



LICENCE TERMS

Background

- A. The Licensor has agreed to grant and the Customer has agreed to acquire a Licence to use the Licensed Material in accordance with the terms and conditions contained in this Agreement.
- B. The Licensor has also agreed to provide Services to the Licensee in accordance with the terms and conditions contained in this Agreement.

It is agreed:

1. Licensed Material

1.1 Licence

In consideration of the payment of Fees by the Customer, and subject to the terms of this Agreement, the Licensor grants to the Customer a non-exclusive, non-transferable Licence for the Term to access the Licensed Material.

1.2 Authorised Use

1. The Customer agrees that only Licensed Personnel may access and use the Licensed Material.
2. The Customer must ensure that Licensed Personnel access and use of all or any of the Licensed Material in accordance with this Agreement.
3. To the extent that the Licensed Material is accessible through a website, such access is subject to the terms and conditions of use that appear on that website and any click and accept end user licence terms, together with privacy and acceptable use standards.

1.3 Co-operation

Upon the reasonable request of the Licensor, the Customer will provide the Licensor with all information and co-operation reasonably necessary to enable the Licensor to perform its obligations under this Agreement and its related business operations.

1.4 Restrictions

The Customer must:

1. use the Licensed Material only in furtherance of its own internal business requirements;
2. not use the Licensed Material in any way that could damage the reputation of the Licensor or the goodwill or other rights associated with the Licensed Material;
3. not permit any third party to use the Licensed Material other than as set out in this Agreement;
4. not reproduce any part of the Licensed Material for sale or incorporation in any product or service intended for sale or supply to third parties;
5. except as expressly permitted by this Agreement, and except to the extent that applicable laws allow, including the Copyright Act 1968 (Cth), not prevent the Licensor restraining the Customer from:
 - a. reproducing or making error corrections to or otherwise modify or adapt the Licensed Material or create any derivative works based upon the Licensed Material;
 - b. de-compiling, disassembling or otherwise reverse engineering the Licensed Material or permit any third party to do so.
6. If you integrate with IntelliHR using our API, you must use efficient programming, which will not cause an excessive number of requests to be made in too short a period of time, as-determined solely by IntelliHR. If this occurs, IntelliHR reserves the right to throttle your API connections or suspend your account.

1.5 Acknowledgement

The Customer acknowledges and agrees that unless specifically identified in the IntelliHR Software Order Form, the Licensor is not obliged to implement changes or update ("Customer Changes") the Licensed Material at the request of the Customer. The Customer may however request that the Licensor implement Customer Changes at any time during the Term. If the Licensor considers in its discretion to implement a Customer Change, it may charge an additional fee for implementing such Customer Change.

2. Services

2.1 Services

The Licensor must provide the Services on the terms and conditions of this Agreement and as set out in the IntelliHR Software Order Form.

2.2 Support and Maintenance

If so specified in the IntelliHR Software Order Form, the Licensor will provide support and maintenance services in relation to the Licensed Material in accordance with the Terms of Software Maintenance and Support, subject to payment by the Customer of any relevant Fee.

2.3 Additional services

1. If the Customer wishes to obtain any services other than those specified in the Order (**Out of Scope Work**), the Customer must pay the Licensor additional fees on a time and materials basis in accordance with the Licensor's then-current standard price list for such Out of Scope Work.
2. Without limiting this clause 6, Out of Scope Work includes any time spent by the Licensor 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 the Licensor.
3. The Licensor may, from time to time, increase the fees specified in the standard price list.
4. Despite anything in this clause 2.3, there is no obligation on the Licensor to provide the Customer with any Out of Scope Work.
5. The Licensor 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 Licensed Material, subject to the same usage rights and restrictions as apply to use of the Licensed Material. Humanforce Deliverables are not considered part of the Licensed Material.
6. Any milestone Humanforce Deliverables identified in a statement of work will be deemed accepted by the Customer five Business Days after delivery by the Licensor (unless the Licensor 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**). The Licensor may raise any corresponding invoice upon Acceptance.

3. Intellectual Property

3.1 Ownership

1. The Licensor warrants that, at the commencement of this Agreement, it is entitled to grant the rights in respect of the Licensed Material subject to the terms and conditions of this Agreement.
2. The Customer acknowledges that all Intellectual Property Rights subsisting in the Licensed Material are either owned or licensed from third parties (as the case may be) by the Licensor and that nothing in this Agreement has the effect of or should be construed as passing ownership of any Intellectual Property Rights of the Licensor to any person.
3. The Licensor acknowledges that all Intellectual Property Rights subsisting in the Customer Materials are either owned or licensed from third parties (as the case may

be) by the Customer and that nothing in this Agreement has the effect of or should be construed as passing ownership of any Intellectual Property Rights in the Customer Material to any person.

4. The Customer acknowledges that the Licensor retains ownership of all Intellectual Property Rights relating to the Licensed Material created by or for the Licensor.
5. Irrespective of whether the Licensed Material (or part of it) is owned or licensed by the Licensor, the Customer may not, and must ensure that its employees, agents, officers and / or contractors do not:
 - a. remove or modify any program markings or any notice of proprietary rights, irrespective of whether such markings or notices are those of the Licensor or a third party;
 - b. make any of the Licensed Material available in any manner to any third party for use in that third party's business operations, or otherwise sublicense, rent, assign, communicate to the public or otherwise deal (wholly or in part) with the Licensed Material;
 - c. copy, adapt, modify, merge or otherwise reproduce any element of any of the Licensed Material; or
 - d. disassemble, decompile or reverse engineer any software forming part of the Licensed Material, unless the Customer is specifically authorised to do so.

4. Customer Data

4.1 Provision of Information

Through the usage of the Licensed Material, Customers will provide and have stored on the Licensor servers, Customer Data. Customer Data may be stored on servers owned by third parties pursuant to arrangements between the Licensor and any such applicable third party.

4.2 Security

The Licensor shall use its best endeavours to ensure the security of the Customer Data held on the Licensor's systems as a result of use of the Licensed Material. Both parties agree that, for the purposes of this clause, best endeavours means applying and maintaining standards and procedures consistent with good industry practice to:

1. prevent unauthorised physical access to any servers on which Customer Data is processed or stored;
2. monitor and detect unauthorised system access or intrusion;
3. ensure that all data communications are HTTPS-compliant;

4. ensure that failover facilities are maintained and configured to enable immediate failover to an identically-configured server with no reduction in performance standards or loss or corruption of Customer Data;
5. enable full data recovery in the event of an unexpected loss or corruption of Customer Data;
6. regularly perform backups of the Customer Data and securely store those backups;
7. securely destroy all copies of the Customer Data in the Licensed Materials at the end of the agreement (subject to any constraints or limits imposed by the Licensor's backup procedures)

The Customer however acknowledges that no information which is available on the internet is completely secure and, provided that the Licensor has complied with its obligations under this clause 4.2, agrees that the Licensor will not be liable for loss or damage which occurs as a result of a third party breaching or overcoming the Licensor's best endeavours.

4.3 Customer Infringement

The Customer shall not knowingly do any act or thing in relation to data which would infringe any party's copyright or intellectual property rights and shall be responsible for obtaining consent, approval or license from the holders of any intellectual property rights required to enable the Customer to deal with any relevant data or to do any act or thing in relation to those intellectual property rights.

4.4 Use of Customer Data

The Customer grants the Licensor 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:

1. to supply the Licensed Material (including accessing Licensed Personnel accounts to provide support and maintenance services);
2. for diagnostic purposes;
3. to test, enhance and otherwise modify the Licensed Material, whether requested by the Customer or not;
4. to de-identify and aggregate the Customer Data for analytic and benchmarking purposes; and
5. as reasonably required for the performance of its obligations under this Agreement.

4.5 Limitations

The Licensor will not, subject to clause 4.4, use the Customer Data for any other purpose without the consent in writing of the Customer.

4.6 Confidentiality

In making use of Customer Data in accordance with clause 4.4, the Licensor will use all reasonable endeavours to preserve the confidentiality of the Customer Data, including the amendment or alteration of information to cause it to be unidentifiable.

4.7 Return of Customer Data

On the termination or expiry of this Agreement, on request and subject to the payment of any fees due, the Licensor or the Controlling entity agrees to return the Customer Data to the Customer within 1 month of expiry or termination of the Agreement, after which time the Licensor may (subject to applicable laws) delete the Customer Data. The Customer Database will be returned by such means as the Licensor reasonably determines, and any uploaded documents such as PDF's stored in the platform will be returned in their original file format. The Customer must pay the Licensor'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).

4.8 Collection of Customer Data

The Customer represents and warrants that:

1. it will comply with the Privacy Laws in connection with its obligations under this Agreement and use of the Licensed Material;
2. it has obtained all necessary consents, releases, and permissions and provided all necessary notices and statements to enable it to provide the Customer Data to the Licensor 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
3. the collection and use of the Customer Data by the Licensor 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.

5. Service Availability

5.1 Availability

The Licensor shall provide the Customer with access to the Licensed Material on a continuous basis during the Term, provided however that the Licensor may suspend all or part of any access to the Licensed Material where:

1. there is a malfunction or breakdown of any of the Licensor's equipment or the equipment of any 3rd Parties providing services to the Licensor;

2. the Licensor is required to undertake the repair, maintenance or service of any part of the Licensed Material;
3. there is an electrical storm, tempest, electrical short circuit, power failure, telecommunications failure or fault;
4. there is an industrial dispute or lockout;
5. it is reasonably required to reduce or prevent breach (or reasonably anticipated breach) of this agreement, fraud or interference with the Licensed Material;
6. the Licensor is required to comply with an order, instruction or request of government, or other such competent body;
7. the Customer has failed to pay Fees that are due and payable to the Licensor; and / or
8. there is a Force Majeure Event.

The Licensor must use its best endeavours to eliminate the risk of any suspension under clause 5.1(2), and to minimise the duration of any suspension under clause 5.1.

5.2 Downtime

The Licensor is not responsible for, and accepts no liability for, any failure or outage of any equipment or service used by the Customer to obtain access to the Licensed Materials, and that has not been provided by the Licensor under this Agreement (including the Customer's internet access, telecommunication systems and computer systems), or for any other failure or outage outside the control of the Licensor.

5.3 Viability

The Licensor may discontinue or suspend access to the Licensed Material if:

1. the ability to provide the Licensed Material is restricted or altered in such a way that the Licensor considers it is impractical, impossible or not commercially viable to continue to provide the Licensed Material; or
2. a claim is made that:
 - e. alleges that the continued provision of the Licensed Material infringes the rights of any person;
 - f. exposes the Licensor to liability to any third party; or
 - g. exposes the Licensor to liability prosecution for an offence or liability to a statutory penalty.

5.4 Notice

In the event that access to the Licensed Material is discontinued in accordance with clause 5.3, the Licensor will endeavour to provide the Customer with prior written notice where it is reasonable and practicable in the Licensor's opinion to do so.

5.5 Notice of Maintenance Requiring Downtime

The Licensor will use its reasonable endeavours to, except in emergency situations:

1. provide the Customer with 72 hours' notice of any scheduled maintenance requiring downtime of the Licensed Material; and
2. undertake any scheduled maintenance requiring downtime between the hours of 7pm and 7am AEST on weekdays or at any time on weekends.

5.6 Loss of Access

The Customer shall have no claim against the Licensor in respect of loss of access or functionality to the Licensed Material referred to in this clause whether such claim lies in contract, tort or otherwise, unless the loss of access or functionality occurs as a result of the Licensor's gross negligence or clear failure to comply with its obligations under clause 5.

5.7 Malfunctions

The Licensor does not warrant that the Licensed Material is or will be completely free of errors, bugs, faults, omissions or miscalculations.

6. Warranties

The Licensor warrants that it:

1. is able to lawfully grant the licence contemplated by this Agreement;
2. will provide and deliver the Licensed Material with due care and skill; and
3. shall provide and maintain help files and other appropriate user documentation.

7. Liability and Indemnity

7.1 Implied terms and warranties excluded

1. The provisions of various laws, statutes, rules or regulations in force from time to time might imply certain conditions, warranties, and obligations in this Agreement. To the extent permitted by law, and subject to clause 7.1(2), and 7.4 below, all such conditions, warranties, and obligations are hereby expressly excluded from having any application to this Agreement.
2. Nothing in this clause 7 is intended to limit users' non-excludable rights under the Competition and Consumer Act 2010 (Cth).

7.2 Cap on Liability

Subject to clauses 7.3 and 7.4, and except for a party's violation of the other party's intellectual property rights, either party's indemnification obligations and any obligation on the Customer to pay Fees to the Licensor, each party's liability to the other party for all claims, loss or damage, however caused made by that party under or in connection with this Agreement is, in aggregate, capped at the amounts paid by the Customer to the Licensor under this Agreement in the 12-month period preceding the date the liability first arose.

7.3 Indirect losses excluded

1. Subject to clause 7.4, in no event will any party be liable to another for indirect or Consequential Loss or damage suffered or incurred in connection with this Agreement.
2. Consequential Loss in clause 7.3(1), means a loss of any one or more of the following:
 - a. profits;
 - b. business;
 - c. business opportunity;
 - d. revenue;
 - e. reputation;
 - f. loss or corruption of data;
 - g. goodwill; or
 - h. anticipated savings.

7.4 Consumer law

If Consumer Law applies and imposes any guarantees in relation to the supply of goods or services under this Agreement, and the Licensor cannot exclude liability for breach of those guarantees but can limit it, clauses 7.1, 7.2 and 7.3 do not apply and instead the Licensor limits its liability (at its option), to the resupply or payment of the cost of resupply of the relevant services, to the extent it is fair and reasonable to do so.

7.5 Intellectual Property Indemnification

The Licensor shall, at its expense, defend the Customer and indemnify them against by paying any damages awarded against the Customer or amounts agreed in settlement in connection with a claim against the Customer that the Customer's use of the Licensed Material in accordance with this Agreement infringes or misappropriates the intellectual property right of any third party. For clarification purposes this stipulation specifically excludes content added into the Licensed Material or processes created within the Licensed Material by the Customer. The Customer agrees to keep the Licensor informed of any such

claims, give the Licensor the option to take over the conduct of the defence of any such claim and not settle any such claim without the Licensor's prior consent.

8. Confidentiality, Privacy and Security

8.1 Treatment of Confidential Information

Each party acknowledges that the Confidential Information of the other party is valuable to the other party. Each party (a "Recipient") undertakes to keep the Confidential Information of the other party (a "Discloser") secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other party.

8.2 Use of Confidential Information

A Recipient may only use or reproduce the Confidential Information of the Discloser for the purposes of performing the Recipient's obligations or exercising the Recipient's rights under this Agreement.

8.3 Disclosure by Recipient

A Recipient disclosing information under this Agreement must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted under this Agreement.

8.4 Return of Confidential Information

At the request of a Discloser, a Recipient must:

1. return to the Discloser all Confidential Information of the Discloser; or
2. destroy the Discloser's Confidential Information and certify to the Discloser that it has been destroyed.

8.5 Privacy

1. The Customer must provide all notifications, and obtain all consents, necessary to ensure that the Licensor can perform its obligations, and exercise its rights, under this Agreement, our Privacy Policy, and Data Processing Agreement in relation to the Customer Data. The Customer indemnifies the Licensor in respect of any Claim arising against the Licensor as a result of a breach of this clause;
2. If, as a result of this Agreement, a party is able to access any personal information about identifiable individuals, then that party:
 - a. will comply with all privacy and data protection laws applicable to their businesses and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by these laws;

- b. must comply with any privacy code or policy which has been adopted by the Customer (copies available on request) as if it were bound by that code or policy;
 - c. must take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised representatives, employees and officers have access to it;
 - d. must immediately notify the other party upon it becoming aware of a breach of this agreement by itself or any representative, employee or officer;
 - e. must co-operate with the other party in the resolution of any complaint under or relating to, any of the laws, codes or policies referred to in (a), and (b), above.
3. The Licensor recognises that some of the Customers team members may be subject to EU General Data Protection Regulation. Where such circumstances prevail, or there is a data transfer between EEA, UK, U.S, NZ and Australia, they will be subject to intelliHR's Data Processing Agreement.

8.6 Exceptions

Nothing in this Agreement prohibits the use or disclosure of any Confidential Information to the extent that the Recipient can demonstrate that:

1. the information is received by the Recipient from a third party who is not under an obligation of confidence in relation to such information;
2. the information is generally and publicly available other than as a result of a breach of confidence by the person disclosing or receiving the information;
3. the information is independently developed by the Recipient's Personnel who do not have access to any of the Discloser's Confidential Information; or
4. the Information was lawfully known to the Recipient prior to receipt of the information from the Discloser.

8.7 Damage and other Remedies

Each party acknowledges that a breach of this clause 8 may cause the other party irreparable damage for which monetary damages may not be an adequate remedy. Accordingly, in addition to other remedies that may be available, each party may seek and obtain injunctive relief against such a breach or threatened breach.

9. Fees, Invoicing and Payment

9.1 Fees

For all fees for Paid Services –

1. The Licensor will apply the agreed payment method or the customer will pay the invoice, on or before the due date on the invoice.
2. The fees payable by the Customer under this Agreement (**Fees**) are:
 - a. the fees set out in the relevant IntelliHR Software Order Form; and
 - b. any fees in respect of Out of Scope Work determined in accordance with clause 2.3.
3. 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 the Licensor 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 the Licensor may charge the Customer's credit card or bank account using direct debit, on a monthly basis, for any Fees payable during the Term.
4. The licence unit number in the IntelliHR Software Order Form 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 IntelliHR Software Order Form, the invoice will reflect the higher actual quantity.
5. All other Fees such as Implementations, consulting or development fees will be charged the amount agreed to by you in the IntelliHR Software Order Form.

9.2 Updating and Additional Fees

The parties agree that:

1. subject always to clause 15.12, the Fees payable by the Customer under this Agreement shall increase by 5% on each anniversary of the Commencement Date.
2. the Licensor may reasonably amend its Fees, upon the provision of written notice, provided no later than one (1) month prior to any Fee variation taking place;
3. the Licensor may impose new Fees for any additions it makes available to the Customer over time where agreed to in writing by the Customer;
4. You agree that written notice will supersede any previous pricing agreement for the purposes of clause 9.

9.3

9.4 GST

1. The parties agree that the amount of the Fees has been determined without regard to any GST payable in respect of goods and services that will be supplied under this Agreement ("GST Exclusive consideration").

2. To the extent that any supply made, or to be made, by the Licensor under or in connection with this Agreement is a taxable supply for the purposes of GST Act, the total amount due to the Licensor in respect of that supply will be the sum of:
 - a. the GST Exclusive consideration for that supply;
 - b. an amount equal to the GST Exclusive consideration for that supply multiplied by the prevailing rate for the calculation of GST as specified under GST Act from time to time.

9.5 Taxes

For each taxable supply, the Customer agrees to pay to the Licensor, the sum of the amounts specified in paragraphs 9.4(b)(i), and 9.4(b)(ii), in the same manner, and at the same time, as the Fees for such supply would be payable.

10. Term and Extension

10.1 Term

The term of this agreement commences on the date of your first subscription invoice and continues in force for the Initial Term and any Renewal Term as specified in the signed IntelliHR Software Order Form.

10.2 Extension of Initial Term

This Agreement will automatically be renewed and extended for successive periods of 12 months (each, a "Renewal Term") unless either party gives the other party not less than 90 days' written notice prior to the end of the then-current Initial Term or Renewal Term (as applicable).

10.3 Termination by Customer

The Customer may terminate this Agreement immediately by notice in writing if:

1. the Licensor commits a material breach of this Agreement which is capable of being remedied and does not remedy that breach within 30 days after receiving written notice of the breach from the Customer; or
2. the Licensor commits a material breach of this Agreement which is not capable of being remedied; or
3. the Licensor becomes Insolvent.

10.4 Termination by The Licensor

The Licensor may terminate this Agreement immediately by notice in writing in whole or in part if:

1. the Customer fails to pay any invoice issued by the Licensor in accordance with the terms of any such invoice;
2. the Customer commits a material breach of this Agreement which is capable of being remedied and does not remedy that breach within 30 days after receiving written notice of the breach from the Licensor;
3. the Customer commits a material breach of this Agreement which is not capable of being remedied;
4. the Customer becomes Insolvent;
5. the Customer fails to use the Services for a period of one (1) year; and/or
6. the Customer infringes the Licensor's Intellectual Property Rights.

10.5 Preservation of Rights

Termination of this Agreement for any reason (including but not limited to termination pursuant to any provision of this clause 10) will not extinguish or otherwise affect:

1. any rights of either party against the other which:
 - a. accrued prior to the time of the termination; or
 - b. otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which arose prior to the time of the termination;
2. the provisions of this Agreement which by their nature survive termination.
3. the right of the customer to recover their data in full from the Licensor in accordance with clause 4.7.

10.6 Effect of termination

The termination of this Agreement will not affect any remedy of any party with respect to any breach of this Agreement. The parties agree that such rights and remedies will survive the termination of this Agreement.

11. Notices

1. A notice, consent, approval or other communication (each a 'notice') under this Agreement must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given at the address last known to the party giving it and:
 - a. delivered to that person's address;
 - b. sent by pre-paid mail to that person's address;

- c. transmitted by facsimile to that person's address; or
 - d. sent by email to that person's email address.
2. A notice given to a party in accordance with this clause is treated as having been given and received:
 - a. if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next following day;
 - b. if sent by pre-paid mail, on the third Business Day after posting;
 - c. if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next following Business Day; and
 - d. if sent by email, at the time that would be the time of receipt under the Electronic Transactions Act 1999 (Cth).
3. At the date of this Agreement, the addresses for notices under this Agreement are set out in the IntelliHR Software Order Form.

12. Dispute Resolution

1. The parties undertake to use all reasonable efforts in good faith to resolve any dispute which arises between them in connection with this Agreement.
2. A party may give the other party a notice of dispute in connection with this Agreement.
3. Any dispute shall be referred:
 - a. initially to the Customer's representative and the Licensor's representative, who will endeavour to resolve the dispute within five (5) Business Days of the giving of the notice; and
 - b. if the Customer's representative and the Licensor's representative do not resolve the dispute within that time, to a member of the Executive Committee of the Customer and a director of the Licensor, who will endeavour to resolve the dispute within a further five (5) Business Days of such other period as is agreed by the parties.
4. If after a period of twenty (20) Business Days after delivery of a dispute notice under clause (b), the parties have not been able to resolve or agree on a process to resolve (whether by mediation, arbitration, alternative dispute resolution or otherwise) a dispute, the dispute shall be referred to mediation. Either party may at any time terminate the mediation in relation to that dispute.
5. A party may not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless:

- a. the dispute has first been referred for resolution in accordance with the dispute resolution procedure set out in this clause 12; and
 - b. a notice terminating any mediation commenced under clause has been issued by either party in accordance with that clause (12.4).
6. If in the course of the dispute resolution procedure set out in clause 12, the parties agree to refer a dispute for resolution by an agreed process, neither party will oppose any application for a stay of any legal proceedings in respect of that dispute pending the completion of that agreed process.

Until a dispute is resolved, whether by agreement between the parties or by a court order, the parties are obliged to continue to perform their obligations under this Agreement.

13. Assignment and Subcontracting

13.1 By the Licensor

The Licensor may assign this Agreement or its rights under this Agreement without the prior written consent of the Customer.

13.2 By the Customer

The Customer must not assign this Agreement or its rights under this Agreement without the prior written consent of the Licensor which shall not be unreasonably withheld or delayed. Any attempted assignment without the Licensor's consent is void.

13.3 Subcontracting

1. The Licensor may subcontract the performance of any of its obligations under this Agreement.
2. The Licensor must ensure that any subcontract entered into by the Licensor is consistent with the provisions of this Agreement with respect to confidentiality.

14. Force Majeure Events

1. If a Force Majeure Event occurs, the party affected ("Affected Party") must give written notice to the other party of particulars of the Force Majeure Event and the extent to which the Affected Party is unable to carry out its obligations.
2. If the Affected Party provides the notice referred to above:
 - a. the obligations of the Affected Party will be suspended from the time the notice is received by the other party until the Affected Party is no longer prevented from or delayed in complying with those obligations by the Force Majeure Event;
 - b. the Affected Party must take reasonable steps to remove or mitigate the relevant Force Majeure Event;

- c. if the Licensor is the Affected Party, the Customer will have the right to suspend all payments to the Licensor during that time in respect of the obligations that are affected by the Force Majeure Event; and
 - d. the term of this Agreement will be extended for that period of time.
3. A party cannot claim a Force Majeure Event continues to apply to the extent that it can be rectified by a disaster recovery plan or business continuity plan. The Licensor must prepare and implement a disaster recovery plan or business continuity plan unless the Force Majeure Event prevents it from doing so.

15. Regulatory Matters

1. The parties acknowledge and agree that each party is responsible for compliance with all applicable regulatory requirements including with respect to their respective activities in relation to this Agreement.
2. Each party represents and warrants that it is not a Sanctions Target. The Customer must not allow the export of the Licensed Material to any country to which such export is restricted or prohibited.
3. This Agreement does not include the provision by the Licensor 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 use of the Licensed Material.

16. General

15.1 Amendments

This Agreement may only be varied by a further written agreement signed by or on behalf of each of the parties.

15.2 Attorneys

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he is not aware of any fact or circumstance that might affect his authority to do so under that power of attorney.

15.3 Consents

Unless this Agreement expressly states otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under this Agreement. To be effective any consent under this Agreement must be in writing.

15.4 Costs

Each party will pay their respective costs and expenses of in connection with the negotiation, preparation, execution, and performance of this Agreement.

15.5 Counterparts and Acceptance

This Agreement may be executed, in original or electronic form, or by clicking upon Accept or applying an electronic signature to the IntelliHR Software Order Form, and in any number of counterparts each of which will be considered to constitute the same instrument. Counterparts may be executed in either original or electronically transmitted form, and the parties hereby adopt as original any signatures received in electronically transmitted form.

15.6 Entire Agreement

This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

15.7 Further acts

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to this Agreement.

15.8 Jurisdiction

1. This Agreement is governed by the law in force in the State of Queensland.
2. Each party submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, in relation to any proceedings that may be brought at any time relating to this Agreement.
3. Each party irrevocably waives any objection it may have now or in the future to the venue of any proceedings where that venue falls within Queensland.

15.9 No Merger

No right or obligation of any party will merge on completion of any transaction contemplated by this Agreement.

15.10 Severability

Any provision of this Agreement that is illegal, void or unenforceable will be severed without prejudice to the balance of the provisions of this Agreement which shall remain in force.

15.11 Stamp Duty

All stamp duty, including any interest or penalties assessed and payable on or in respect of this Agreement is payable by the Customer.

15.12 Market Review

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

15.13 Waiver

1. Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Agreement.
2. Any waiver or consent given by any party under this Agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.
3. No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

15.14 Modern Slavery

1. In performing its obligations under this Agreement, the Licensor will comply with applicable laws relating to modern slavery, including but not limited to the Modern Slavery Act 2018 (Cth).
2. The Licensor conducts its business in a manner that is consistent with the principles of the Modern Slavery Act 2018 (Cth).
3. The Licensor implements reasonable due diligence procedures for its own contractors, agents, contractors and sub-contractors in relation to Modern Slavery.

16. Definitions and Interpretation

16.1 Definitions

In this Agreement the following definitions apply unless the context requires otherwise:

Agreement means this Agreement and includes its Recitals, Annexures, Schedules, Appendices, IntelliHR Software Order Form and Terms of Software Maintenance & Support.

Business Day means:

1. for receiving a notice under clause 12, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the Notice is received; and
2. for all other purposes, a day that is not a Saturday, Sunday, public holiday.

Billable headcount is determined by the number of current staff with records in the system on the first day of the month, or on the day of go live for the Initial Monthly Subscriptions. For clarity – once a staff member is no longer employed in the system (ie. once their ‘end date’ has passed) we maintain their data at no monthly charge to the customer.

Claim means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

Commencement Date means the date the IntelliHR Software Order Form is signed by the parties.

Confidential Information means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this Agreement relating to the business, services, technology or other affairs of the discloser of the information.

Controller has the meaning it has in section 9 of the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Customer means the customer as described in the IntelliHR Software Order Form.

Customer Data means data owned or supplied by the Customer and stored on the Licensor systems through the Customer’s usage of the Licensed Materials.

Customer Materials means any trademarks, images, content or other materials developed by the Customer prior to the Commencement Date or independently of this Agreement and includes any Customer Data.

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

1. any instructions or specifications provided by or on behalf of the Customer, or under the authority of the Customer;
2. 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:

- a. 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 the Licensor;
- b. any delay or failure by the Customer to perform any Customer responsibilities (including as set out in a statement of work) or provide any Customer Materials;
- c. information from, or provided by, the Customer;
- d. modifications or adjustments to the Licensed Material, whether or not authorised by the Licensor, or changes in the Customer's data, database or content;
- e. connectivity issues or failure of a network (public and/or private);
- f. the handling, use or deployment of the Services in a manner other than permitted in applicable Licensor documentation or otherwise in non-compliance with any applicable routine or process prescribed by the Licensor; or
- g. any negligence, misuse, improper or unauthorised use, reproduction or distribution of the Licensed Material which is not permitted under any applicable terms of use or licence, restrictions of use or any relevant acceptable use policy.

Discloser means the party disclosing Confidential Information.

Fees means the fees set out in the IntelliHR Software Order Form.

Force Majeure Event means any event beyond the reasonable control of the non-performing party and which the party could not have prevented by reasonable precautions or could not have remedied by the exercise of reasonable efforts or could not have prevented by taking steps specifically required under this Agreement, including but not limited to the extent that a disaster recovery plan or business continuity plan is able to prevent or remedy such event, which is limited to the following:

1. fire, flood, earthquake, elements of nature or act of God;
2. acts of war, terrorism, riot, civil disorder, rebellion or revolution, all by a third party;
or
3. strikes, lockouts or labour disputes of a general nature that extend beyond the non-performing party's Personnel (such as a general or industry-wide strike),

but does not include an act, omission or event caused or contributed to by a Related Entity of the non-performing party.

Go Live Date is the date we have your data uploaded into the service, provide you access, and carry out your Kick-Off Workshop.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended from time to time.

GST Exclusive Consideration means any consideration payable under this Agreement that either does not include an amount referable to GST or, if the consideration is inclusive of GST, is that consideration excluding the amount referable to GST using the rate of GST in force at the time the parties agreed on the consideration.

Initial Term means the period specified in the IntelliHR Software Order Form commencing on the Commencement Date.

A person is *Insolvent* if:

1. it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
2. it has had a Controller appointed, or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property;
3. it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);
4. an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b), or (c), above;
5. it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand;
6. it is the subject of an event described in section 459(C)(2)(b), or section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject);
7. it is otherwise unable to pay its debts when they fall due; or

8. something having a substantially similar effect to any or all of (a), to (g), happens in connection with that person under the law of any jurisdiction.

Intellectual Property Rights means all intellectual property rights of whatever nature including all rights conferred under statute, common law or equity, including all copyrights, patent rights, trade mark rights (including any goodwill associated with those trade mark rights), design rights and trade secrets, whether or not registered and including the right to register such rights.

intelliHR Software means an online Human Capital Management System including but not limited to Human Capital Management Business Intelligence, Contemporary People Management Tools and HR Automation Capabilities.

intelliHR Software Order Form means the online order form made available by intelliHR setting out the customer's details and the agreed details of the Software, Services and Fees.

Licence means the licence granted by the Licensor to the customer as specified in clause 1.1.

Licensed Material means the intelliHR Software and that material set out in the intelliHR Software Order Form including:

1. Project Materials;
2. any software to be supplied under this Agreement including any enhancements, upgrades or modifications to that software; and
3. any digital information, illustration, animation, flash file, audio, photographic images and/or other material, together with any other accompanying material made available by the Licensor for the purposes of this Agreement.

Licensed Person means an employee or contractor of the Customer who is authorised by the Customer to access and use the Licensed Material, and Licensed Personnel will be reference to each such Licensed Person.

Licensor means intelliHR Systems Pty Ltd ACN 167 233 310.

Licensor Deliverables means any materials, deliverables, modifications, derivative works or developments that the Licensor provides in connection with any Services (including any Out of Scope Work).

Licensor's Website means the website of the Licensor located at the web address <http://www.website2021dev.wpengine.com>.

Loss means claims, liability, loss, damage costs and expenses including but not limited to legal costs on a full indemnity basis.

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

Moral Rights means any of the rights described in Article 6 of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being “droit moral” or other analogous rights arising under any statute (including the Copyright Act 1968 (Cth) or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

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 includes officers, employees, agents, contractors, consultants and representatives.

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

Project Materials means any methodologies, tools, ideas, processes, documents (including working proofs), software, reports, diagrams, concepts, techniques, know-how and any other material created, developed, modified or adapted by the Licensor during the course of the performance of the Services or in connection with this Agreement.

Receiver has the meaning it has in the Corporations Act.

Recipient means the party receiving Confidential Information.

Related Entities has the meaning it has in the Corporations Act, and Related Entity has a corresponding meaning.

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.

Services means the services referred to in the IntelliHR Software Order Form and those other services set out in this Agreement.

Tax Invoice has the same meaning as in the GST Act.

Taxes means any taxes, imposts, deductions, levies, charges, including transportation and delivery charges), withholdings and duties imposed by any Government Agency (including stamp, customs and transactions duties) arising in connection with this Agreement, together with any penalties, fines, expenses and interest arising in connection with those amounts, but does not include GST.

Term means the term of this Agreement commencing on the Commencement Date until terminated in accordance with clause 10.

Terms of Software Maintenance & Support means the terms of software maintenance and support (if any) linked from the IntelliHR Software Order Form.

16.2 Interpretation

In this Agreement the following rules of interpretation apply unless the contrary intention appears:

1. headings are for convenience only and do not affect the interpretation of this Agreement;
2. the singular includes the plural and vice versa;
3. words that are gender neutral or gender specific include each gender;
4. where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
5. the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
6. a reference to:
 - a. a person includes a natural person, partnership, joint venture, Government Agency, association, corporation or other body corporate;
 - b. a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;

- c. a party includes its successors and permitted assigns;
 - d. a document includes all amendments or supplements to that document;
 - e. a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Agreement;
 - f. (vi) this Agreement includes all schedules and attachments to it;
 - g. a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - h. an Agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - i. a monetary amount is in the currency stipulated in the IntelliHR Software Order Form;
7. an Agreement on the part of two or more persons binds them jointly and severally;
8. when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
9. in determining the time of day, where relevant to this Agreement, the relevant time of day is:
- a. for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - b. for any other purpose under this Agreement, the time of day in the place where the party required to perform an obligation is located;
10. no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.
11. A term or expression starting with a capital letter:
- a. which is defined in clause 16.1, has the meaning given to it in clause 16.1;
 - b. which is defined in the Corporations Act, but is not defined in clause 16.1, has the meaning given to it in the Corporations Act; and
 - c. which is defined in the GST Act, but is not defined in clause 16.1 or the Corporations Act, has the meaning given to it in the GST Act.