



## BIZPAY PAYROLL SERVICES TERMS OF USE

This Bizpay Payroll Services Terms of Use Agreement ("this Agreement") is made and entered into by and between **SUBSCRIBER** (as defined below), and **MANAGEMENT CONTROL SYSTEMS LIMITED**, a company duly incorporated under the Laws of Jamaica with registered offices at 10 – 12 Grenada Crescent, Kingston 5, in the parish of St. Andrew, Jamaica (hereinafter MC Systems).

This Agreement contains the terms and conditions that govern the use by the Subscriber of MC Systems' Bizpay cloud based, software as a service, Payroll Platform (the "Platform").

MC Systems directly, and through its Website (<https://bizpay.mcsystems.com/payrollapi>) and the associated domains thereof (the "Website"), offers customers the products and services listed at <https://bizpay.mcsystems.com/payrollapi/BizPayCentralOverview.pdf>, as such list may be updated, modified, or otherwise changed from time to time (collectively, the "Services").

MC Systems reserves the right to change these terms at any time, effective upon the posting of modified terms and MC Systems will make every effort to communicate these changes to Subscriber by notification on the Website and / or email.

Subscriber understands and agrees that this Agreement is likely to be updated from time to time and that it is Subscriber's obligation to ensure that they have read, understood and agree to the most recent terms available on the Website.

### 1. Definitions

"Agreement" - means these Terms of Use.

"Authorized User" - may be the person who registers to use the Service, and includes any entity on whose behalf that person registers to use the Service, or other person or entity authorized to use the Service by the Subscriber.

"Access Fee" - means the annual or monthly fee (as notified to Subscriber by MC Systems and including any updates or amendments thereto) payable by Subscriber in consideration for access and use of the Platform via the Website.

"MC Systems Content" - means text, graphics, images, music, software, audio, video, works of authorship of any kind, and documents, information, or other materials that are posted, generated, provided, or otherwise made available through or by consequence of the Services by MC Systems, excluding User Data.



"User Data" - means information input by Authorized User to the Platform or otherwise transmitted to the custody or control of MC Systems to facilitate the provision of the Services hereunder.

"Intellectual Property Right" - means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

"Service" - means the cloud-based Payroll services made available (as may be changed or updated from time to time by MC Systems) via the Website and the Platform.

"Subscriber" - means the person who registers to use the Service, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.

"You" - means the Subscriber, and where the context permits, an Authorized User. "Your" has a corresponding meaning.

## **2. Subscriber representations:**

By registering to use the Service, Subscriber represents that that they:

- i. are a Company duly incorporated in Jamaica or registered under the Laws of Jamaica ("an entity") or have all due authorization to act for and on behalf of and to hereby bind an entity to the extent necessary to fulfill this Agreement; and
- ii. have read and understood these Terms and agree to same.

## **3. Overview**

MC Systems' Bizpay Platform allows Subscribers to run payroll an unlimited number of times for the duration of a fully paid up subscription to the Service. Access to the Platform and Data uploaded by the Subscriber to populate their payroll information will remain available to the Subscriber for a maximum of six (6) months following the expiry of the last paid up subscription to the Service. Upon expiration of a subscription the Subscriber and Authorized Users will automatically lose access to running payroll and any further or other additional functions paid for in the Subscription.



#### 4. Grant of Rights

MC Systems grants Subscriber the right to access and use the Service via the Platform with the particular user roles available to the Subscriber and each Authorized User in accordance with the subscription type and as limited by the access profiles granted by the Subscriber to each Authorized User. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement. Without limitation, Subscriber understands and agrees that this grant and the use and access to the Service of Authorized Users is **conditional** on the Subscriber and all Authorized Users:

- i. complying with this Agreement and all applicable laws, rules, and regulations;
- ii. not attempting to undermine the security or integrity of MC Systems' computing systems or networks or, where the Services are hosted by a third party, that third party's computing systems and networks;
- iii. not using, or misusing, the Services in any way which may impair the functionality of the Platform or Website, or other systems used to deliver the Services, or impair the ability of any other user to use the Platform or Website;
- iv. not attempting to gain unauthorized access to any materials other than those to which Subscriber or Authorized User has been given express permission to access;
- v. not transmitting, or inputting into the Website, any (i) files that may damage any other person's computing devices or software, (ii) content that may be offensive, or (iii) material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which Authorized User does not have the right to use); and
- vi. not attempting to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the Website except as is strictly necessary to use either of them for normal operation.

#### 5. Terms of Access to Users

MC Systems' provision of the Service is subject to the terms of this Agreement, the "Bizpay Central Overview" accessible at <https://bizpay.mcsystems.com/payrollapi/BizPayCentralOverview.pdf> (including any future amendments or alterations thereto or successor site) and any additional supplemental terms referenced herein or which MC Systems may present Subscriber with



for review and acceptance at the time Subscriber subscribes to any Services hereunder (each, “Service Terms”), and any Service Terms shall be incorporated into and form a part of this Agreement. If the terms hereof conflict with any Service Terms, the Service Terms will govern to the extent of such conflict, save where revised by a more recent version of this Agreement.

Subscriber acknowledges and agrees that:

- i. the Subscriber determines who is an Authorized User and what level of access and control of the User Data including the Subscription settings is given to the Authorized User;
- ii. the Subscriber is responsible for all acts and omissions of the Authorized User in relation to use of the Platform;
- iii. the Subscriber controls each Authorized User’s level of access to the Services at all times and can revoke or change an Authorized User’s access, or level of access, at any time and shall notify MC Systems of same by updating that Authorized User’s access profile on the Website, in which case that person or entity will cease to be an Authorized User or shall have that different level of access, as the case may be;
- iv. The Subscriber must ensure that all usernames and passwords required to access the Service are kept secure and confidential. Subscriber must immediately notify MC Systems of any unauthorized use of passwords associated with their Subscription or any other breach of security in which case MC Systems will reset login credentials or disable a user profile or subscription temporarily or permanently as may be deemed necessary;
- v. Subscriber must take all actions in relation to the use and access to the Website that MC Systems reasonably deems necessary to maintain or enhance the security of MC Systems’ computing systems and networks and Subscriber’s access to the Services.

## **6. Warranty of Functionality**

MC Systems makes no representations or warranties about the Platform’s uptime, availability, or permissibility in any particular geographical location. From time to time, scheduled system maintenance or emergency maintenance may occur, and during such



maintenance periods, the Platform may be inaccessible and unavailable, with or without notice to Users. Notwithstanding the foregoing, MC Systems undertakes to make best efforts to advise of any maintenance or full or partial down-time in advance.

MC Systems warrants that the said Platform shall perform in all material respects according to MC Systems' specifications concerning the said Platform when used with the appropriate computer equipment.

MC Systems shall not be responsible for the repair of any damage arising out of or resulting from improper operation of the Platform and related services by Authorized Users.

The Subscriber understands and agrees that they must maintain copies of all Data inputted into the Platform or otherwise in furtherance of receiving the Services hereunder.

**MC Systems expressly excludes liability for any loss of Data no matter how occasioned and Subscriber acknowledges and agrees that MC Systems is not responsible for the loss or modification of any User Content and that Subscriber's use of the Bizpay Platform hosted on the Website is at Subscriber's risk.**

## **7. Intellectual Property, User Data and Licenses**

MC Systems and its licensors exclusively own all worldwide right, title, and interest in and to the MC Systems Content, and in and to the Bizpay Platform, Website and the Services, including in each case all associated Intellectual Property Rights. User acknowledges that the Bizpay Platform, Website, Services, and MC Systems Content are protected by copyright, trademark, and other laws of Jamaica and foreign countries. Subscriber agrees not to remove, alter, or obscure any copyright, trademark, service mark, or other proprietary rights notices incorporated in or accompanying the Bizpay Platform, Website, Services, or MC Systems Content.

Subject to Subscriber's payment in full of all fees applicable to the Services and compliance with this Agreement, MC Systems grants Subscriber a limited, non-exclusive, non-transferable, non-sublicensable license to access, view, and download MC Systems Content solely in connection with Subscriber's permitted use of the Bizpay Platform for Subscriber's own business purposes. Failure to comply with the payment obligations and conditions under this Agreement will result in denied or reduced access to the functions of the Bizpay Platform and the Services hereunder.



Title to, and all Intellectual Property Rights in the User Data remain User's property and nothing in this Agreement will be deemed to restrict any rights that Subscriber may have to use and exploit User Data. Notwithstanding the foregoing, Subscriber may generally remove User Data from the Bizpay Platform and Website. Moreover, in certain instances, some User Data may not be completely removed and copies of User Data may continue to exist on the Platform.

Further, by making any User Data available through the Services, Subscriber hereby grants to MC Systems a non-exclusive, transferable, sublicensable, worldwide, royalty-free license to use, copy, transmit, store, back-up, modify, create derivative works based upon, publicly display, publicly perform, and distribute User Data in connection with operating and providing the Bizpay Platform and the Services. Subscriber is solely responsible for all User Data. Subscriber represents and warrants that Subscriber owns all User Data or Subscriber has all rights that are necessary to grant MC Systems the license rights in User Data under this Agreement. Notwithstanding the foregoing, MC Systems retains the right to remove User Data in accordance with the terms of this Agreement.

If Subscriber (including Authorized User) enables or engages third-party applications for use in conjunction with the Services, Subscriber acknowledges that MC Systems may allow the providers of those third-party applications to access User Data as required for the interoperation of such third-party applications with the Services. MC Systems shall not be responsible for any disclosure, modification or deletion of User Data resulting from any such access by third-party application providers.

## **8. Support**

Issues or errors which are identified as "system bugs" will be rectified in the shortest possible time. Where errors are as a result of the User's misuse of the system, MC Systems will rectify such errors if requested in writing. Investigation and resolution time to rectify errors resulting from misuse may be charged, at the prevailing rate at the date of the exercise.

Official support hours are 8:30am to 5:00pm Mondays to Fridays, excluding Jamaican public holidays. Support may also be provided outside of official hours if pre-arranged or depending on the availability of support personnel.

The official channels for reporting issues or making requests are via email to MC [bizpaysupport@mcsystems.com](mailto:bizpaysupport@mcsystems.com) or via telephone to the MC Systems Customer Service Department at (876)929-8661.



## 9. Fees and Payments

Subscription fees are payable annually or monthly by Subscriber in advance and are based on number of employees to be processed using the Platform. Further, Subscriber may elect to avail themselves of “add – on” Services which may be made available by MC Systems from time to time and are at cost additional to the Subscription Fees, but in any event also payable in advance and in accordance with any Service Terms provided in relation to said add on.

Payment of any other amount owed by the Subscriber to MC Systems pursuant to this agreement shall be paid within ten (10) days following an invoice from MC Systems. In the event that any overdue amount owed by the Subscriber is not paid following ten (10) days, then in addition to any other amount due, MC Systems may impose and the Subscriber shall pay a late payment charge at the rate of one and a half percent (1.5%) per month on any overdue amount.

**All fees are payable via ecommerce facility on the Website, bank transfer, direct deposit or at the offices of Management Control Systems at 10-12 Grenada Crescent, Kingston 5. Where payment is made by any method save and except use of the ecommerce platform, proof of payment must be provided by email or delivery to the aforementioned offices of MC Systems Limited. Access to the functions of the Platform will be unlocked no later than forty-eight hours (48 hrs) of MC Systems’ receipt of proof of payment. MC Systems implores all our customers to always keep a copy of their receipts.**

## 10. Warranty Disclaimer

MC Systems warranties set forth in this agreement are exclusive and are in lieu of all other warranties, expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

## 11. Limitation of Liability

In no event shall MC Systems be liable for indirect, special incidental or consequential damages (including lost profits or savings) whether based on contract, tort or any other legal theory, arising out of the use of the Services. In no event shall MC Systems’ liability for damages whether based on contract, tort, or any other legal theory exceed the amount paid by the Subscriber for Services herein.





## 12. Cancellation and Refunds

Subscriber may terminate this Agreement by cancelling their subscription with or without cause by Notice in Writing to MC Systems. **MC Systems shall not refund Subscriber all or any portion of subscription fees where Subscriber elects to cancel a subscription before its expiry.**

Subscriber understands and agrees that they will have fourteen (14) days from the date of their Notice of cancellation to download any User Data they wish to retain after which MC Systems shall delete all Data relating to Subscriber within seven (7) working days, save and except Data which MC Systems is required to retain by any legal, regulatory or accounting obligations and limited to the period and extent of such obligation.

MC Systems reserves the right to terminate this Agreement and delete all User Data associated with a Subscription without notice to Subscriber where the Services are not used for six (6) consecutive months following the expiration of their last paid up Subscription.

MC systems may terminate this Agreement with immediate effect and without notice to Subscriber where it finds or reasonably believes that Subscriber has used the Services to commit or in furtherance of any fraudulent activity, engaged in any breach of section 4 of these Terms, or any further or other violation of MCS' intellectual property rights.

If MC Systems terminates this agreement prior to the expiration of a paid up subscription, MC Systems will refund the Subscriber any pre-payments that may have been made, pro-rated to cover the period of notice.

## 13. Confidentiality

- a. MC Systems shall take all reasonable precautions in dealing with any documents, storage media and information provided by the Licensee or that it becomes privy to during this contract, so as to prevent any unauthorized person from having access to, causing damage to, or destroying the said documents, storage media or information.
- b. The Licensee shall not make the Software available in any form to any person other than its employees or contractors whose job performance requires such access. The Licensee shall take all the reasonable measures to protect the confidentiality of the Software and ensure that any person permitted access to same shall not disclose it or use it except as permitted by this agreement.



#### **14. Assignment**

MC Systems shall not be entitled to assign or otherwise transfer this agreement or any rights or obligations there under, without first seeking and acquiring the written consent of the Licensee.

Neither this agreement nor any interest in this agreement may be assigned by Licensee without the prior express written approval of MC Systems.

#### **15. Governing Law**

This agreement shall be construed and enforced in accordance with the laws of Jamaica.

#### **16. Severability**

If any term of this agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

#### **17. Agreement**

This agreement, the annexes hereof and documents incorporated by reference herein set forth the entire understanding and agreement of the parties and supersede all prior understanding or agreement on the object of this agreement.