the Direct Deposit service will be error free. If errors are detected later, Gpayroll may be unable to complete the Direct Deposit in time. Gpayroll will make reasonable efforts to inform you if the Direct Deposit cannot be completed in time and shall use its reasonable endeavours to correct such errors in time, if possible.
- 4.3 In the event that you wish to correct an error in any payroll information submitted by you to Gpayroll which involves the cancellation and/or changing of any Electronic Instructions issued by Gpayroll to the Participating Bank, you acknowledge that Gpayroll shall use its reasonable endeavours to accommodate such requests but will not be held liable if the Participating Bank is unable to give effect to it. You also undertake to pay any associated charges involved.
- 4.4 You also acknowledge that the successful completion of Direct Deposit is contingent upon the maintenance of sufficient funds in your account. Additional charges and/or interest (at such rates that will be notified to you) will be imposed if the insufficiency of funds in your account results in the debiting of Gpayroll's account and/or an extension of credit from the Participating Bank to Gpayroll in order to meet your Direct Deposit payment liabilities.

#### **5. SPECIFIC THIRD PARTY CONDITIONS GOVERNING DIRECT DEPOSIT**

- 5.1 Gpayroll's provision of the Direct Deposit Service to you is subject to Gpayroll's compliance with the Participating Bank's terms and conditions. You therefore acknowledge and accept any and all impact, limitation, failure, delay, inefficiency and/or problems that may arise out of such compliance and will comply with any reasonable requests for the provision of any additional information that is necessary for Gpayroll to provide the Direct Deposit Service to you.

#### **6. CUSTOMER'S OBLIGATIONS**

6.1 The warranties set out in Clause 6 of the Gpayroll Services Agreement apply equally to Customers who have opted for the Direct Deposit Service.

## **7. LIMITATION OF LIABILITY**

7.1 Except as indicated in Clause 7.2 below, the Limitation of Liability provisions set out in Clause 11 of the Gpayroll Services Agreement also apply to Customers who have opted for the Direct Deposit Service.

7.2 To the maximum extent permitted under applicable law, you agree that Gpayroll will not be liable for any losses, damages, costs or expenses (whether direct or indirect, and whether foreseeable or not) which you may suffer or incur based on a claim in contract, tort (including negligence), breach of statutory duty or otherwise as a result of incomplete and/or inaccurate performance Direct Deposits due to:

- (a) events not reasonably within Gpayroll's, the Participating Bank's and/or their Providers' control;
- (b) insufficiency of funds in your account;
- (c) problems with the Internet or inaccurate or incomplete information from you;
- (d) any unavailability of the Gpayroll's and/or Participating Bank's services;
- (e) Gpayroll's access or use or inability to access or use the Participating Bank's services;
- (f) any faults in, failures, breach and/or unauthorised use of Gpayroll's and/or the Participating Bank's Systems, security code and/or security mechanism;
- (g) Participating Bank's failure to receive or delay in receiving Gpayroll's Electronic Instructions because of any failure of Gpayroll's and/or the Participating Bank's system or other facilities or the telecommunication links used to transmit the Electronic Instructions;
- (h) any breach of security or unauthorised use of, corruption or transmission error associated with Gpayroll's and/or the Participating Bank's system or other facilities;
- (i) any act or omission of telecommunications carriers, internet service providers or any other Third Party Service Provider or sub-contractor of the Participating Bank;
- (j) the exercise of any of the Participating Bank's rights under its terms and conditions; and
- (k) the exercise of any of Gpayroll's rights under the general Services Agreement and these Additional Terms and Conditions.

7.3 If Gpayroll defaults in the performance of Direct Deposit, Gpayroll is only responsible for correcting that default. In the event such remedy fails of its essential purpose and Gpayroll is found liable under contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, Gpayroll's maximum liability will be limited to an amount equal to the fees paid for the Direct Deposit Service in the month during which the breach occurred or up to \$500, whichever is the lower.

## **8. INDEMNITIES**

8.1 The indemnity provisions set out in Clause 12 of the Gpayroll Services Agreement apply equally to Customers who have opted for the Direct Deposit Service.

## **9. TERMINATION**

- 9.1 You acknowledge and accept that the Participating Bank may at any time without any liability to you, terminate Gpayroll's access to or use of their Electronic Banking Services which may result in the termination of the Direct Deposit Service. Gpayroll will use its best endeavours to provide reasonable notice to you of such termination, unless such termination is due to a fundamental breach of the Gpayroll Services Agreement and/or the Additional Terms and Conditions for Specific Services. Gpayroll will not be held liable for any losses, damages costs or expenses arising out of such termination provided such termination is made in accordance to the terms set out in Clause 13 of the Gpayroll Services Agreement..
- 9.2 Except as provided in Clause 9.1 above, the termination provisions set out in Clause 13 of the Gpayroll Services Agreement apply equally to Customers who have opted for the Direct Deposit Service.