

Maintenance + Support Services Agreement

1. BACKGROUND

The Customer has been granted a Licence of the Software and agrees to the provision by the Company to it of maintenance and support services as described in and on the terms set out in this Agreement.

2. TERM

The Company shall provide the Services to the Customer and the Franchisees for the Term subject to the terms of this Agreement.

3. SERVICES

3.1 Subject to payment of the Fees and, compliance by the Customer with the terms of this Agreement, the Company agrees to provide the Services to the Customer.

3.2 The Company will provide the Services with reasonable skill and care.

3.3 Franchisee users will have access to help.humanforce.com where they can use the knowledge base and other resources to assist in proper use of the Software, and where they will be able to log support queries with the Company.

3.4 The Company reserves the right to review the use of the Services during the Term to assess fair use and will advise the Customer if it reasonably considers that the Customer's demand for Services during the Term does not or is likely not to satisfy the requirement of fair use. Fair use presupposes that the amount of time spent by the Company in the provision of the Services will not materially exceed the amount of time which the paid Fees would allow based on the Company's standard professional services charge out rates for maintenance and support.

3.5 The current Fair Usage Policy of the Company has been provided to the Customer.

3.6 If the use of Services does not satisfy the requirements of fair use then the Company may suspend the provision of the Services for an appropriate time period and/or render an additional invoice at relevant professional services rates to rectify the deficiency.

3.7 The Company agrees to act in good faith with respect to the issue of determining fair use and with respect to its Fair Usage Policy.

3.8 Subject to clause 13, the Customer will not be entitled to a refund of the Fees in the event of termination or suspension of the Services unless the Agreement is terminated pursuant to clause 14.3.

3.9 The Company shall during the Term, remotely by telephone and/or email (except for installation assistance as party of Quality Control), provide to the Customer the Services detailed below in accordance with this Agreement.

3.10 The Services comprise:

3.10.1 supplying Releases and Updates - which shall be licensed under and form part of the Licence;

3.10.2 responding to Support Requests - at the relevant Support Level and on the basis of the relevant Priority Level assigned in respect of the use of the Software: extending only to guidance and clarification over the usage of the Software and its component parts; diagnostic activity review; Software error rectification; addressing configuration issues or fine-tuning of the Software; advanced fault diagnosis and rectification (relevant procedures in relation to incidents are addressed in further detail in Schedule 1); and

3.10.3 Quality Control - this comprises a pre-installation guide whereby a Company engineer performs the initial installation, sets default configurations as a record of the install and conducts a post-installation workshop to walk the Customer through good housekeeping practices.

3.11 Services are provided only for the relevant Software which is the subject of the Licence.

3.12 The Company's obligation to provide Services is limited to:

3.12.1 the Release of the Software current at the time; and

3.12.2 the immediately preceding Release at the relevant time, but only for a period of 12 months from the date on which the superseding Release was made generally available.

3.13 The Services do not include (subject to clause 13):

3.13.1 correction of errors or defects in the Software caused by modifications to the Software not authorised by the Company;

3.13.2 initial installation of the Software to work with third party hardware or software components other than those expressly agreed in writing by the

Company in the Order Form or other relevant document;

3.13.3 training of staff;

3.13.4 reversing entries or repairing data caused by incorrect operation;

3.13.5 in-depth or highly technical queries i.e. non-operational questions such as those regarding product integration or development;

3.13.6 use of third party applications including Microsoft Office, Crystal Reports and Microsoft Excel;

3.13.7 assistance with viruses, worms, and other malware;

3.13.8 assistance with virus protection systems that impede the proper use of the Software;

3.13.9 system recovery or transfer to another server or machine in the case of server upgrades or replacement, hard disk failures, etc;

3.13.10 in-depth business consultation or process development;

3.13.11 data conversion, deducing, cleansing, importing or processing;

3.13.12 creation of reports, queries, analysis types or forms;

3.13.13 support for third party products, including, but not limited to: operating systems, databases, network devices and access control systems;

3.13.14 testing (except for the purposes of Quality Control under clause 3.10.3);

3.13.15 payroll systems;

3.13.16 HR information resource systems;

3.13.17 integration;

3.13.18 correction of errors or defects in the Software caused by the use of the Software together with Information Technology Products not authorised or approved in writing by the Company;

3.13.19 correction of errors or defects in the Software caused by the Customer's failure to have suitably qualified and adequately trained operational staff or a failure to meet the requirements of clause 11;

3.13.20 the cost of supplying data storage media, stationery and other supply items;

3.13.21 correction of errors or defects in the Software caused by incorrect use of the Software;

3.13.22 hardware failures or defects of any sort for:

- i hardware not supplied by the Company; or
- ii hardware acquired by the Company as agent for the Customer

but subject to statutory rights of the Customer which cannot be lawfully excluded and the provisions of clause 13;

3.13.23 installation of new Releases and Updates on the IT infrastructure of the Customer (i.e. outside of the Company's hosted environment);

3.13.24 setup of additional/new functionality or components that are outside of the original scope and initial setup documentation agreed to by the Company or a subsequent Statement of Work or Professional Services Agreement;

3.13.25 third party software or hardware which is not supported by the Software in respect of which any issues must be addressed with the supplier of the third party application or hardware; and

3.13.26 any service, support or maintenance item that cannot be conducted remotely i.e. a Company representative is required onsite.

3.14 The Company has no obligation to provide and may suspend the provision of the Services and any collateral (including licence) rights and services if a payment is not made when due under this Agreement. Non-payment and suspension of Services and any collateral rights and services in such circumstances is without prejudice to the rights of the Company.

3.15 The Company will provide support for the Software remotely during Support Hours in the form of assistance and advice on the Software and will make reasonable endeavours to respond to requests for such assistance and advice in accordance with the Target Response Table, subject to the Customer complying with the provisions of this Agreement.

3.16 The Customer must provide the Company with:

3.16.1 a return call service during usual business hours for all calls made by the

Company to the Customer in the course of providing remote support;

3.16.2 a listing of outputs and all such other data as the Company may reasonably request from the Customer in order to reproduce operating conditions similar to those present when the problem was discovered; and

3.16.3 a remote connection mechanism to access the computer/server that the support and maintenance relates to and the host computer/server of the Company application and database(s).

4. PROFESSIONAL SERVICES

4.1 The services which are not included as part of the Services under this Agreement may be provided under a separate Professional Services Agreement.

4.2 If the Company does in fact provide services to the Customer which are not within the scope of Services under this Agreement, not being under a signed Professional Services Agreement or relevant Order Form, Statement of Work or other document (including time spent to rectify, consider or address issues that are not the responsibility of or supported by the Company, or due to interference with or a change to configurations contrary to specification, instructions of the Company or changes to Software without the prior approval of the Company in writing) then the Customer will in addition pay to the Company the applicable professional services fees at then applicable or published hourly or other professional services Standard Rates and the terms of the Company's standard form Professional Services Agreement shall apply to the provision of such professional services. The making of enquiries or the provision of a response by the Company is not indicative and may not be taken as evidence of an acceptance by the Company that a particular issue is within the scope of Services.

5. CONFIGURATION CHANGES

The Customer may only configure the Software within the scope of and in accordance with its licensed functionality. The Company shall not be obliged to support and/or maintain the configuration changes or rectify any instability or performance issues resulting or arising, directly or indirectly, from or in connection with such configuration changes unless it has previously consented in writing to the configuration changes and also so agreed to provide support and maintenance services with respect to such changes.

6. SUPPORT LEVELS

6.1 The Company has three distinct Priority Levels outlined in Schedule 1, which complement each other to provide a comprehensive support offering.

6.2 Errors, defects and non-conformities of the Software will be categorised by the Company in accordance with the table at Schedule 1.

6.3 In relation to each of the Priority Levels, the Company will use its reasonable endeavours to:

6.3.1 meet the target Initial Response Times;

6.3.2 provide a temporary resolution to the problem within the Target Resolution Time; and

6.3.3 provide support in the nature described in the Target Response Table.

6.4 After three unsuccessful attempts to contact (during Support Hours) the person reporting the issue or request the priority will be changed to a priority level 3.

7. RELEASES + UPDATES

7.1 Subject to clause 7.3, Releases and Updates are provided during the Term to Customer as part of the Services and form part of the Licence, provided always that the Company only supports and maintains the immediately preceding Release at any given time for a period of 12 months from the date on which the superseding Release was made generally available.

7.2 The Company ordinarily schedules (but is not obliged to do so) up to four quarterly Releases per year. The purpose of these Releases is to provide updated versions of the Software. Updates are provided on an *ad hoc* basis to resolve specific incidents, at the sole discretion of the Company.

7.3 The Company will provide the Customer with Updates and Releases to the Software licensed by the Customer, provided such Updates and Releases are made generally available to other licensees of the Software.

7.4 The Company shall provide notification to approved customer contacts of Releases and Updates within 30 Business Days of the date on which the new Release or Update is formally made available. With each new Release or Update, the Company will provide the Customer with documentation containing a detailed explanation of how the new Release or Update operates including any effect that it will have on the functionality or performance of the Software. The Customer will notify the

Company via email of its intention to apply the Update or new Release.

7.5 Upon request by the Customer, the Company will provide the Primary Contact with one copy of the Update or new Release.

7.6 If the Customer elects not to implement a new Release, the Company will continue to provide support and maintenance Services for the version of the Software used by Customer. However, the Company only provides support and maintenance Services for the immediately preceding Release and the most up-to-date and then current generally available licensed version of the Software.

8. RESUMPTION OF SERVICES

8.1 In circumstances where the Customer wishes to resume Services after an interruption in coverage (for example, due to termination for failure to make a payment or following a suspension by the Company), the Customer may reinstate the provision of the Services with 90 days written notice to the Company only if the Customer pays the Company the Fees which would have been payable over the intervening period had the Customer not cancelled the provision of Services, and the Customer installs (at its own cost) all Updates and Releases of the Software released over the intervening period, as supplied by the Company. An additional fee may be payable as the Company requires.

8.2 The Company reserves the right to undertake a review of the Customer's system to ascertain if any changes have been made that may be material to the supportability of the system. A review of the Customer's system may include an on-site visit by a Company engineer and the compilation of a report describing the configuration of the system plus any pertinent diagnostics, which must be rectified prior to the resumption or non-suspension of Services.

8.3 A review of the Customer's system is a fixed price professional service at applicable Standard Rates.

9. FEES PAYABLE BY CUSTOMER

9.1 The Customer shall pay to the Company the Fees in accordance with the Frequency of Payment.

10. RENEWAL

The Company will ordinarily issue the Customer with a renewal invoice approximately 6 weeks prior to the end of the Initial Term or relevant Subsequent Term.

11. TRAINING

11.1 The Software is specialist technology which requires professional training in its use. Certified training courses are available for system administrators as a professional service.

11.2 The provision of the Services is predicated on the Customer's and Franchisee's staff and relevant numbers of persons having received the appropriate training, achieved relevant Company certification and having at all times appropriate technical skills to fulfil their job roles as applicable for use of the Software.

11.3 To assist the Customer in this regard, the Company will provide the Quality Control services.

11.4 Training levels and competence levels are determined by the Company in its reasonable discretion. Amounts due or paid in respect of the Services will not be refunded on account of a decision by the Company to suspend Services (which it has the right to do at any time if it is not reasonably satisfied with respect to competency levels at all relevant times).

12. INDEMNITY

The Customer indemnifies and shall keep the Company and its Related Body Corporates and Personnel indemnified, to the extent caused or contributed to by the Company or its Related Body Corporates or against all and any claims, actions, damages, outgoings, charges, payments paid or suffered, losses, costs, amounts incurred, expenses and liabilities, which any of them may incur or suffer or may be liable for in connection with the death, personal injury or damage incurred or sustained by any person, directly or indirectly, as a result of the negligence, default, breach or omission of the Customer, its Related Bodies Corporates and affiliates, its and their employees, agents, contractors, managers and other persons or entities, in connection with the provision by the Company of the Services or any Professional Services to or for the Customer except to the extent that the death, personal injury or damage is directly caused by the Company or its Related Bodies Corporate.

13. STATUTORY GUARANTEES + LIMITATION OF LIABILITY

13.1 Certain provisions of the *Competition and Consumer Act 2010* (Cth) (including, without limitation, the Australian Consumer Law) and other State, Territory or Commonwealth laws in Australia, as amended or replaced from time to time (collectively, **ACL**) provide **consumers** (as that expression is

used in the ACL) and others with certain rights (collectively, the **consumer guarantees**) in relation to goods or services purchased by consumers.

13.2 The Company does not give any guarantee, indemnity or warranty or make any representation of any kind, express or implied, with respect to the supply by the Company of any goods or services in connection with this Agreement, except by way of consumer guarantee (as may be relevant).

13.3 Subject to clauses 13.1, 13.2 and 13.4 the aggregate liability of the Company for breach of or liabilities under, in respect of and in connection with this Agreement, any Licence, any Professional Services Agreement, Order Form or any Statement of Work related to it as well as its duties at law and in equity (however arising) and whether in contract, tort (including without limitation negligence), under statute, under indemnities or on any other basis is limited at the Company's option:

- 13.3.1 to the extent the Company has failed to comply with a consumer guarantee under the ACL:
- i in the case of goods - the replacement of the goods, the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or (as may be relevant) bringing the Software into conformance with the published Software specification (at the time of delivery); or
 - ii in the case of services - the supply of the services again or the payment of the cost of having the services supplied again.

13.3.2 to the amount paid or indemnified by an insurer in favour of the Company in respect of the liability to the Customer under the Company's professional indemnity insurance policy, or the amount the Company would have been entitled to be paid or indemnified for such liability by such an insurer but for any failure by the Company to effect, maintain or claim under the Company's professional indemnity insurance policy.

13.4 In no circumstances will either Party be liable to the other or its successors in title or permitted assignees for any indirect or special or consequential loss or damage arising out of, in connection with or relating to the performance, breach, termination or non-

observance of this Agreement. Each Party agrees that loss of profits, revenue, goodwill, bargain, opportunities, loss or corruption of data or loss of anticipated savings however and whenever occurring, will constitute indirect or consequential loss or damage.

14. TERMINATION

14.1 Either the Company or the Customer may terminate this Agreement for any reason upon not less than 14 days' prior written notice to the other, such termination to take effect at the end of the Initial Term or any Subsequent Term (as the case may be) but without prejudice to antecedent rights and continuing obligations.

14.2 The Company may terminate this Agreement by notice in writing to the Customer if the Customer fails to pay any sum payable under this Agreement, the Licence, a Statement of Work, Professional Services Agreement, Order Form or other relevant agreement or document on or before the due date for payment of that sum.

14.3 Notwithstanding clause 14.1, the Customer may terminate this Agreement by notice in writing, with such termination to take effect at the end of the notice period, if the Company fails to meet either of the obligations listed at 14.3.1 or 14.3.2 three times within a six week period:

14.3.1 Priority 1 Target Resolution Time listed in Schedule 1 of this Agreement, or

14.3.2 Monthly Uptime Percentage specified in clause 12.2 of the Hosting Services Agreement.

14.4 Either Party may terminate this Agreement if the other Party materially breaches any term of this Agreement, the Licence, or a Statement of Work or other relevant agreement or document not otherwise mentioned in this clause 14.4 and the defaulting Party does not remedy the default or breach (if capable of remedy) to the full satisfaction of the non-defaulting Party within 10 days after receipt by the defaulting Party of a notice from the non-defaulting Party specifying the relevant material breach.

14.5 This Agreement shall terminate immediately upon expiry of the Term or on earlier termination of the Licence.

14.6 Termination under clauses 14.2 and 14.4 becomes effective on the date that notice in writing is delivered to the defaulting Party stating that a sum has not been paid or that a material breach has occurred which is not capable of remedy or has not been remedied within the relevant 10 day period.

14.7 If a breach occurs pursuant to clauses 14.2 or 14.4, the non-defaulting Party may exercise its rights:

14.7.1 notwithstanding the prior acceptance of any part of any amount payable under this Agreement;

14.7.2 notwithstanding the occurrence of any previous or other breach; and

14.7.3 without the necessity for any notice to or of any consent or concurrence on the part of any other person.

14.8 Upon termination of this Agreement, neither Party will have any further obligations under this Agreement other than:

14.8.1 in respect of any liability for antecedent breach; or

14.8.2 any liability in respect of provisions of this Agreement which are expressed to continue in full force and effect notwithstanding termination.

14.9 For the avoidance of doubt, upon termination the Customer will no longer have access to the Company's Services including, but not limited to, new Releases or Updates.

14.10 The following clauses of this Agreement shall continue in full force and effect notwithstanding termination of this Agreement: clauses 12 (*indemnity*), 13 (*statutory guarantees + limitation of liability*), 14 (*termination*), 15 (*assignment*), 16 (*force majeure*), 17 (*regulatory requirements*), 18 (*governing law*) and 18 (*definitions*).

15. ASSIGNMENT

15.1 Subject to the following provisions of this clause 15, the Customer may not assign, dispose of or otherwise transfer this Agreement or any rights or obligations under this Agreement without the prior written permission of the Company.

15.2 The Customer may assign this Agreement and its rights and obligations under it to a Related Body Corporate of it provided that the Customer at the same time also assigns all its rights and obligations under any related Licence, Professional Services Agreement, Statement of Work and any other agreement relating to this Agreement and the Software.

15.3 It is a condition of a permitted assignment under clause 15.2 that the Related Body Corporate to whom rights and obligations are assigned must remain a Related Body Corporate of the original assignor (i.e. first Customer) and that evidence to the reasonable satisfaction of the Company must be produced prior to assignment to the Company to evidence that the assignee is able

to fully meet the obligations so assigned. For the avoidance of doubt, the assignor shall remain fully liable as an original contracting party to the Company in the event of non-performance by any permitted assignee in respect of any such agreement or licence (whether subsequently varied or not and even if notice of variation has not been given).

15.4 The Customer may in no circumstances assign any rights or obligations under this Agreement to a Competitor.

15.5 The Company may assign, in part or in full, its rights and/or obligations under this the Agreement without the consent of the Customer.

15.6 Subject to this clause 15, this Agreement shall be binding on the Parties to it and their respective successors and permitted assigns.

16. FORCE MAJEURE

16.1 Notwithstanding any other provision in this Agreement, no default, delay or failure to perform on the part of the Company will be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of the Company, including, but not limited to a Force Majeure Event.

16.2 If a Force Majeure Event arises, the time for performance required by the Company under this Agreement will be extended for any period during which performance is prevented by the event.

17. REGULATORY REQUIREMENTS

17.1 The parties acknowledge and agree that:

17.1.1 except as expressly agreed to the contrary, they are respectively responsible for compliance with all Regulatory Requirements applicable to them including with respect to their respective activities in relation to this Agreement; and

17.1.2 each will promptly notify each other of any users' and/or regulatory authorities' queries or complaints regarding this Agreement and the matters contemplated by it.

17.2 This Agreement does not include the provision by the Company to the Customer of any legal or regulatory advice. Furthermore, the Customer is solely responsible for the interpretation and application of any relevant laws, Industrial Instruments, decisions, agreements and policies (including enterprise or collective bargaining agreements, employer/employee arrangements, pay rates,

entitlements and decisions) in relation to this Agreement and the Software, its configuration, use of data, rates, amounts, inputs and information. Any template provided by the Company or configuration by it of Software based upon such a template (comprising and/or including and/or reflecting formulae, pay rates, data, amounts, inputs, entitlements, decisions and information) is illustrative of functionality only, for the purpose only of facilitating the Customer's consideration of how laws, Industrial Instruments, decisions, agreements and policies (including enterprise or collective bargaining agreements, employer/employee arrangements, pay rates, entitlements and decisions might be applied. Specifically, the Company will not check or consider the accuracy or relevance of any such matters (including from or concerning the template or configuration based upon it) or the Customer's compliance with industrial relations, workplace or employment laws. Any such use by the Customer of configured Software is entirely at the Customer's own risk. No duty of care or obligation is assumed by the Company. The Customer acknowledges that substantial loss and damage may be caused or arise from non-compliance by the Customer with respect to the interpretation and application of any relevant laws, Industrial Instruments, decisions, agreements and policies (including enterprise or collective bargaining agreements, employer/employee arrangements, pay rates, entitlements and decisions).

17.3 The parties shall respectively comply with relevant laws applicable to them relating to the privacy and security of any relevant personal information.

17.4 If the Company **processes** (which for these purposes includes using, handling, hosting, transferring, disclosing, deleting, archiving, rendering anonymous amending, augmenting, deleting or rearranging (whether by automated means or otherwise), using or handling in Australia or overseas) any personal information on the Customer's behalf when performing or in connection with its obligations under this Agreement:

17.4.1 the Customer shall ensure that the Customer or other relevant person is entitled to transfer the relevant personal information to the Company and otherwise lawfully process the personal information in accordance with this Agreement and Regulatory Requirements;

17.4.2 the Customer shall ensure that the relevant third parties, customers, employees, independent contractors and other persons have been informed of, and have given their consent to,

such use, processing as required by all applicable data protection and privacy laws in Australia or overseas;

17.4.3 subject to clauses 17.3 and 17.5, the Company shall process the personal information only in accordance with the terms of this Agreement; and

17.4.4 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal information or its accidental loss, destruction or damage.

17.5 If the Company is required by Regulatory Requirements to disclose, delete, amend, permit access, correct, render anonymous or otherwise process personal information for the purposes of the *Privacy Act 1988* (Cth) or other relevant laws then it may do so and in such circumstances the Customer shall pay to the Company its reasonable costs of compliance at Standard Rates.

18. GOVERNING LAW

This Agreement is governed by the laws of New South Wales which shall have non-exclusive jurisdiction with respect to any disputes.

19. DEFINITIONS

In this Agreement, unless the context otherwise requires or provides:

Agreement means this maintenance + support agreement.

Business Days means a day which is not a Saturday or Sunday or a bank or public holiday in Sydney, Australia.

Commencement Date means the date stated in a relevant Order Form, Proposal, OTP or other relevant document accepted by the Company.

Company means TimeTarget Pty Limited (ACN 140 620 248) of Suite 10.01, Level 10, 52 Alfred Street, Milsons Point NSW 2061 but for the purposes of this Agreement shall include its permitted assigns from time to time.

Competitor means another workforce management, time and attendance, rostering or any other software vendor or developer that is or may reasonably be considered by the Company to be a competitor of the Company.

Customer means any person or entity that submits an Order Form, Proposal, OTP or other relevant document to the Company and agrees by conduct or by virtue of notice or otherwise to be bound by this Agreement but for these purposes shall include any permitted assignee

under and to the extent contemplated by clause 15.

Customisation(s) means a development, enhancement or other Modification to the Software which is undertaken by the Company at the request of the Customer pursuant to a Statement of Work or other relevant document.

Fair Usage Policy means the Fair Usage Policy in writing of the Company from time to time.

Fees means the annual maintenance and support fees specified in a relevant Order Form, Proposal, OTP or other document in respect of the provision of the Services, as varied by the Company in accordance with this Agreement.

Force Majeure Event means strikes, lock-outs or other labour disputes, riots, civil disturbance, actions or inaction of governmental authorities, epidemics, wars, computer downtime, embargoes, storms, floods, fires, earthquakes, acts of God or the public enemy, nuclear disasters or default of a carrier or any other event which is not within the Company's reasonable control.

Franchisee means a person or entity who has the right to operate a business under the Customer's Coffee Club brand.

Frequency of Payment means the frequency of payment of Fees specified in a relevant Order Form, Proposal, OTP or other document and in the absence of any stated frequency shall be in advance for the Initial Term and each Subsequent Term.

Initial Response Time means the initial response time specified in the Target Response Table in Schedule 1 in relation to each Priority Level.

Information Technology Product includes without limitation, any software, hardware, firmware, operating system, telecommunications or other equipment used for acquisition, storage, processing, display, transmission or reception of data to or from the Software.

Intellectual Property Rights means all present and future intellectual and industrial property rights subsisting in any and all media and materials (whether now known or created in the future), conferred by statute, at common law or in equity and wherever existing.

IT means information technology.

Licence means the licence granted by the Company to the Customer to use the Software for its internal uses on the terms and conditions referred to in the relevant licence agreement or EULA.

Order Form means an order form or purchase order (howsoever expressed) submitted by the Customer to the Company.

OTP means an offer to purchase submitted by the Customer to the Company.

Parties means the Company and the Customer.

Personnel means the Company's officers, employees, agents, nominees, authorised representatives, carriers, delegates and sub-contractors.

Primary Contact means the person:

(a) authorised by the Customer to request the Services; and

(b) who is considered by the Company to have been trained to a satisfactory level on the Software.

Priority Levels means the priority levels specified in Schedule 1.

Professional Services Agreement means an agreement in writing between the Company and the Customer for the provision to the Customer of professional services.

Proposal means a quotation by the Company for the supply of particular goods and/or services.

Quality Control has the meaning given in clause 3.10.3.

Related Bodies Corporate means as defined in the *Corporations Act 2001* (Cth).

Regulatory Requirements means all applicable laws including practice requirements stipulated by any regulatory authority (whether established pursuant to statute or

otherwise and whether mandatory or voluntary), regulations, instruments and provisions in force from time to time and any binding codes of practice.

Release means software which has been produced primarily to extend, alter or improve the Software by providing additional functionality or performance enhancement (whether or not defects in the Software are also corrected) while still retaining (in whole or in part) the original or substantial similar designated purpose of the Software, but for the avoidance of doubt shall not include new software products so designated by the Company (even if the new software has some or all of the same functionality).

Services means the maintenance and support services specified in this Agreement.

Software means the TimeTarget software (excluding corresponding source code) as detailed in the relevant Order Form, Proposal, OTP, or other relevant document and, if applicable, Customisations (pursuant to a Statement of Work or other relevant document) and Releases and Updates to the extent provided under this Agreement.

Standard Rates means the Company's then current standard consultancy rates for professional services.

Statement of Work means an agreement in writing for the provision of goods and/or services which may include certain deliverables and/or Customisations in respect of the Software. Such agreement in writing may incorporate or comprise the terms of or be subject to a Professional Services Agreement of the Company.

Support Hours means 8.30 a.m. to 5.30 p.m. Sydney time on Business Days.

Professional Services means the professional services described in clause 4 (*Professional Services*).

Target Resolution Time means the target resolution time specified in the Target Response Table in Schedule 1 relative to Support Hours.

Target Response Table means the target response table specified in Schedule 1 as varied from time to time, by mutual agreement between the Parties.

Term means the term specified in the Order Form, OTP, Proposal or other relevant document but if a term is not so specified, the remainder of the calendar year from the Commencement Date (**Initial Term**), and thereafter (subject to renewal in writing and payment of relevant Fees and other amounts owing or due) on a rolling six monthly basis (each a **Subsequent Term**).

Territory means Australia, New Zealand and Papua New Guinea or as otherwise specified in the Order Form, OTP, Proposal or other relevant document.

Tools means the underlying architecture from which the Software is designed, and includes software application programming tools and code.

Update means software which has been provided to overcome defects in the Software and includes patches.

Schedule 1

PRIORITY LEVELS

Priority Level Table

<p>Priority Level 1 (Total System Failure/Payroll Issue on Payroll Processing Day)</p>	<p>A problem that brings the system to a halt or renders a whole subsystem inoperable. OR A problem experienced on day of live payroll processing that is causing a situation where payroll cannot be run or there are significant issues in pay run result.</p>
<p>Priority Level 2 (Substantial System Failure)</p>	<p>A problem that renders a major portion of a system inoperable significantly effecting workflow in critical areas so that other methods must be employed.</p>
<p>Priority Level 3 (Limited Impact)</p>	<p>A user job that is not causing significant issues or problems in the operation of TimeTarget.</p>

Target Response Table

Priority Level	Initial Response Time	Target Resolution Time	Nature of support
1	30 minutes	8 hours	The problem will be worked on until fixed or a patch applied in the Support Hours
2	4-hours	Less than 24 hours	The problem will be worked on until fixed or a patch applied in the Support Hours
3	1 week	4 weeks or next Update or Next Release	<p>The problem will be attended to in a mutually agreed time which avoids critical disruption of the Customer's operations. AND/OR The problem will be scheduled into TIMETARGET's normal work program in the Support Hours</p>