

Humanforce Customer Agreement

1. PURPOSE OF THIS DOCUMENT

- 1.1. These terms set out the rights and responsibilities of Humanforce and the Customer in relation to the Solution and associated goods and/or services (**Services**).
- 1.2. By executing an Order that references these terms, the Customer agrees to be bound by these terms. These terms, together with the Order, set out the terms and conditions governing the Customer's access to and use of the Services (**Agreement**).
- 1.3. To the extent of any inconsistency between any of the following documents, the following order of precedence applies (in descending order):
 - (a) the Order;
 - (b) this Humanforce Customer Agreement;
 - (c) any Statement of Work (if applicable);
 - (d) any other document mentioned in the relevant Order.

2. OVERVIEW

- 2.1. These terms comprise [Part 1: General Terms](#), [Part 2: Product-specific Terms](#) and [Part 3: Schedules](#). *Part 2: Product-specific Terms* contains additional terms relating to the following products:
 - (a) [intelliHR](#);
 - (b) [Humanforce Thrive](#);
 - (c) [Humanforce Payroll](#); and
 - (d) [SMS services](#).
- 2.2. Product-specific terms only apply if the Customer orders the relevant products. If the Customer orders any of these products, the applicable product-specific terms form part of the Agreement and take precedence over *Part 1: General Terms* to the extent of any inconsistency.

PART 1: General Terms

3. RIGHTS TO USE SOLUTION

- 3.1. Humanforce grants to the Customer a limited, non-exclusive, non-transferable, revocable and personal right to access and use the Solution (as a Service) during the Term.
- 3.2. The right of the Customer to access and use the Solution is limited to access and use by the Authorised Users in accordance with the terms of this Agreement.
- 3.3. The number of concurrent Authorised Users and Admin Users is as specified in the Order. The Customer is responsible for understanding the settings and controls of the Solution and for controlling who the Customer allows to become an Authorised User or Admin User. The Customer is responsible for compliance with the Agreement by all Authorised Users and Admin Users. The Customer must require that all Authorised Users and Admin Users keep their user credentials for the Solution strictly confidential. The Customer is responsible for the activities of all Authorised Users and Admin Users, even if those Authorised Users or Admin Users are not from the Customer's organisation.
- 3.4. Where specified in the Order, Humanforce will provide such training reasonably required by the Customer to enable the Customer's Personnel to properly use the Solution.
- 3.5. Humanforce reserves the right at any time and without liability to the Customer, to disable

or suspend the Customer's access to the Solution (or any part of it) without notice if Humanforce reasonably suspects that the Customer is in breach of this Agreement or if Humanforce is otherwise required to do so by law.

- 3.6. Without limiting any of the Customer's other obligations under this Agreement, the Customer must:
- (a) check all output produced in the provision of the Services and advise Humanforce immediately of any errors, including any omissions and anomalies;
 - (b) advise Humanforce immediately if a change has occurred to the integration of the Services with a third party's software causing the performance of the Services to be affected;
 - (c) refer all comments relating to the performance of the Service (whether written or verbal) immediately to Humanforce; and
 - (d) disallow access immediately to any individual who ceases to be an Authorised User.

4. RESTRICTIONS ON USE OF THE SOLUTION

- 4.1. The Customer must not (and must procure that any Authorised Users do not) access or use the Solution except as permitted under this Agreement.
- 4.2. Without limiting this clause 4, the Customer must not, and must not permit any other person, to:
- (a) use or access the Solution other than as contemplated by this Agreement;
 - (b) resell, transfer, distribute or provide others (except Authorised Users) with access to the Solution;
 - (c) grant any security interest over the Solution;
 - (d) use the Solution in any way that damages, interferes with, or interrupts the operation of the Solution or the use of the Solution by other users;
 - (e) copy, alter, modify, create derivative works from, reproduce to a third party, reverse assemble, reverse engineer, reverse compile or enhance the Solution (or any part of the Solution or the Services);
 - (f) use the Solution to develop a competitive product or service, or copy any features, functions, interfaces or graphics of the Solution or Services;
 - (g) alter, remove, or tamper with any trade marks, any patent or copyright notices, any proprietary notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the Solution;
 - (h) "frame", "mirror" or serve the Solution on any web server or other computer server over the internet or any other network;
 - (i) introduce any material which could harm, disable, destroy or interfere with the Services, including any material that contains viruses, malicious code or any other material into the Solution;
 - (j) use the Solution in a manner that is false, fraudulent, misleading or deceptive;
 - (k) publish the results of software performance benchmarks to any third party without Humanforce's prior written consent; and
 - (l) use the Solution in any way which is in breach of any applicable law or regulation in any jurisdiction (including outside Australia), or which infringes any person's rights, including Intellectual Property Rights or obligations of confidentiality (or which would cause Humanforce or its third-party suppliers to breach applicable laws or infringe applicable rights).

5. SERVICE LEVELS

- 5.1. Humanforce will make the Solution available to Authorised Users for not less than 99.50% of the time during each calendar month of the Term (**Service Level**), except for:
 - (a) scheduled downtime, of which Humanforce shall provide the Customer with reasonable advance electronic notice; and
 - (b) any unavailability caused by circumstances beyond Humanforce's reasonable control, including but not limited to unavailability resulting from the failure or delay of any third-party hosting services or the occurrence of a Force Majeure Event.
- 5.2. The Service Level will be measured on a calendar month basis by calculating the percentage of the total hours the Solution is available compared to the total hours the Solution is scheduled to be available according to Humanforce's service availability schedule as notified to the Customer from time to time.
- 5.3. Humanforce will use reasonable commercial endeavours to meet the recovery time objective and recovery point objective set out in Schedule 1.

6. SUPPORT SERVICES

- 6.1. During the Term, Humanforce will respond to requests for support in respect of the Solution in accordance with the terms of the Support Package selected by the Customer, as specified in the Order and further described in Schedule 3 (**Support Services**). Humanforce will use reasonable commercial endeavours to meet the target response and resolution times set out in Schedules 2 and 3 applicable to the Customer's Support Package.
- 6.2. The Support Services are strictly limited to:
 - (a) providing guidance and clarification on the access to and use of the Solution;
 - (b) rectifying errors in the Solution that are not Customer-induced Issue(s) or that otherwise result from use of the Solution in a manner that is not authorised or approved by Humanforce in writing;
 - (c) diagnostic activity review; and
 - (d) providing access to Admin Users to the online support portal located at help.humanforce.com.
- 6.3. Humanforce will provide Support Services in relation to:
 - (a) the then-current release of the Solution; and
 - (b) 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.
- 6.4. The Customer must:
 - (a) log a ticket for assistance in the Humanforce Help portal and provide Humanforce with an email address and a return call service to allow Humanforce to communicate with the Customer for the purposes of providing the Support Services;
 - (b) follow any problem determination, problem analysis, or service request procedures that Humanforce provides;
 - (c) provide Humanforce with all information and data as Humanforce may reasonably request to reproduce operating conditions similar to those present when any errors in the Solution were discovered, or is otherwise required to provide the Support Services;
 - (d) provide Humanforce with a remote connection mechanism to access the computer or server that the support and maintenance relates to; and
 - (e) follow all guidance provided by Humanforce as part of the Support Services related to the proposed use of the Solution and/or the Services.
- 6.5. Humanforce reserves the right at any time to refuse any requests for Support Services in relation to the Solution that Humanforce may reasonably deem to be inappropriate,

unreasonable, illegal, or otherwise non-compliant with the terms of this Agreement.

7. PROFESSIONAL SERVICES

- 7.1. If the Order specifies that Humanforce is providing Professional Services, details of those Professional Services will be set out in a Statement of Work, which may include additional terms applicable to Professional Services.
- 7.2. If the Customer wishes to obtain any services other than those specified in the Order (**Out of Scope Work**), the Customer must pay Humanforce additional fees on a time and materials basis in accordance with the Standard Price List for such Out of Scope Work.
- 7.3. Without limiting this clause 7, Out of Scope Work includes any time spent by Humanforce and its Personnel to rectify, consider or address any issues that are:
 - (a) Customer-induced Issue(s); or
 - (b) not the responsibility of or supported by Humanforce.
- 7.4. Humanforce may, from time to time, increase the Fees specified in the Standard Price List provided that Humanforce provides 30 days' notice in writing.
- 7.5. Despite anything in this clause 7, there is no obligation on Humanforce to provide the Customer with any Out of Scope Work.
- 7.6. Humanforce will retain all right, title and interest in and to Humanforce Deliverables. The Customer may use any Humanforce Deliverables provided to the Customer only in connection with the Solution, subject to the same usage rights and restrictions as apply to use of the Solution. Humanforce Deliverables are not considered part of the Solution.
- 7.7. Any milestone Humanforce Deliverables identified in a Statement of Work will be deemed accepted by the Customer five Business Days after delivery by Humanforce (unless Humanforce is notified in writing of any material failure to meet the requirements set out in the Statement of Work within five Business Days after delivery), or upon the Customer's use of the Humanforce Deliverable for any purpose other than testing (if earlier) (**Acceptance**). Humanforce may raise any corresponding invoice upon Acceptance.
- 7.8. The Customer will perform any customer responsibilities identified in a Statement of Work and will provide all reasonable assistance and access to Customer Materials as necessary for the provision of the Professional Services. If the Customer does not provide Humanforce with timely assistance or access to Customer Materials, Humanforce will not be required to perform the Professional Services until such access is provided and, if the Professional Services are delayed as a result, the Professional Services will be Out of Scope Work to the extent of the delay.
- 7.9. The Customer retains its rights in Customer Materials. Humanforce will use Customer Materials solely for purposes of performing the Professional Services. The Customer represents and warrants that it has all necessary rights in the Customer Materials to provide them to Humanforce for such purposes.
- 7.10. Changes to the scope of the Professional Services defined in a Statement of Work may be made in accordance with the following procedure:
 - (a) Either party may request a change by submitting a written change request describing the proposed change (**Change Request**) to the other party.
 - (b) Any additional Professional Services arising from the Change Request and corresponding additional fees must be agreed in writing by the parties.

8. FEES

- 8.1. The fees payable by the Customer under this Agreement (**Fees**) are:
 - (a) the fees set out in the relevant Order; and
 - (b) any fees in respect of Out of Scope Work determined in accordance with clause 7.2.
- 8.2. Unless otherwise specified in the Order, the Customer must pay the Fees in one of the following

ways:

- (a) annually in advance, in which case the Customer must pay Humanforce the full amount within 30 days following receipt of an invoice from Humanforce; or
 - (b) on a monthly basis, in which case the Customer agrees that Humanforce may charge the Customer's credit card or bank account using direct debit, on a monthly basis, for any Fees payable during the Term.
- 8.3. All amounts stated in the Order and payable under this Agreement are exclusive of GST, VAT and other similar sales taxes. If applicable, the GST, VAT or similar sales tax amount will be set out on Humanforce invoices and the Customer will pay the GST, VAT or similar sales tax amount at the same time as the Fees.
- 8.4. Unless otherwise specified in the Order and subject always to clause 24.3, the Fees payable by the Customer under this Agreement shall increase by 5% on each anniversary of the Commencement Date.
- 8.5. If the Customer does not pay an amount payable under this Agreement when it is due:
- (a) Humanforce may, without notice or liability to the Customer, restrict or suspend the Customer's access to the Services under this Agreement; and
 - (b) Humanforce may recover from the Customer any amounts incurred by it to recover any due and unpaid amount under this Agreement.

9. CONFIDENTIALITY

- 9.1. Each party (**recipient**) must keep confidential and not disclose any Confidential Information of the other party (**discloser**) except:
- (a) as permitted under this Agreement;
 - (b) where the recipient has obtained the prior written permission of the discloser;
 - (c) to the recipient's officers, agents, professional advisers, employees, contractors, subcontractors, and insurers who need to know the information; or
 - (d) where the recipient is compelled to do so by law, provided that the recipient uses commercially reasonable efforts to give the discloser written notice prior to disclosure.
- 9.2. A recipient disclosing information as permitted by clause 9.1 must use all reasonable endeavours to ensure that the persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in this clause 9.
- 9.3. Subject to clause 9.4, as soon as practicable following a request by the discloser, the recipient must deliver to the disclosing party all documents or other materials containing or referring to the discloser's Confidential Information which are:
- (a) in the recipient's possession, power, or control; or
 - (b) in the possession, power or control of persons who have received Confidential Information from the recipient under clause 9.1.
- 9.4. The obligation in clause 9.3 does not apply to Confidential Information of the discloser that the recipient requires to perform its obligations under this Agreement.
- 9.5. The recipient's obligations under this clause 9 survive termination of this Agreement.

10. CUSTOMER DATA

- 10.1. If, as a result of this Agreement, Humanforce is able to access any Customer Data held by or on behalf of the Customer, then Humanforce must:
- (a) maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data;
 - (b) to the extent the Customer Data comprises Personal Information:

- (i) comply with applicable Privacy Laws;
 - (ii) process the Customer Data in accordance with the privacy policy of Humanforce in force from time to time and any data processing agreement between the parties (if applicable); and
 - (iii) use the Customer Data only for the purposes of this Agreement.
- 10.2. The Customer Data is and remains, as between the parties, the property of the Customer.
- 10.3. The Customer grants Humanforce a worldwide, non-exclusive, perpetual, irrevocable, royalty-free licence to access, use, process, back-up, store, combine, reproduce, or display the Customer Data and any Intellectual Property Rights in the Customer Data:
 - (a) to supply the Services (including accessing Authorised User accounts to provide Support Services);
 - (b) for diagnostic purposes;
 - (c) to test, enhance and otherwise modify the Solution, whether requested by the Customer or not;
 - (d) to de-identify and aggregate the Customer Data for analytic purposes; and
 - (e) as reasonably required for the performance of its obligations under this Agreement.
- 10.4. The Customer represents and warrants that:
 - (a) it will comply with the Privacy Laws in connection with its obligations under this Agreement and use of the Services;
 - (b) it has provided all notices and obtained all necessary consents, releases, and permissions and provided all necessary notices and statements to enable it to provide the Customer Data to Humanforce and its third-party suppliers for the purposes set out in this Agreement, or otherwise has a lawful basis to provide the Customer Data; and
 - (c) the collection and use of the Customer Data by Humanforce and its third-party suppliers in accordance with this Agreement does not violate any laws or rights of any third party, including any intellectual property rights, rights of privacy or rights of publicity.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1. Except as otherwise set out in the Agreement, all Intellectual Property Rights in the Intellectual Property remain vested in Humanforce.
- 11.2. All Intellectual Property developed, adapted, modified, improved, or created by Humanforce or Humanforce's Personnel (including in connection with this agreement) will at all times vest, or remain vested, in Humanforce.
- 11.3. The Customer must not, without Humanforce's prior written consent:
 - (a) copy or use, in whole or in part, any of the Intellectual Property;
 - (b) materially modify, develop, improve, adapt or alter any or all of the Intellectual Property, reproduce, retransmit, distribute, disseminate, sell, publish, broadcast, or circulate any of Humanforce's intellectual property to any third party; or
 - (c) breach any Intellectual Property Rights in the Intellectual Property, including (without limitation) altering or modifying the Intellectual Property or creating derivative works from the Intellectual Property.
- 11.4. The Customer grants to Humanforce and its Personnel a royalty-free and non-exclusive licence, during the Term of this Agreement (and for such reasonable period following its termination), to use any Intellectual Property Rights of the Customer to the extent that it is necessary for Humanforce and its Personnel to use such Intellectual Property Rights to provide the Services.

12. WARRANTIES

- 12.1. Each party represents and warrants that it has full right, power, and authority to enter and perform its obligations under this Agreement.
- 12.2. Humanforce warrants to the Customer that:
- (a) the Solution will operate substantially in accordance with Humanforce's published software specification in effect from time to time;
 - (b) the Customer's use of the Solution as permitted by, and in accordance with, this Agreement will not infringe upon any person's Intellectual Property Rights; and
 - (c) Humanforce will provide the Services contemplated by this Agreement with reasonable skill and care.
- 12.3. To the extent permitted by law, Humanforce excludes all express or implied representations, conditions, warranties and guarantees arising from or in connection with this Agreement, whether based in statute, regulation, common law or otherwise (other than the warranties given in this clause 12) and Humanforce does not warrant that:
- (a) the Solution or the Services will be free from Errors or Minor Defects or that such Errors or Minor Defects can or will be corrected;
 - (b) subject to clause 5.1, use of the Solution and the Services will be uninterrupted;
 - (c) the Solution and the Services will meet the Customer's particular expectations or requirements, whether known to Humanforce or not; and
 - (d) the Solution and the Services will provide any function not specified in the Order.
- 12.4. The Customer acknowledges that Humanforce is not liable for defects and errors in the Solution or the Customer's inability to use the Solution which are caused by a Customer-induced Issue.
- 12.5. The Customer acknowledges that it has not relied on any term, condition, representation, warranty, matter, statement or conduct in entering into this Agreement that is not expressly stated in this Agreement, any Order or any documents specifically referred to in an Order. For the avoidance of doubt, the Customer has not relied on any descriptions, illustrations or representations contained in any catalogues or any other publicity and marketing material produced by Humanforce.
- 12.6. The Customer must ensure that, to the best of its knowledge and belief, all information that it provides to Humanforce, including all information entered into the Solution, is complete, accurate and up-to-date. The Customer must promptly notify Humanforce if it becomes aware that any information is incomplete, inaccurate or out-of-date and provide Humanforce with updated information.
- 12.7. Neither Humanforce nor its third-party suppliers will be liable for any breach of this Agreement to the extent that such breach results from Humanforce's (or its third-party supplier's) use of any information provided by or on behalf of the Customer that is incomplete, inaccurate, or out-of-date.

13. LIMITATION OF LIABILITY

- 13.1. To the extent permitted by law, the aggregate liability of Humanforce and its Related Companies to the Customer in respect of all Losses suffered or incurred by the Customer arising from or in connection with this Agreement (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise) is limited for all claims to the total Fees paid by the Customer to Humanforce and/or its Related Companies in the 12-month period preceding the date on which a claim first arises.
- 13.2. Despite anything to the contrary, neither Humanforce nor its Related Companies will have any liability to the Customer for any Loss arising from or in connection with:
- (a) any Third-Party Products; and

- (b) any Customer-induced Issue(s).
- 13.3. To the extent permitted by law, neither party will be liable to the other party for any indirect, special, or consequential Loss or damage, or for any loss of profits, loss of business opportunity, loss of contracts, loss of anticipated savings, loss of or damage to goodwill, loss of reputation or loss of or corruption of software, data or information, arising with respect to the subject matter of this Agreement, regardless of whether such damages or Losses could have been foreseen or prevented by either party.
- 13.4. Nothing in this Agreement excludes, restricts or modifies any condition, warranty, consumer guarantee, right or remedy implied or imposed by law, statute or regulation to the extent it cannot be lawfully excluded, restricted or modified. If any such condition, warranty, consumer guarantee, right or remedy applies, Humanforce limits its liability to the extent permitted.

14. REGULATORY REQUIREMENTS

- 14.1. The parties acknowledge and agree that:
 - (a) each party is responsible for compliance with all applicable regulatory requirements including with respect to their respective activities in relation to this Agreement; and
 - (b) each party will promptly notify the other party of any queries or investigations initiated by any regulatory authority in relation to or in connection with this Agreement.
- 14.2. Each party represents and warrants that it is not a Sanctions Target. The Customer must not allow the export of the Solution to any country to which such export is restricted or prohibited.
- 14.3. This Agreement does not include the provision by Humanforce to the Customer of any legal or regulatory advice. 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) including in relation to this Agreement and the Solution, its configuration, use of data, rates, amounts, inputs and information.
- 14.4. Any template provided by Humanforce or configuration of the Solution by it 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. Humanforce will not check or consider the accuracy or relevance of any such matters or the Customer's compliance with industrial relations, workplace or employment laws.
- 14.5. Any use by the Customer of the configured Solution is entirely at the Customer's own risk. No duty of care or obligation is assumed by Humanforce. The Customer acknowledges that substantial loss and damage may arise from non-compliance by the Customer with respect to the interpretation and application of relevant laws, industrial instruments, decisions, agreements and policies (including enterprise or collective bargaining agreements, employer/employee arrangements, pay rates, entitlements and decisions).

15. INSURANCE

- 15.1. During the Term, Humanforce will maintain:
 - (b) insurance cover of up to \$10 million on a claims-made basis for professional indemnity, public liability and cyber liability; and
 - (c) workers' compensation insurance as required by the laws of the Applicable Jurisdiction.

16. TERM AND TERMINATION

- 16.1. This Agreement commences on the Commencement Date and continues for the Initial Term. This Agreement will automatically renew for successive periods of 12 months (each a **Renewal Term**) unless either party gives the other party not less than 90 days' written notice of non-renewal prior to the end of the then-current Initial Term or Renewal Term (as applicable), in

which case the Agreement will terminate at the end of the then-current Initial Term or Renewal Term.

- 16.2. A party may terminate this Agreement immediately by notice in writing if the other party:
- (a) commits a material breach of this Agreement that:
 - (i) cannot be remedied; or
 - (ii) is capable of being remedied, and has failed to remedy the breach within 20 Business Days after written notice of the breach has been given by the non-defaulting party to the defaulting party; or
 - (b) becomes the subject of any proceeding relating to winding up, insolvency, receivership, liquidation, or assignment for the benefit of creditors provided that the termination is not prohibited by any law.
- 16.3. Humanforce may terminate this Agreement immediately by notice in writing if:
- (a) any Fees are not paid when due and the Customer has failed to comply with a notice or reminder to pay the outstanding Fees in full within 15 Business Days; or
 - (b) the Customer breaches an obligation of confidence or infringes the Intellectual Property Rights of any person.

17. EFFECT OF TERMINATION

- 17.1. Termination or expiry of this Agreement will not affect the operation of provisions of this Agreement which by their nature survive termination or expiry of this Agreement or any rights or remedies already accrued to either party under this Agreement.
- 17.2. On termination or expiry of this Agreement the Customer must:
- (a) immediately pay in full any outstanding Fees up to the date of termination and any amounts that are otherwise due to Humanforce under this Agreement;
 - (b) immediately cease to use the Solution; and
 - (c) immediately deliver to Humanforce all documents or other materials containing or referring to the Humanforce's Confidential Information which are in the Customer's possession, power, or control, or in the possession, power, or control of persons to whom the Customer has disclosed Humanforce's Confidential Information.
- 17.3. After termination of this Agreement, at the Customer's request and subject to the payment of any Fees due, Humanforce will use reasonable efforts to allow the Customer to download or access the Customer Data which may be made available to the Customer by such means as Humanforce reasonably determines (in its sole discretion). The Customer must ensure it downloads or accesses the Customer Data pursuant to this clause within 90 days after termination, after which time Humanforce (subject to applicable laws) may delete the Customer Data. The Customer must pay Humanforce's reasonable costs incurred in, or in connection with, transferring, making available or storing the Customer Data in accordance with this clause (including any hosting charges payable for the continued use of or access to the archive copy of the Customer Data).
- 17.4. Unless otherwise agreed in writing, any de-installation, modification work or services supplied by Humanforce (including any transition out, migration, data transfer or other termination or expiry-related services) will be supplied by Humanforce (if Humanforce so agrees or has agreed) on a chargeable time and material basis in accordance with the Standard Price List.

18. DISPUTES

- 18.1. If a dispute under this Agreement arises:
- (a) the party claiming that a dispute has arisen must give notice to the other party indicating the nature of the dispute (**Dispute Notice**).
 - (b) within 5 Business Days of receipt of a Dispute Notice, a senior representative of each

party must meet and attempt to resolve the dispute within 10 Business Days of receipt of the Dispute Notice;

- (c) if the parties fail to resolve the dispute within 10 Business Days of receipt of the Dispute Notice, the Managing Director or Chief Executive Officer of each party (or his or her nominee) must meet and attempt to resolve the dispute within 20 Business Days of receipt of the Dispute Notice; and
- (d) if the parties fail to resolve the dispute within 30 Business Days of receipt of the Dispute Notice, the parties may commence legal proceedings to have the dispute resolved in a court in the Applicable Jurisdiction.

18.2. The parties may agree in writing to any the extension of any of the time periods set out in this clause 18.

18.3. Nothing in this clause 18 prevents a party from commencing proceedings for urgent injunctive or declaratory relief.

18.4. Unless expressly agreed otherwise in writing, each party must continue to perform its obligations while any dispute is being resolved.

19. FORCE MAJEURE

19.1. Notwithstanding any other provision in this Agreement, a party will not be liable for any delay in or for any failure to perform its obligations under this Agreement to the extent that the party is able to demonstrate that such delay or failure has been caused by a Force Majeure Event.

19.2. If a Force Majeure Event arises, the affected party must notify the other party as soon as practicable, continue to perform all unaffected obligations in accordance with this Agreement and use reasonable endeavours to overcome the effects of the Force Majeure Event as soon as possible.

20. NOTICES

20.1. Any notice under or in connection with this Agreement must be in writing. Notices may be posted by prepaid post, delivered by hand or emailed to the address of the authorised signatory as stated in the Order and, in the case of notices to Humanforce, must be copied to accounts@humanforce.com. The parties agree that any electronic communication will satisfy any applicable legal communication requirements, including that such communications be in writing.

20.2. A notice is taken to be received:

- (e) in the case of prepaid post sent to an address in the same country, on the 3rd Business Day after posting;
- (f) in the case of prepaid post sent to an address in another country, on the 5th Business Day after posting by airmail;
- (g) in the case of delivery by hand, on delivery; and
- (h) in the case of email, immediately, unless the sender receives a message from its mail servicer indicating that it has not been successfully transmitted.

21. ASSIGNMENT + SUBCONTRACTING

21.1. The Customer may not assign, dispose of, or otherwise transfer any rights or obligations under this Agreement without the prior written consent of Humanforce (which may be given or withheld in Humanforce's sole and absolute discretion).

21.2. Humanforce may assign, in part or in full, its rights and obligations under this Agreement without the consent of the Customer or any other person.

21.3. Humanforce may subcontract any of its rights and/or obligations under the Agreement, including to any of its Related Companies. Humanforce will remain responsible for compliance with the Agreement by any subcontractor.

21.4. Subject to this clause 21, this Agreement shall be binding on the parties to it and their respective successors and permitted assigns.

22. GOVERNING LAW

22.1. This Agreement is governed by the laws in force in the Applicable Jurisdiction.

22.2. *The U.N. Convention on Contracts for the International Sale of Goods* does not apply.

23. MODERN SLAVERY

23.1. In performing its obligations under this Agreement, Humanforce will comply with applicable laws relating to modern slavery, including but not limited to the Modern Slavery Act 2018 (Cth).

23.2. Humanforce conducts its business in a manner that is consistent with the principles of the Modern Slavery Act 2018 (Cth).

23.3. Humanforce implements reasonable due diligence procedures for its own contractors, agents, contractors and sub-contractors in relation to Modern Slavery.

24. GENERAL

24.1. This Agreement constitutes the entire terms agreed by the parties and supersedes any prior written or other agreement of the parties.

24.2. Humanforce may modify the terms and conditions of this Agreement from time to time, with notice to you or by posting the modified terms and conditions on our website. Modifications will take effect at the next renewal of your Term and will automatically apply as of the renewal date unless you elect not to renew pursuant to this Agreement.

24.3. The parties acknowledge and agree that market conditions will impact on Humanforce's ability to supply the Services for the Fees. Following the expiration of the Initial Term and not more often than once in any 12-month period, Humanforce may adjust the Fees to reflect then-current market conditions.

24.4. Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or as reasonably requested by another party to give effect to this Agreement.

24.5. If any provision in this agreement is invalid, void or unenforceable, all other provisions which are capable of separate enforcement without regard to an invalid, void or unenforceable provision are and will continue to be of full force and effect in accordance with their terms.

24.6. A failure or delay to exercise or enforce, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement does not preclude a party from, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.

24.7. Provided that Humanforce has obtained the Customer's prior written consent, Humanforce may publicly refer to the Customer as a customer of Humanforce, including in marketing materials and public relations communications. The Customer grants to Humanforce a non-exclusive, royalty free licence to use the Customer's name and trademarks for such purposes only.

24.8. The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and other related documentation.

24.9. If a party suffers Losses in connection with this Agreement for which the other party is liable (including under an indemnity), the party suffering the Losses must use reasonable endeavours to mitigate its Loss.

24.10. Except where expressly stated otherwise, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

25. DICTIONARY + INTERPRETATION

25.1. In this Agreement, "including" (and its variants) means "including without limitation" (and its variants) and headings are for convenience only.

25.2. In this Agreement, unless otherwise specified, the following terms have the following meanings:

Admin Users means those persons who are authorised by the Customer to access and use the Solution with certain administration and special access rights.

Agreement means this document together with the terms of the relevant Order and any other documents mentioned in the Order.

API means an application programming interface.

Applicable Jurisdiction means where the contracting party is:

- (a) TimeTarget Pty Limited (ACN 140 620 248), then New South Wales, Australia;
- (b) TimeTarget Workforce Management Limited (Company Number 09246413), then the United Kingdom;
- (c) TimeTarget Workforce Management Limited (NZBN 9429047051393), then New Zealand; or
- (d) Humanforce Workforce Management Pte Ltd (UEN 201719997R), then Singapore.

Authorised Users means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Solution and includes the Admin Users.

Business Day means a day which is not a Saturday, Sunday or public holiday in the Applicable Jurisdiction. If there is any doubt, it means a day which is not a Saturday, Sunday or public holiday in Sydney, Australia.

Business Hours means where the Applicable Jurisdiction is:

- (a) New South Wales, Australia, then 8.30am to 5.30pm on Business Days in Sydney, Australia;
- (b) United Kingdom, then 8.30am to 5.30pm on Business Days in London, United Kingdom;
- (c) New Zealand, then 9am to 5pm on Business Days in Auckland, New Zealand; or
- (d) Singapore, then 8.30am to 5.30pm on Business Days in Sydney, Australia.

Commencement Date means the commencement date stated in the Order.

Confidential Information means with respect to a party:

- (a) all information relating to the operations or affairs of the party including all financial or accounting information, all customer names and lists, terms and conditions of supply, sales records, marketing analysis and research and reports and other marketing information and all trade secrets, know how, operating procedures and technical information; and
- (b) all other information:
 - (i) treated by the party as confidential;
 - (ii) which is capable of being protected at law or equity as confidential information;
 - (iii) in respect of which the party owes a duty of confidence to a third party; or
 - (iv) the disclosure of which might cause Loss or damage to or otherwise adversely affect the party,

in whatever form.

Customer means the customer specified in the Order.

Customer Data means all data and information (Confidential Information, Personal Information or otherwise) relating to the Customer and its operations, facilities, personnel and assets in whatever form such information may exist and whether entered into, stored in, generated by or processed by the Solution, or otherwise provided to Humanforce, in relation to this Agreement.

Customer Materials means materials, systems, personnel or other resources.

Customer-induced Issue means any non-conformity or issue with respect to the Services which relates to or results from:

- (a) any instructions or specifications provided by or on behalf of the Customer, or under the authority of the Customer;
- (b) integrations with any third-party products or services;
- (c) non-conformities or issues otherwise attributable to the Customer (including any person acting on the behalf of the Customer), including non-conformities or issues resulting partly or wholly from:
 - (i) use of the Services in combination with any hardware or other equipment, software, accessory or other product, or any data or business methods not expressly authorised, prescribed, approved or permitted in writing by Humanforce;
 - (ii) any delay or failure by the Customer to perform any Customer responsibilities (including as identified in a Statement of Work) or provide any Customer Materials;
 - (iii) information from, or provided by, the Customer;
 - (iv) modifications or adjustments to the Solution, whether or not authorised by Humanforce, or changes in the Customer's data, database or content;
 - (v) connectivity issues or failure of a network (public and/or private);
 - (vi) the handling, use or deployment of the Services in a manner other than permitted in applicable Humanforce documentation or otherwise in non-compliance with any applicable routine or process prescribed by Humanforce; or
 - (vii) any negligence, misuse, improper or unauthorised use, reproduction or distribution of the Solution which is not permitted under any applicable terms of use or licence, restrictions of use or any relevant acceptable use policy.

Dispute Notice has the meaning given in clause 18.1.

Errors or Minor Defects means errors or minor defects in the appearance, operation and functionality of the Solution which do not prevent the Customer from using the Solution in the manner contemplated by this Agreement.

Fees has the meaning given in clause 8.1.

Force Majeure Event means strikes, lock-outs or other labour disputes, riots, civil disturbance, actions or inaction of governmental authorities, epidemics, pandemics, wars, computer downtime, failure of a relevant network (public and/or private) or information technology infrastructure, connectivity issues, sanctions, embargoes, storms, floods, fires, earthquakes, acts of God or the public enemy, nuclear disasters or default of a carriage, retail or wholesale service provider or any other event which is not within the relevant party's reasonable control.

Humanforce means the Humanforce entity stated on the Order, being one of the following:

- (a) TimeTarget Pty Limited (ACN 140 620 248) of Level 14, 90 Arthur Street, North Sydney NSW 2060, Australia;
- (b) TimeTarget Workforce Management Limited (Company Number 09246413) of Kings Parade, Lower Coombe Street, London CR0 1AA, United Kingdom;
- (c) TimeTarget Workforce Management Limited (NZBN 9429047051393) of Level 1, 196 Wordsworth Street, Sydenham, Christchurch, 8023, New Zealand; or
- (d) Humanforce Workforce Management Pte Ltd (UEN 201719997R) of 30 Cecil Street #19-08 Prudential Tower, 049712, Singapore,

and includes their permitted assigns from time to time.

Humanforce Works means any existing or future versions or iterations of the Solution, customised

software, integrations, adaptations, extensions or any other existing or future works of authorship of any form or format (tangible or intangible and whether or not based on any pre-existing works of Humanforce), which have been, or will be, created by (or on behalf of) Humanforce. This includes, without limitation, object code, source code, structures, sequences, organisation, system and software designs, architecture, logic, database models, data objects and column models, libraries, files, data, APIs, and screens that have been created by (or on behalf of) Humanforce.

Humanforce Deliverables means any materials, deliverables, modifications, derivative works or developments that Humanforce provides in connection with any Professional Services or Out of Scope Work.

Initial Term means the initial term specified in the Order.

Intellectual Property means the Solution and the Humanforce Works.

Intellectual Property Rights means:

- (a) patents, designs, trademarks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trademark or service mark;
- (b) copyright (including copyright in software, websites, databases and advertising and other promotional materials);
- (c) all rights to have information (including trade secrets, know how, operating procedures and technical information) kept confidential; and
- (d) all other rights or protections having similar effect anywhere in the world.

Loss or Losses means in relation to any fact, matter or circumstance, all losses, costs, charges, damages, expenses and other liabilities arising out of or in connection with that fact, matter or circumstance including all legal and other professional expenses on a solicitor client basis incurred in connection with investigating, disputing, defending or settling any claim, action, demand or proceeding relating to that fact, matter or circumstance (including any claim, action, demand or proceeding based on the terms of this agreement).

Modern Slavery has the meaning given in the Modern Slavery Act 2018 (Cth).

Order means an order form, work order, purchase order, services order, statement of work, proposal, or other contractual order for goods and/or services to be supplied by Humanforce and includes any schedules and annexures.

Out of Scope Work has the meaning given in clause 7.2.

Personal Information means any information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in material form or not, about an individual whose identity is apparent or can be reasonably ascertained from the information or opinion.

Personnel means the officers, employees and contractors (including sub-contractors) of that person or any of its Related Companies.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy Act 2020* (NZ), Regulation (EU) 2016/679 (General Data Protection Regulation) or any successor legislation or other applicable privacy laws as may be in force from time to time which regulate the collection, storage, use and disclosure Personal Information.

Professional Services means any professional services specified in the Order, which may include implementation and/or migration services.

Related Company means a related body corporate as that expression is defined in section 50 of the *Corporations Act 2001* (Cth).

Renewal Term has the meaning given in clause 16.1.

Sanctions Target means any party that is a target of Australian, United States, European Union, United Kingdom or United Nations sanctions or any other sanctions issued by an authority relevant to the party's operations. Sanctions Targets include any party identified on the OFAC list of SDN, OFAC Foreign Sanctions Evaders List, or OFAC Sectorial Sanctions Identifications Lists, and any party identified in, or in annex to, a resolution of the EU or the UN sanctions as a targeted party.

Service Level has the meaning given in clause 6.1.

Services means the provision of goods and/or services under this Agreement and may include the provision of the Solution, Support Services, Payroll Services, Professional Services and/or Out of Scope Work.

Solution means the standard, non-modified version of the software solution/s specified in the Order (including such modules, applications and extensions specified in the Order).

Standard Price List means Humanforce's standard price list from time to time concerning relevant goods and/or services for the relevant country or place where delivery is to be made or supplied.

Statement of Work means a statement of work for professional services referenced in the Order.

Support Packages means the support packages offered by Humanforce in respect of the Support Services as described at Appendix A, the terms of which are set out at Appendix A, as may be varied from time to time, provided that Humanforce provides the Customer with 30 days' prior written notice of any material changes to the terms of such support packages.

Support Services has the meaning given in clause 6.1.

Term means the Initial Term and any Renewal Term.

Third Party Products means any software, hardware or other goods and/or services:

- (a) owned by, vested in or otherwise provided by, or sourced by the Customer from, any third party (including for these purposes any free or open-source software) whether as part of any products, licence or other services provided by Humanforce to the Customer, sourced by the Customer directly, or otherwise; or
- (b) that have not been provided by Humanforce.

PART 2: Product-specific Terms

INTELLIHR-SPECIFIC TERMS

26. LICENSED USER NUMBERS FOR INTELLIHR

26.1. The quantity of licensed users for IntelliHR products specified in an Order is the minimum monthly quantity to be invoiced. If, in any month, actual billable headcount on the service on the invoice date is higher than the quantity specified in the Order, the invoice will reflect the higher actual quantity.

HUMANFORCE THRIVE-SPECIFIC TERMS

27. ADDITIONAL DEFINITIONS

27.1. The following terms have the following meanings:

Authority to Deduct means the consent given by an Eligible Employee to repay any applicable Employee Streams by way of a deduction from their next salary or wage payment at the end of each Payment Cycle.

Blossom means Gleneagle Asset Management Limited ABN 29 103 162 278 AFS Licence No. 226 199.

Blossom Fund is a unit trust as a registered managed investment scheme ARSN 645 889 998 operated by Blossom.

Customer Systems means the Customer payroll and time and attendance systems (as appropriate), and any other relevant systems reasonably required to facilitate the implementation of the Humanforce Thrive Program.

Eligible Employees has the meaning given to it in clause 30.1.

Employee Stream means a low-cost credit facility provided to an Eligible Employee through the Humanforce Thrive Platform.

Employee Terms means the general terms and conditions provided to Eligible Employees and hosted on the Humanforce website.

Grow Account means the investor account as recorded and determined by Blossom, reflecting the value of the Eligible Employee's investment from time to time in the Blossom Fund.

Grow Contribution means a request made by an Eligible Employee via the Humanforce Thrive App to direct a proportion of their net salary to investment in the Blossom Fund.

Humanforce Thrive API means the API made available by Humanforce for connection of the Customer Systems to the Humanforce Thrive Platform.

Humanforce Thrive App means the mobile based application that allows an individual to use the Humanforce Thrive Platform.

Humanforce Thrive Platform means the application supplied by Humanforce that enables the Customer and its Eligible Employees to administer and use the Humanforce Thrive Program. The Humanforce Thrive Platform does not include access to any source code.

Payment Cycle means, as appropriate, the monthly, bi-monthly, fortnightly, weekly (or otherwise) payment cycle or cycles utilised by the Customer to pay its employees.

28. OVERVIEW

28.1. Humanforce Thrive is an online integrated solution that:

- (a) enables employers to provide their personnel with flexible access to accrued salary and wages;
- (b) allows employers to provide their personnel with access to a Grow Account; and

- (c) provides an employer's personnel with access to financial wellbeing content and tools and, if set out in the Order, employee perks and discounts.

(the **Humanforce Thrive Program**).

- 28.2. The Customer wishes to access the Humanforce Thrive Program to support the financial wellbeing of its personnel.
- 28.3. The Customer acknowledges its obligation to make a payment in respect of the Employee Streams should an Employee Stream remain outstanding after a Payment Cycle pursuant to clause 32.1(c).

29. LICENCE

- 29.1. Humanforce grants to the Customer a non-exclusive licence during the Term to:
 - (a) access and participate in the Humanforce Thrive Program;
 - (b) use Humanforce Thrive's logo and branding that has been supplied to it by Humanforce to promote Humanforce Thrive both to its Eligible Employees and publicly;
 - (c) integrate the Customer Systems with the Humanforce Thrive Platform; and
 - (d) make the Humanforce Thrive Program available to the Customer's Eligible Employees, subject to:
 - (i) Eligible Employees accepting and complying with all applicable terms and conditions of the Humanforce Thrive Platform;
 - (ii) Humanforce's rights to decline or suspend in clause 30.3(c); and
 - (iii) any access restrictions imposed by the Customer.
- 29.2. The Customer grants to Humanforce a non-exclusive licence to use the Customer's logo and branding that has been supplied to it by the Customer to promote Humanforce Thrive both to the Eligible Employees and publicly.
- 29.3. The Customer acknowledges that it has no right, title or interest in the Humanforce Thrive Program except as set out in this clause 29.
- 29.4. The licence created by this Agreement does not create a fiduciary duty between the parties, nor does it permit a party to bind the other party.

30. GRANTING AND PERMITTING ACCESS TO ELIGIBLE EMPLOYEES

- 30.1. The Customer will make available to its employees, and where applicable those of its Related Companies specified in an Order Form (**Eligible Employees**), the Humanforce Thrive Program.
- 30.2. The Customer acknowledges that the Humanforce Thrive Program is a credit service and not a payroll service, and that the Customer is at all times liable for the payment of employee superannuation, income, tax and other employment related payments.
- 30.3. Humanforce may decline or suspend access to the Humanforce Thrive Program at any time without giving a reason if an Eligible Employee:
 - (a) fails Know Your Customer (**KYC**) or Anti-Money Laundering checking, or other due diligence;
 - (b) declines to accept or breaches the Employee Terms;
 - (c) declines to accept or withdraws their privacy consent;
 - (d) is required to provide Humanforce with a direct debit authority, and declines to give, revokes or breaches their direct debit authority;
 - (e) is required to provide Humanforce and the Customer with a salary deduction authority, and declines to give, revokes or breaches their salary deduction authority;

- (f) fails to repay any credit on the scheduled repayment date; or
- (g) is considered by Humanforce, acting reasonably, to be an unsuitable loan candidate.

31. DUTY TO DISCLOSE ACCURATE ACCRUED INCOME INFORMATION

31.1. The Customer must, on a daily basis unless agreed in writing otherwise, accurately notify Humanforce of each Eligible Employee's:

- (a) net accrued unpaid salary or wage; or, if unavailable despite the Customer having taken reasonable steps to ascertain the same
- (b) gross accrued unpaid salary or wage; or if unavailable despite the Customer having taken reasonable steps to ascertain the same
- (c) approved hours and pay rate; or if unavailable despite the Customer having taken reasonable steps to ascertain the same
- (d) worked hours and pay rate

as applicable, through a data feed facilitated by the integration of the Humanforce Thrive Platform with the Customer Systems, or otherwise if no such data feed is available (**Accrued Income**). The Accrued Income must exclude any known or suspected deductions and any salary or wages yet to be accrued.

31.2. Humanforce is entitled to rely on the data supplied by the Customer.

31.3. Unless otherwise agreed in writing (including in an Order Form), Humanforce imposes a 50% limit on the Accrued Income that an Eligible Employee is able to borrow (**Accrued Income Limit**).

31.4. Humanforce may impose other buffers and caps on the amount of the Accrued Income an Eligible Employee may borrow at its discretion, and display such commensurate amounts on an Eligible Employee's Humanforce Thrive App.

31.5. Humanforce retains the full discretion in deciding whether to accept or decline an Eligible Employee's request to borrow.

31.6. The Customer must notify Humanforce immediately of:

- (a) any change to the duration or dates of the Customer's Payment Cycle generally and/or in respect of an individual Eligible Employee;
- (b) any change to an Eligible Employee's employment status, including whether any Eligible Employees have been terminated;
- (c) any Eligible Employee revoking its salary deduction authority;
- (d) any Eligible Employee's unpaid leave dates; and
- (e) any other matter impacting an Eligible Employee's current or future available salary or wage.

31.7. Humanforce is entitled to rely on the then current status of an Eligible Employee at the time of advancing credit.

32. CUSTOMER AUTHORISES HUMANFORCE TO LEND, AND HONOURS REPAYMENT

32.1. By submitting Eligible Employee and Accrued Income details, the Customer:

- (a) authorises Humanforce to provide Employee Streams to Eligible Employees up to the Accrued Income Limit at the time of the request;
- (b) agrees to honour the Eligible Employee's Authority to Deduct; and
- (c) acknowledges, agrees to, and warrants that it becomes liable for, and will pay the aggregate balance of all outstanding Employee Streams in full at the end of each Payment Cycle and/or on each Eligible Employee's termination of employment.

32.2. The Customer's obligation under this clause 32 survives termination of this Agreement to the extent that all Employee Streams are repaid in full to Humanforce.

33. GROW

33.1. Where an Eligible Employee elects to make Grow Contributions the Customer will, at the end of each relevant Pay Cycle, deduct the relevant Grow Contribution from the Eligible Employee's net salary and forward the same to Humanforce who will send the same promptly (and typically within three (3) Business Days) to Blossom to invest in the Blossom Fund and be reflected in the Eligible Employee's Grow Account. The Customer recognises that Humanforce cannot contribute to the Eligible Employee's Grow Account unless it has processed the Eligible Employee's Grow Contribution deduction and sent it to Humanforce through the Customer Systems or otherwise.

33.2. Humanforce may, in its absolute discretion, terminate the provision of access via Humanforce Thrive to the Grow Account at any time if it gives the Customer at least one month's advance written notice.

34. HUMANFORCE THRIVE PLATFORM INTEGRATION AND USE

34.1. The Customer agrees to prepare its technical environment for integration with the Humanforce Thrive Platform in accordance with Humanforce's reasonable recommendations, and as appropriate:

- (a) the Customer agrees to give and/or assist Humanforce with reasonable access to the Customer Systems to integrate via an API, Secure File Transfer Protocol (SFTP), flat-file transfer or otherwise; or
- (b) Humanforce will give the Customer access to the Humanforce Thrive APIs, and provide adequate information to assist the Customer to integrate with the Humanforce Thrive Platform.

34.2. Each party will give the other such assistance as the other reasonably requires to ensure satisfactory integration between the Customer Systems and the Humanforce Thrive Platform.

35. EMPLOYEE COMMUNICATIONS AND ROLL-OUT

35.1. The Customer will assist Humanforce in raising awareness of the Humanforce Thrive Program to Eligible Employees, including by:

- (a) sending Eligible Employees relevant communications about Humanforce Thrive which may be by the Customer or Humanforce on its behalf by:
 - (iv) email or texts;
 - (v) messages on internal messaging platforms;
 - (vi) including Humanforce Thrive in company newsletters (if any);
 - (vii) where relevant, promoting the Humanforce Thrive Program with physical posters in staff areas;
 - (viii) promoting the Humanforce Thrive Program at company events and all-hands meetings; and
 - (ix) promoting the Humanforce Thrive Program via any other relevant channels of communication.

36. EMPLOYEE STREAM REPAYMENTS

36.1. The Customer must ensure that all Employee Stream repayments are repaid to Humanforce in full, through an integration with the Customer Systems or otherwise, on or by the first Business Day following the end of each Payment Cycle to which the Employee Stream relates or the termination of the relevant Eligible Employee's employment (whichever is earlier).

36.2. If any Employee Stream repayment is not repaid in full by the first Business Day following the end of a Payment Cycle to which the Employee Stream relates or the termination of the relevant Eligible Employee's employment (whichever is earlier), the amount outstanding will become immediately due and payable by the Customer.

HUMANFORCE PAYROLL – SPECIFIC TERMS

37. ADDITIONAL DEFINITIONS

37.1. The following terms have the following meanings:

ClickSuper means ClickSuper Pty Limited (ACN 122 693 985).

DMS means deduction management system.

EFT means electronic funds transfer.

Payroll Services includes:

- (a) the provision of payroll software as a web-based software service to the Customer that enables the Customer to provide certain payroll services to its employees and contractors;
- (b) Optional Services in relation to payroll, if applicable; and
- (c) Other Services, in relation to payroll, if applicable.

Service Desk Module means the module of the Software through which the Customer is able to request assistance or provide information regarding the Payroll Service. The description of each service available through the Service Desk Module and the support provided is identified in section 5 of Schedule 4.

Service Request means a request for a one-off service.

SLA means the service level agreement attached as Schedule 4.

Westpac means Westpac Banking Corporation (ACN 007 457 141).

38. PAYROLL SERVICES

38.1. In relation to the Payroll Services and without limiting any of the Customer's other obligations under this Agreement, the Customer must:

- (a) provide a payroll service to its employees and contractors commensurate with the level of competence, skill and knowledge reasonably expected to be delivered by a payroll office;
- (b) check all output produced in the provision of the Payroll Services upon receipt and advise Humanforce immediately of any errors, including any omissions and anomalies;
- (c) recover all monies overpaid in error as a result of the provision of the Payroll Services;
- (d) where an individual's duties as an Authorised User change, immediately amend that Authorised User's access to the extent necessary to allow that Authorised User to perform their duties for the Customer;
- (e) not provide a payroll service to its employees using personnel located outside of an Australian State or territory without the prior written consent of Humanforce;
- (f) provide and maintain an internet connection and use reasonable endeavours to ensure that the connection is kept up to date;
- (g) in the event EFT is contracted as part of the Services, comply with the standard clauses required by Westpac, contained in Schedule 5;

- (h) in the event DMS is contracted as part of the Service provision, comply with the terms of service required by ClickSuper, contained in Schedule 6;
 - (i) protect, and not do anything to harm, Humanforce's and its third party supplier's rights, interest and goodwill in, their brand names; and
 - (j) advise Humanforce if the Customer's total number of employees and contractors falls below 100.
- 38.2. The Customer acknowledges and agrees that it must implement and maintain reasonable security measures to protect:
- (a) against unauthorised access to its accounts, including by ensuring the Customer only permits Authorised Users to access the Payroll Service and ensuring that all passwords are kept confidential; and
 - (b) all employee records and Customer Data that it makes available through the Payroll Services, including by ensuring that email payslips are password protected.
- 38.3. The Customer will ensure that all Personnel who have access to, or otherwise use, the Payroll Services:
- (a) undertake the training courses provided prior to accessing or using the Payroll Services;
 - (b) are appropriately experienced to adequately perform the Customer's services;
 - (c) have reviewed and will keep up to date with all documentation, videos and other materials relating to the Software that are made available or issued to the Customer during the Term;
 - (d) have access to the Service Desk Module to seek support in the event of an incident and/or to make Service Requests.
- 38.4. The Customer represents and warrants that:
- (a) its employees have, or will acquire, the requisite technology, skill, personnel and ability to enable it to perform all of its obligations under the Agreement; and
 - (b) to the extent the Customer uses any third-party products in connection with the Services, that it has the legal right to use any third party's intellectual property, including software, in connection with the Services.

39. LICENSED USER NUMBERS FOR PAYROLL SERVICES

- 39.1. The quantity of licensed users for Payroll Services specified in an Order is the minimum monthly quantity to be invoiced. If, in any month, actual employees entered into or stored in the payroll system during the relevant month is higher than the quantity specified in the Order, the invoice will reflect the higher actual quantity.

40. SERVICE LEVELS

- 40.1. In relation to the Payroll Services, clause 6 of the General Terms does not apply. Humanforce uses reasonable endeavours to perform the Payroll Services in accordance with the Service Level Agreement at Schedule 4. Humanforce does not otherwise provide any service levels in connection with the Payroll Services.

41. EFFECT OF TERMINATION

- 41.1. Subject to clause 41.2, the Customer may request information relating to the Payroll Services received prior to the termination or expiry of this Agreement. Such information will be provided, where Humanforce is able to and agrees to provide such information, on terms and conditions to be agreed by the Customer and Humanforce.
- 41.2. The Customer acknowledges and agrees that:

- (c) except where required by applicable law, Humanforce has no obligation to retain information relating to the Payroll Services following termination or expiry of this Agreement;
- (d) Humanforce will use reasonable endeavours to hold information relating to the Payroll Services (including any Customer Data and Employee Records held by it in connection with the Payroll Services) for up to 30 days after the termination or expiry of this Agreement, to allow for provision of the information to the Customer in accordance with clause 41.1; and
- (e) Humanforce may be unable to fulfil any request to provide information relating to any of the Services if the information has been deleted prior to the Customer's request.

SMS SERVICES-SPECIFIC TERMS

42. SEPARATE TERMS FOR SMS SERVICES

- 1.1. SMS Services are provided by a third-party provider. In relation to SMS Services only, the terms of service available at <https://messagemedia.com/au/legal/terms-of-service/> apply to the supply of those Services in place of the Agreement. Pricing for SMS Services is as set out in the Order.

PART 3: Schedules

SCHEDULE 1

SERVICE LEVELS

Recovery Time Objective (RTO)	In the result of an unscheduled outage the Recovery Time Objective is 8 hours
Recovery Point Objective (RPO)	In the result of an unscheduled outage the Recovery Point Objective is RPO is taken from the previous night's backup taken between 1am-3am Sydney time)
Agreed uptime per month	A minimum uptime of 99.5% is provided (excluding scheduled downtime for maintenance)

SCHEDULE 2

Priority Level Table

Priority Level 1 (Total System Failure/ Payroll Issue on Payroll Processing Day)	<p>A problem that brings the system to a halt or renders a whole subsystem inoperable.</p> <p>OR</p> <p>A problem experienced on the 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>
Priority Level 2 (Substantial System Failure)	<p>A problem that renders a major portion of a system inoperable, significantly affecting workflow in critical areas so that other methods must be employed.</p> <p>OR</p> <p>A Priority 1 issue where a viable workaround exists.</p>
Priority Level 3 (Limited Impact)	<p>A user job that is not causing significant issues or problems in the operation of the Solution.</p>

Target Response Table – Standard Support Package

Priority Level	Target 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 Business Hours
2	4 hours	Less than 24 hours	The problem will be worked on until fixed or a patch applied in Business Hours
3	1 week	4 weeks or next update/ release	<p>The problem will be attended to in a mutually agreed timewhich avoids critical disruption of the Customer's operations.</p> <p>AND/OR</p> <p>The problem will be scheduled into Humanforce's normal work program in Business Hours</p>

*** Resolution time excludes time waiting for customer feedback.**

SCHEDULE 3

SUPPORT PACKAGES

Humanforce offers two support tiers: Standard and Enterprise. Unless the Order specifies that Enterprise Support will be provided, Humanforce will provide Standard Support. The Enterprise Support package target response and resolution times are set out below. Humanforce also offers an Award as a Service for Humanforce Workforce Management which can be added to the Standard Support package for an additional fee. The Enterprise Support package includes Award as a Service for Humanforce Workforce Management.

Humanforce's obligation to provide Support Services is limited to:

- the then-current release of the Solution; and
- 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.

Target Response Table – Enterprise Support Package

Priority Level	Target Initial Response Time	Target Resolution Time	Nature of support
1	15 minutes	4 hours	The problem will be worked on until fixed or a patch applied in Business Hours
2	2 hours	8 hours	The problem will be worked on until fixed or a patch applied in Business Hours
3	2 days	1 week	The problem will be attended to in a mutually agreed timewhich avoids critical disruption of the Customer's operations. AND/OR The problem will be scheduled into Humanforce's normal work program in Business Hours

* Resolution time excludes time waiting for customer feedback.

The Standard and Enterprise Support Package inclusions are summarised in the table below:

Item	Standard Support	Enterprise Support
Phone support	<ul style="list-style-type: none"> 8.30am to 5.30pm Sydney time 9.00am to 5.00pm Auckland time 8.30am to 5.30pm London time <p>Customers will have access to Phone Support for P1 and P2 issues. P3 issues will be managed via email.</p>	<ul style="list-style-type: none"> 7.00am to 7.00pm Sydney time 8.30am to 7.00pm Auckland time 8.30am to 5.30pm London time <p>Customers will have access to Phone Support for P1 and P2 issues. P3 issues will be managed via email.</p>
24/7 Help Portal	Included	Included
Webinars	Topical webinars and feature demonstrations	Topical webinars and feature demonstrations
Analytics	Not included	Quarterly support analytics
Account	Not included	Dedicated Senior Support Engineer (includes up to eight hours of support from our Technical Support Team per week – additional fees may apply for exceeding these times)
Award as a Service (Humanforce Workforce Management only – see further details below*)	Not included – optional add-on (for a fee)	Included
Roadmap insights (intelliHR only)	Not included	Quarterly product roadmap sessions
Prevention (intelliHR only)	Not included	Proactive preventative integration support
Beta feature access (intelliHR only)	Not included	Early access to new features upon request

*** Further details of Award as a Service:**

1. Includes updates to nominated, current Australian Fair Work Industry Awards as specified in the Order or as otherwise agreed by the parties in writing.
2. Humanforce will notify customers when changes to nominated Fair Work Industry Awards occur.
3. Excludes any custom awards, such as Enterprise Agreements and Enterprise Bargaining Agreements.

SCHEDULE 4

SERVICE LEVEL AGREEMENT FOR PAYROLL SERVICES

The Payroll Services are provided to the Customer in accordance with the following:

1. Services

The provision of the Payroll software services consists of sections 2 (Software), 3 (Service Levels), 4 (Infrastructure Support and Availability) and 5 (Service Desk Module) of this Schedule.

1.1 Definitions

Capitalised terms used but not defined in this Schedule have the meanings given in the General Terms. In addition, the following definitions apply:

Business Hours means the time between 8.00 a.m. and 5.00 p.m. on Business Days.

Disaster means any event that causes it to be unreasonably prohibitive or impossible to continue providing Services.

Disaster Recovery Plan means the plan for recovery following a Disaster.

Incident Ticket means a Ticket created in the Software which has resulted from an Incident. The Ticket can be generated either:

- (a) automatically by the Software; or
- (b) by the Customer through the Service Desk Module.

Pay Event means the mechanism to allow a Customer to report Employee payments subject to withholding via Single Touch Payroll.

Payroll Cut-Off Period means the period(s) of time defined in the payroll calendar during which the payroll data is frozen.

Performance Categories means the categories identified in section 3.1 of this Schedule.

Scheduled Downtime means the planned period of time during which the Software is not available and has been communicated to the Customer. Scheduled Downtime may include but is not limited to an agreed maintenance window or an emergency fix outside of Business Hours.

Service Level Tables means the tables included in this Schedule relating to:

- (a) Technical Support (section 3.2); and
- (b) Software Availability (section 3.3).

Service Levels means each performance level identified in section 3 of this Schedule.

Software Availability means the availability of and access to the Software.

Software Business Hours means the hours where the Software is scheduled to be available, being 24 hours per day 7 days a week excluding Scheduled Downtime.

Target Performance Level means the target level of performance attributed to each Service Level and identified in the Service Level Tables.

Technical Support means the support services provided for the resolution of Incidents.

Ticket means any ticket created in the Service Desk Module.

Update Event means the mechanism which allows a Customer to report changes to an Employee's year to date amounts via Single Touch Payroll.

2. Software

- (a) The Software includes the following modules; security, workflow, customer management, payroll management, employee management, pay processing, pay enquiry, pay adjustments, reporting including RMS, leave management, terminations, employee/manager self-service, utilities, audit, rate sets, multi costing and service desk; and
 - (i) Uses current withholding tax tables and current ATO thresholds.
 - (ii) Stores all transactions resulting from payroll calculations for the Contract Period.
 - (iii) Stores report images for seven years.
 - (iv) Creates audit records of all changes providing a full audit report.
 - (v) Stores Employee audit records for seven years.
 - (vi) Provides upgrades with documentation as a part of the Services for the Contract Period.
- (b) The output that can be obtained from the Software includes; generation of reports, payslips, calculation of terminations and redundancies, payment of superannuation contributions at month end, creation of PAYG files production of payroll tax reports.
- (c) The Software is accredited by the Australian Tax Office for Single Touch Payroll. At the conclusion of each payroll process, a Pay Event will be created and transmitted by the Software to an accredited ATO gateway for submission to the ATO. An Update Event will be submitted when required.

3. Service Levels

3.1 Performance Categories

There are two Performance Categories:

- (a) Technical Support, relating to the resolution of Incident Tickets; and
- (b) Software Availability, relating to the availability of the Software.

Each Performance Category has a specified Target Performance Level.

3.2 Technical Support

- (a) Subject to section 3.4, Humanforce will use reasonable commercial endeavours to meet the Service Level for Technical Support, being the period of time between the creation of an Incident Ticket and the confirmation to the Customer of a resolution (i.e. repair or bypass not an escalation), excluding:
 - (i) time outside of Business Hours; and
 - (ii) waiting periods during which Humanforce or its supplier/s have to await the Customer's or third party's (except for third parties contracted by Humanforce) performance of services/deliveries which precede Humanforce's obligations, during which the period of time to a resolution is suspended.

The calculation will represent an average of all Incidents affecting the Customer during the calendar month.

- (b) The Service Level Table below identifies the classification of Incidents based on their priority and the Target Performance Level.

Incident Classification	Target Performance Level
Priority 1: within 4 Business Hours	98%
Priority 2: within 5 Business Hours	Resolved within the required time

Priority 3: within 6 Business Hours	
Priority 4: planned Software release	

(c) Incident Tickets issued are prioritised by Humanforce in its sole discretion, based on the following criteria:

- (i) **Priority 1:** An Incident that has an immediate impact on the payroll accuracy or timeliness, or block the execution of critical business processes for which no workaround has been identified. The Incident potentially has a major financial impact or impacts a large proportion of the population.
- (ii) **Priority 2:** An Incident that has no immediate impact on the payroll accuracy or timeliness but block the execution of key business processes for which no workaround has been identified. The Incident potentially has a major financial impact or impacts a large proportion of the population.
- (iii) **Priority 3:** An Incident with an immediate impact on the payroll accuracy or timeliness, or on the execution of business processes but for which a workaround is available.
- (iv) **Priority 4:** An Incident with low impact for the Customer and/or on the given Service. Timing of the resolution will be mutually agreed.

(d) The following priorities have been identified for the stated sub-categories of Incidents and will be applied:

Sub-Category	Priority
All Users or API – pay calculation not operable	1
Some Users – pay calculation not operable	1
One User – pay calculation not operable	2
All Users or API – cannot access ABA file	1
Some Users – cannot access ABA file	1
One User – cannot access ABA file	2
All Users or API – function not working to specification	2
Some Users – function not working to specification	3
One User – function not working to specification	4
All Users or API – can't initiate a function	2
Some Users – can't initiate a function	3
One User – can't initiate a function	4
All Users or API– a process aborts unexpectedly	2
Some Users – a process aborts unexpectedly	3
One User – a process aborts unexpectedly	4
All Users or API– unexpected results from a function	2
Some Users – unexpected results from a function	3
One User – unexpected results from a function	4

3.3 Software Availability

(a) Subject to section 3.4, the Service Level is the number of minutes the Software is available divided by the number of minutes the Software is scheduled to be available (ie. 24 hours per day, 7 days per week, excluding Scheduled Downtime) during a calendar month, expressed as a percentage.

- (b) The Service Level Table below identifies the measurement of the Software Availability during Business Hours and the Target Performance Level.

Software Availability	Target Performance Level
During Software Business Hours	99% availability

- (c) Service Level support for Software Availability Incidents are prioritised by Humanforce at its sole discretion based on the following criteria:

Sub-Category	Priority
All Users – cannot log-in or API is not accessible	1
All Users or API – no response: Software not available	1
All Users or API – experiencing a slow response	2

- (d) The Software will not be available to Customers during a Scheduled Downtime, being:
- (i) **Planned Outages:** every Sunday between 20.00 and 21.00 hours for the purpose of upgrading the Software;
 - (ii) **Ad Hoc Outages:** in specific circumstances Humanforce will provide:
 - (A) Customers with 5 Business Days' notice prior to a planned outage; or
 - (B) notification to Customers on the login or User screen with details of the planned outage including; the start date and time, estimated date and time for resumption of payroll service and the reason for the outage;
 - (iii) **Emergency Fixes:** determined as a failure in the performance of the Software which results in Customers' inability to successfully complete the payroll cycle. Humanforce (or its supplier/s) will provide:
 - (A) notification to Customers immediately, on the login or User screen, advising of the requirement for an emergency fix; and
 - (B) the estimated time for completion of the fix.

Humanforce (or its supplier/s) will use reasonable endeavours to perform and successfully complete the Software upgrade or emergency fix within the time advised.

3.4 Excused Performance

Humanforce will not take into consideration those events identified below which may affect its performance:

- (a) Any time during which Humanforce is excused from performance in accordance with this Contract;
- (b) During Force Majeure Events;
- (c) As a result of Humanforce's or the Customer's negligence or willful misconduct, or the negligence or willful misconduct of others authorised by Humanforce or the Customer to use or receive the Services provided under this Contract;
- (d) Failure of equipment, services, software or systems not provided or managed by Humanforce;
- (e) Performance of Services pursuant to the Disaster Recovery Plan;
- (f) During the Payroll Cut-Off Periods; or
- (g) Scheduled Downtimes.

4. Infrastructure Support and Availability – Microsoft Azure

- (a) Microsoft supports the Microsoft Azure Infrastructure Platform which underpins the infrastructure availability under this Contract. Information relating to service levels provided by Microsoft can be obtained from Microsoft's website at: <http://www.windowsazure.com/en-us/support/legal/sla/>.
- (b) The following Microsoft Azure Infrastructure Platform services are used to provide the Payroll Services:
 - (i) Windows Azure Cloud Services, Virtual Machines and Virtual Network SLA (the Virtual Network part of the SLA is not applicable for the Payroll Services); and
 - (ii) Windows Azure Cloud Services, Storage SLA.

5. Service Desk Module

5.1 General

- (a) Support Services will be provided through the Software's Service Desk Module into which all requirements for support must be entered and a Ticket created. The Service Desk Module operates during Business Hours and supports the following activities:
 - (i) Incident reporting; and
 - (ii) Service Requests.
- (b) All Employee data must be submitted by the Customer through the Service Desk Module.

5.2 Incident reporting

- (a) In the event an Incident is identified the Customer reports it in the Service Desk Module with as much detail as is known including what actions were being undertaken, what was expected outcome, actual outcome and relevant copies of the screens.
- (b) The Incident will be allocated an Incident Ticket number and be investigated and the Customer will be advised of the outcome including workaround actions that may be required to be undertaken. The progress of the Incident can be monitored by the Customer through the Service Desk Module.
- (c) Incidents incorrectly classified by the Customer will be reclassified by Humanforce or its supplier/s.

Humanforce will at its sole discretion determine whether a Service Request is chargeable. Service Requests subject to a quotation will not be undertaken until the quotation has been approved by the Customer.

SCHEDULE 5

STANDARD CLAUSES REQUIRED BY WESTPAC

Westpac provides certain EFT services in connection with the Payroll Services. Westpac requires the Customer to agree to the following standard clauses in relation to the services provided by Westpac:

6. Bureau Conditions

- (a) Westpac Banking Corporation (**Westpac**) has received and expects to receive in the future Transaction Negotiation Authorities (**TNA**) issued by Financial Institutions in respect of users (**Users**) participating in the Bulk Electronic Clearing System.
- (b) The TNA authorises Westpac to accept instructions from a User through Humanforce or its supplier/s (the **Bureau**) to draw on a User's account with Westpac or another bank and credit the proceeds as instructed by the Bureau.

7. Definitions

For the purpose of these conditions, unless the context requires otherwise:

Bulk Electronic Clearing System or **BECS** is Clearing Stream 2 (Direct Entry) of the Australian Payments Clearing Association Limited.

Business Day means any weekday which is not a national holiday in Australia.

Cut Off Time means the local time in the place where the Transaction is to be initially processed by Westpac (as advised to the Bureau from time to time).

Events beyond Westpac's control means an event or circumstances beyond the reasonable control of Westpac including, without limitation, acts of God, war, change of law, computer viruses, system (hardware and/or software) failure or malfunction, or industrial dispute.

Files means one or more payment instructions written in an electronic format suitable for processing through Westpac.

Financial Institution means a bank, building society or credit union which, from time to time, participates in BECS.

Process Data Day or **PD Day** is the date in character position 75 – 80 in Record Type "0" of the BECS Data Entry Format.

Recall means a recall of the entire monetary value of a Transaction or the entire monetary value of a File prior to distribution.

Release is the process which splits Files into separate logical files for posting to Westpac accounts or exchange with other Financial Institutions.

Transaction means the detail of each individual payment instruction and related data contained in Files prepared by the Bureau.

SCHEDULE 6

DEDUCTION MANAGEMENT SERVICE ADDITIONAL TERMS

8. Definitions

For the purposes of this Schedule the following definitions will apply:

File Upload Code means the following code: **FF3TTW**.

Terms of Service means the terms of service provided by ClickSuper.

9. Deduction Management Service

ClickSuper provides ClickSuper's DMS service on behalf of Customers. Upon contracting for this Optional Service, the Customer is required to comply with ClickSuper's registration protocols.

10. Customer's Registration Procedure

The Customer is required to complete the ClickSuper online using the link: <https://clicksuper.com.au> entering the File Upload Code in the 'service details' field.

11. Terms of Service

In entering into the registration arrangement for DMS ClickSuper, the customer is required to accept ClickSuper's Terms of Service.