1. Definitions and interpretation

1.1 Definitions

In this agreement:

API means application program interface, as that term is understood within the information, communications and technology industry.

Client Data means the data supplied by the Client, its Personnel or its End Users and used in connection with the Software, including Outputs but excluding Tanda Data.

Client Technology means the Intellectual Property Rights of the Client which are created, and owned, by the Client independently of the Agreement.

Employee has its ordinary meaning, but also includes independent contractors, and is not restricted to full time equivalent employees (FTEs), and includes part time employees.

Employee Time Clock means the tablet computer device with Tanda's time clock functionality installed on the device.

Employee Time Clock Application means the mobile software application made available to the Client by the Apple App Store or Google Play which provides time and attendance recording functionality for the Client and End Users.

End User means any Personnel of the Client who access or use the Software.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Licence means the licence set out in clause 2.1, as limited by clauses 2.2, 2.3 and 2.4.

Login means the username and password individually used by authorised End Users to access the Software.

New IP means any and all Intellectual Property Rights created after the Commencement Date, in the course of, or connection with, this Agreement, but in all instances excluding Client Data.

Personal Information has the meaning given in the Privacy Law.

PPS Act means the *Personal Property Securities Act 2009 (Cth)*.

PPS Property means any property over which a security interest (as that term is defined under the PPS Act) can be legally granted under the PPS Act.

PPSR means the Personal Property Securities Register established under section 147 of the PPS Act.

Privacy Law means the *Privacy Act 1988* (Cth).

Scheduled Maintenance means preventative or emergency maintenance in relation to any software used, or relied upon, to provide the Software.

Services means services provided to the Client by Tanda in relation to the Software, including but not limited to Support Services and Implementation Services.

Software means the software application developed and owned by Tanda at the time this Agreement is entered into but as modified, developed or enhanced by Tanda from time to time (including any corrections or fixes) and which is provided to the Client to assist the Client to:

(a) prepare and publish rosters;

(b) record time and attendance data;

(c) generate timesheets based on time and attendance data recorded; and

(d) calculate payroll in accordance with clause 4.1 of this Agreement.

The Software also includes all New IP.

The Software will be provided as a service and made accessible by the Tanda Web Portal.

Support Services means the support as set out in this agreement.

Tanda Data means all data which:

(a) is in, or used in, aggregate and de-identified form; or

(b) is held by, or disclosed to, Tanda independently of this Agreement,

Tanda Web Portal means the client portal accessible via the website www.tanda.co.

Tanda Technology means all Intellectual Property Rights created, owned or licensed by Tanda, including the Software and the algorithms and software used by (or comprised in) the Software and the Tanda Data.

Term means the total duration of this agreement.

Where a term used in this agreement appears in bold type in the Reference Schedule, that term has the meaning shown opposite it in the Reference Schedule.

2. Licence

2.1 Grant

Tanda grants to the Client a revocable, non-exclusive, non-transferable, licence for the Term of this Agreement to:

(a)   access and use the Software via the Tanda Web Portal for its internal business purposes in accordance with the terms of this Agreement and clause 2.2 and 2.3; and

(b)   use any Intellectual Property Rights in Materials deliberately provided by Tanda under the Agreement to the Client, for the Client's internal business purposes in accordance with the terms of this Agreement and clause 2.2 and 2.3.

2.2 Authorised Use

(a)   The Client must ensure that its access and use of the Software and its End User's use of the Software are strictly in accordance with the terms of this Agreement.

(b)   The Client must ensure that all End User Login details, including usernames and passwords, required to access the Software are kept secure and confidential.

(c)   The Client must immediately notify Tanda of any unauthorised use of passwords, and Tanda will reset the relevant password. The Client must also take all other action that Tanda reasonably deems necessary to maintain or enhance the security of Tanda's computing systems and network.

(d)   The Client acknowledges and agrees that:

(1)   the Client determines who is an End User and what level of access (if applicable), to the Software that End User has;

(2)   the Client is responsible for all End Users' use of the Software;

(3)   the Client controls each End User's level of access to the Software at all times and can revoke or change an End User's access, or level of access, at any time for any reason, in which case that person or entity will cease to be an End User or shall have that different level of access, as the case may be.

2.3 Restrictions and special acknowledgments

As a fundamental condition of the Licence, the Client agrees the prior written consent of Tanda is required for the Client to sub-licence any right or obligations under the Agreement.

2.4 Limited Licence

The Client acknowledges, and agrees, that the rights granted to it under the Licence are expressly limited to the rights stated in clause 2.1. To the fullest extent permitted by law, all implied rights in relation to the Licence are excluded.

3. Availability and suspension

3.1 Loss of Access

Client shall have no Claim against Tanda in respect of loss of access or functionality to the Software referred to in this clause.

4. Payroll calculator

4.1 Payroll calculator

(a)   The Software assists the Client to calculate payroll based on time and attendance data and the application of a selection of pay-based rules in modern awards and enterprise agreements (**Payroll Calculator**).

(b)   For the purposes of this Agreement, a pay-based rule is a rule in a modern award and enterprise agreement that requires the Client to pay an Employee a monetary entitlement if that Employee satisfies certain prescribed criteria set out in the modern award or enterprise agreement.   Examples of pay-based

rules in modern awards and enterprise agreements include rules relating to the payment of overtime, penalty rates and monetary allowances.

(c)   In using the Payroll Calculator, the Client acknowledges and agrees that:

(1)   only a select number of modern awards and enterprise agreements have been automated and made available by Tanda through the Software;

(2)   it is the Client's sole responsibility to determine that the correct modern award/enterprise agreement is being applied in relation to its individual Employees;

(3)   Given the complex nature of rules in modern awards and enterprise agreements, only a select number of pay-based rules have been automated by Tanda as part of the Payroll Calculator. It is the Client's sole responsibility to review the calculations generated by the Payroll Calculator for its individual Employees, for each pay period, to confirm that the individual Employees are being paid in accordance with the relevant modern award/enterprise agreement. Where the Client identifies that an Employee is entitled to additional entitlements not included as part of the Payroll Calculator's calculations, it will be the Client's sole responsibility to pay that Employee those entitlements separately;

(4)   The pay-based rules may not be the same pay-based rules across each of the modern awards/enterprise agreements that Tanda automates and makes available through the Software. If the Client has Employees covered by multiple modern awards/enterprise agreements, it will be for the Client to determine which pay-based rules are automated in each instrument and to separately apply any additional pay-based rules which have not been automated in the relevant modern award or enterprise agreement;

(5)   It is the Client's sole responsibility to review the calculations generated by the Payroll Calculator for individual Employees for each pay period, to determine that individual Employees are being paid in accordance with the relevant modern award/enterprise agreement. Where the Client identifies an error in the calculations generated by the Payroll Calculator, it will be the Client's sole responsibility to rectify that error to ensure that individual Employees are paid correctly; and

(6)   Tanda may modify, develop or enhance the Payroll Calculator (including any corrections or fixes), but not decrease the functionality without prior agreement, at any time during the Term of the Agreement and without notice to the Client.

(d)   The Client acknowledges that Tanda is not responsible or Liable for the Client's use of the Payroll Calculator to administer the implementation, usage or calculation of industrial relations awards or enterprise agreements, penalties, pay rates or similar.

4.2   **Important acknowledgements**

As a fundamental condition of the Agreement, the Client acknowledges and agrees that:

(a)   Any statement, information or advice provided by Tanda prior to, during the Term of this Agreement or after its expiration is general in nature and should not be relied upon by any person as legal advice or otherwise.

(b)   Tanda is not responsible or Liable for the application, interpretation, usage or calculation of Employee entitlements in modern awards and enterprise agreements, whether in connection with the Payroll Calculator, the Software or otherwise; and

(c)   Tanda will not be liable in any way for (and is released from) any Loss (including any Loss incurred by an End User or Personnel of the Client) arising from any error, inaccuracy, incompleteness or other similar defect:

(1)   in the Software, or

(2)   in any application, interpretation, usage or calculation of Employee entitlements in modern awards and enterprise agreements.

5.   Employee Time Clocks

5.1   **Provision of Employee Time Clocks**

(a)   Where Employee Time Clocks are provided:

(1)   Tanda shall be responsible for arranging delivery of the Tanda supplied Employee Time Clocks to the Client's business address; and

(2)   title to the Tanda supplied Employee Time Clocks shall remain at all times with Tanda.

(b)   The Client acknowledges that:

(1)   Tanda is under no obligation to accept any Client request for a Tanda supplied   Employee Time Clock;

(2)   Tanda supplied Employee Time Clocks remain the property of Tanda at all times and are to be used only for their designed purpose of recording the Client's employee attendance;

(3)   Tanda reserves the right to register its interest in Tanda supplied Employee Time Clocks on the PPSR;

(4)   the Client will be liable for for the cost of any damage to or loss of Employee Time Clocks provided to the Client by Tanda;and

(5)   the Client is not permitted to, and must not, Dispose of its interest in, or otherwise part with possession or control of, any Tanda supplied Employee Time Clock, without Tanda's prior written consent.

6.   Obligations of the Client

6.1   General obligations

The Client will (in the manner permitted by the Licence):

(a)   provide Tanda with the Client Data, database scheme and API details necessary for Tanda to integrate the Software within the Client's operating environment and to enable the Client to access and use the Software;

(b)   provide Tanda with all information and co-operation reasonably necessary to enable Tanda to perform the Services and comply with its obligations under the Agreement;

(c)   take reasonable steps to ensure that any users (including End Users) of the Software:

(1)   are suitably trained on how to use the Software;

(2)   employ and implement the correct use of the Software in accordance with any manuals or documentation supplied with the Software; and

(3)   comply with any other reasonable directions of Tanda in relation to the use of the Software;

(d)   provide Tanda with all reasonable information and access to its computer or other device and network systems in order for Tanda to provide the Services in accordance with the terms of the Agreement; and

(e)   promptly notify Tanda of any event or incidents that is likely to or will impact on access and use of the Software, the provision of the Services or any other obligation of Tanda.

7.   Intentionally Deleted

8.   Intellectual Property Rights

8.1   Ownership – Tanda Technology

(a)   Ownership of the Tanda Technology is not modified by this Agreement.

(b)   The Intellectual Property Rights in the Tanda Technology remain vested in Tanda.

8.2   Ownership – Client Technology

(a)   Ownership of Client Technology is not modified by this Agreement.

(b)   The Intellectual Property Rights in Client Technology remain vested in the Client.

(c)   The Client grants Tanda a non-exclusive, non-transferable, worldwide, royalty free licence to use Client Technology, Client Data (to the extent the Client may have any rights in relation to such Client Data) and Materials provided to Tanda solely for the purposes of this Licence and performing obligations under this Agreement, for the Term.

(d)   For clarity, the Client and Tanda acknowledge that Tanda Data may incorporate or be derived, at least in part, from Client Data, and accordingly, while the Customer shall have exclusive title and ownership over the Client Data, Tanda shall retain exclusive title and ownership to the Tanda Data.

8.3   Provision and ownership of New IP

Upon its creation, all New IP will be owned by, and assigned to, Tanda.

8.4   Prohibited activities

The Client will not (and must not permit or procure its Personnel or subcontractors to):

(a)   Unless otherwise expressly authorised in writing by Tanda:

(1)   reverse engineer or decompile the Software;

(2)   reproduce, make error corrections to or otherwise modify or adapt the Software to create any derivative works based on the Software;

(3)   use, or permit, the Software to be accessed or used in any way other than in a manner expressly permitted by this Agreement;

(4)   attempt to gain unauthorised access to any Materials other than those which the Client has been given express permission to access on the computer system which the Software is hosted;

(5)   challenge the validity of any Intellectual Property Rights of Tanda (or a Related Body Corporate of Tanda);

(6)   permit the Software to be accessed in any unauthorised way, including via interfaces (including exposing or "passing through" a software API or otherwise making the Software accessible as an API).

(b)   do or permit any other act which infringes Tanda's Intellectual Property Rights;

(c)   do or permit an act that uses the Software in a way that could infringe a third party's Intellectual Property Rights.

8.5   **Survival**

This clause 8 survives the termination or expiration of this Agreement.

9.   **Client Data**

9.1   **Provision of information**

Through the usage of the Software, the Client will provide and have stored Client Data on Tanda's servers.

9.2   **Backup**

The Client is solely responsible for making backups of its Client Data, and Tanda excludes all Liability in connection with backups (or lack thereof) of Client Data. Tanda shall not be required to provide the Client with any copy or record of the Client Data.

9.3   **Client Data storage**

The Client acknowledges and agrees that Tanda may (but is not obligated to the Client) to hold Client Data in its systems in order to provide the Services and for the administration of the Client's account.

10.   **Confidential information**

10.1   **Return of Confidential Information**

The Client must, on demand, return to Tanda any Confidential Information supplied by Tanda in connection with this Agreement. Each party agrees that confidentiality obligations under this clause 10 shall continue for a period of five years from the termination or expiration of this Agreement.

10.2   **Survival**

This clause survives the termination or expiration of this Agreement for the period set forth in clause 10.2.

11.   **Privacy law**

(a)   Each party agrees to comply with all Privacy Laws in relation to any and all Personal Information that it collects from the other party in connection with the Agreement.

(b)   The Client warrants that it has sought the necessary consent required by Privacy Laws, the *Spam Act 2003* (Cth) and the Do Not Call Register Act 2006 *(Cth)* from all individuals whose Personal Information it causes to be disclosed to Tanda or otherwise held in connection with the Software, to enable Tanda (or its Personnel and its related parties):

(1)   to collect such Personal Information via the Software;

(2)   to hold and use that Personal Information for the purposes of Tanda performing its obligations under this Agreement; and

(3)   to directly contact individuals (including by email and phone) using the Personal Information held by Tanda in connection with clauses 11(b)(1) and 11(b)(2) above.

12.   **Intentionally deleted**

13.   Intentionally deleted

14.   Miscellaneous

14.1   Assignment

The Client will not assign, transfer or novate all or any part of its rights or obligations under or relating to this Agreement or grant, declare, create or dispose of any right or interest in it, without the prior written consent of Tanda.

14.2   Severability

If a provision of this Agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

14.3   Fundamental Condition

As a fundamental condition of this Agreement, the Client acknowledges and agrees that any statement, information or advice provided by Tanda and its Personnel (including information displayed on its website www.Tanda.com and in its marketing and promotional material) prior to, during and after the expiration of the Agreement is general in nature and should not be relied upon by any person as legal advice or otherwise.