

## AGREEMENT FOR SERVICES RELATED TO CIVIHR PORTAL

This Agreement governs the Sign Up Form to access the Client Site. Definitions are found in clause 21 of this Agreement.

### 1 SERVICES

- 1.1 CiviHR grants to the Client a non-exclusive, non-assignable, non-sublicensable right for the Authorised Users to use and access the Services and the Documentation during the Term, subject to the terms of this Agreement.
- 1.2 The Client shall ensure that the Authorised Users comply with the terms of this Agreement and the Clients shall be liable for the acts and omissions of the Authorised Users.
- 1.3 The Client may only access and use the Service for the purpose of managing its Staff data and to enjoy the functionality advertised by CiviHR online, and for no other purpose. Additional fees may be payable for any unauthorised use.
- 1.4 The Client shall not permit any third party (other than the Authorised Users) to use the Services or use the Services on behalf of or for the benefit of any third party.
- 1.5 The Client shall notify CiviHR as soon as it becomes aware of any unauthorised use of the Services by any person.
- 1.6 The Software is available (as open source software) to download separately from this Agreement under the aGPL open source licence terms. However, use of the Software through the Client Site and enjoyment of the Services is governed by this Agreement.
- 1.7 The Client shall not, without the prior written consent of CiviHR:
  - (a) deal in any other manner with any of its rights and obligations under this Agreement;
  - (b) store on, or distribute or transmit via the Service any virus or any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities; or
  - (c) attempt to obtain, or assist third parties in obtaining unauthorised access to the Services.
- 1.8 In relation to Authorised Users:
  - (a) the Client shall procure that each Authorised User uses his/her own secure password or log in credentials for his/her use of the Services, and that each Authorised User keeps his/her password or other authentication factors confidential and secure against unauthorised use; and
  - (b) CiviHR may disable user names, passwords or other authentication factors in use if it considers that the password or other log in factor has been compromised.
- 1.9 The Client acknowledges that:
  - (a) it is responsible for ensuring that it achieves or meets any compatibility requirements that may be communicated to it;
  - (b) it has the right to enjoy the Services only in accordance with the express terms of this Agreement; and
  - (c) the Services are not designed to achieve any of the functionality or performance not expressly communicated by CiviHR to Client.

## **2 FEES**

- 2.1 The Client shall pay to CiviHR the Fee monthly in advance.
- 2.2 Unless stated otherwise on the Sign Up Form, the Fee shall be paid in Pound Sterling. If the Fee on the Sign Up Form is stated in a different currency to the currency that the payment is to be made in, the exchange rate shall be taken from [www.xe.com](http://www.xe.com) at the time and date of payment.
- 2.3 Unless otherwise agreed by the parties in writing, CiviHR may opt to increase the Fee at the beginning of each Year by up to 3%.
- 2.4 CiviHR shall be entitled at any time to invoice the Client for additional fees where the Client uses the Service other than in accordance with clause 1 of this Agreement. The Client agrees to pay such additional fees to CiviHR within 30 days of the date of the relevant invoice.
- 2.5 CiviHR may charge interest on late payments of Fees at the annual rate of 5%, calculated daily for each day between the due date and the date of payment.
- 2.6 Unless otherwise agreed, all sums payable under this Agreement are exclusive of any applicable VAT or any other applicable tax.
- 2.7 If the Client has a bona fide dispute in respect of the whole or any part of any invoice, it shall notify CiviHR of the nature of such dispute within 21 days of the Client's receipt of the invoice (giving all relevant details of the dispute). If the Client notifies CiviHR that it disputes the whole or any part of sums payable to the Client in connection with this Agreement, the Client shall be entitled to withhold payment of the disputed amount (but not any undisputed elements). The parties shall co-operate in good faith to resolve the dispute over the invoice as promptly as possible. On settlement of any dispute, the Client shall make the appropriate payment in accordance with this Agreement (together with any interest).
- 2.8 Neither party shall be entitled to set-off such sums due from it to the other against any payments due to it from the other under or relation to this Agreement.
- 2.9 The Client shall make all payments under this Agreement without the withholding or deduction of, or in respect of, any tax, unless required by law. If any such withholding or deduction is required, the Client shall, when making the payment to which the withholding or deduction relates, pay to CiviHR such additional amount so that CiviHR receives the same total amount that it would have received if no such withholding or deduction had been required.

## **3 CONFIDENTIALITY**

- 3.1 Each party shall, during the Term and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Agreement) or (without the prior written consent of the other party) disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any information of a confidential nature (including trade secrets and information of commercial value) that may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use all reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 3.2 The existence and terms of this Agreement are confidential and may not be disclosed in part or whole by the Client without the prior written consent of CiviHR. Unless otherwise agreed in writing, CiviHR shall be entitled to publicise the existence of the Client as a customer of CiviHR.

#### **4 CIVIHR'S WARRANTIES**

- 4.1 CiviHR warrants that the Software and the Service will, when used in accordance with the requirements of this Agreement (including the Documentation, all applicable user manuals and lawful CiviHR instructions), function and perform, in all material respects, with no Faults. If there is a Fault, the Client shall promptly notify CiviHR in writing with details and CiviHR shall use reasonable endeavours to remedy the same in accordance with the SLA. If CiviHR fails to remedy the Fault within 28 days (or such longer period as the parties may agree), the Client may terminate this Agreement on written notice, if notice of termination is received by CiviHR within 60 days of the Fault first being notified to CiviHR. The Client's sole remedy for breach of the warranty in this clause 4.1, or for any failure to rectify or delay in rectifying the Fault, shall be to terminate this Agreement.
- 4.2 The Client acknowledges that, without prejudice to clause 4.1 and the Service Level Agreement:
- (a) access and use of the Services may not be entirely uninterrupted or error-free;
  - (b) as the Service has not been developed to meet the specific needs of the Client, the Client is responsible for its choice of vendor, software and services; and
  - (c) CiviHR shall not be liable for any failure of the Service to provide any functionality or performance that is not expressly set out by CiviHR in its online descriptions of the Client Site or as expressly represented to Client prior to the date of the Sign Up Form.
- 4.3 Except as stated in this Agreement, all conditions, warranties and other terms that might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, and including as to satisfactory quality, fitness for purpose or the use of reasonable skill and care, are hereby excluded to the fullest extent permitted by law.

#### **5 LIMITS OF LIABILITY AND INDEMNITY**

- 5.1 Subject to clause 5.3, CiviHR shall have no liability for any loss or damage under or in connection with this Agreement or any collateral contract, whether in contract, tort (including negligence) or otherwise howsoever arising, which fall within any of the following categories:
- (a) loss of profits, loss of contracts, business interruption, loss of anticipated savings, loss of business opportunity, loss of goodwill or loss or damage to data; and
  - (b) any indirect, consequential or special loss (even though CiviHR may be or become aware of the circumstances in which such loss could arise).
- 5.2 Without prejudice to clause 5.1, but subject to clause 5.3, the maximum aggregate liability of CiviHR in any Year, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement, the licence for the Software or any collateral contract, shall in no circumstances exceed a sum equal to 125% of the Fee paid in the 12 months prior to the breach that gave rise to the liability.
- 5.3 Nothing in this Agreement shall exclude CiviHR's liability:
- (a) for death or personal injury caused by the negligence of CiviHR or its Staff;
  - (b) for fraud or fraudulent misrepresentation; or
  - (c) for any other liability that may not be excluded by law.
- 5.4 The Client hereby indemnifies CiviHR on demand against all losses, damages, claims, costs and expenses, including fines, legal and other professional fees and expenses incurred by CiviHR or its contractors arising as a result of a breach of this Agreement or misuse of the

Service or the Software by the Client, an Authorised User, an assignee or any Authorised User of an assignee.

## **6 INTELLECTUAL PROPERTY RIGHTS**

### **6.1 As between CiviHR and the Client:**

- (a) all Intellectual Property Rights in the Software and the Documentation are, and shall remain, owned exclusively by CiviHR, and the Client shall have no right in or to the Software and the Documentation other than the right to use them as part of the Service during the Term and in accordance with the terms of this Agreement; and
- (b) CiviHR shall own any and all:
  - (i) Intellectual Property Rights that arise or are created in connection with the provision of the Services; and
  - (ii) goodwill arising as a result of use of the Software and Documentation.

6.2 CiviHR acknowledges that ownership of Client Materials and ownership of all Intellectual Property Rights in any Client Materials (including any modifications or adaptations of such Client Materials produced in the course of providing the Services and Deliverables) shall remain vested in the Client or its licensors. To the extent that any Intellectual Property Rights in the Client Materials vest in CiviHR, CiviHR shall assign all right, title and interest in such Intellectual Property Rights to the Client. The Client hereby grants to CiviHR a non-exclusive licence during the Term to use the Client Materials solely for the purposes of providing the Services, the Development Services and the Deliverables.

6.3 The Software within the Client Site is licensed under the aGPL licence. CiviHR makes all Software available to anyone to download and modify under the terms of the aGPL. CiviHR may incorporate some of these modifications into the Software within the Client Site, and as such CiviHR cannot give an unqualified intellectual property warranty. Accordingly CiviHR warrants that, to the best of its knowledge and belief, that the Client may use the Client Site and the Software of which CiviHR is the contributor free from any claim of Intellectual Property Rights infringement from third parties.

## **7 DURATION AND TERMINATION**

7.1 This Agreement shall commence on the Commencement Date and shall continue for an initial period of one Year ("**Initial Term**") and shall continue thereafter for further consecutive one Year periods unless and until either party gives to the other not less than 30 days' written notice of termination, such notice to expire at the end of the Initial Term or any subsequent Year ("**Term**").

7.2 CiviHR may at any time suspend the Services or terminate this Agreement with immediate effect on written notice to the Client if the Client fails to pay any amount due under this Agreement on the due date for payment and remains in default for more than 28 days after being notified in writing to make such payment.

7.3 Either party may at any time terminate this Agreement with immediate effect by giving written notice to the other party:

- (a) pursuant to clause 16.2;
- (b) if the other party commits any material breach of this Agreement, which breach is not remediable or, if remediable, is not remedied within 28 days after the service by the party not in default of a written notice on the other party, specifying the nature of the breach and requiring that the same be remedied; or

- (c) if the other party becomes insolvent, enters into liquidation, whether voluntary or compulsory, passes a resolution for its winding up, has a receiver or administrator appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt.

7.4 Termination by either party in accordance with the rights contained in this clause 7 shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

7.5 On termination for any reason:

- (a) all rights granted to the Client under this Agreement shall cease and CiviHR may take steps to prevent access to the Software by the Authorised Users;
- (b) the Client shall cease all activities authorised by this Agreement;
- (c) the Client shall immediately pay to CiviHR any and all sums due to CiviHR under this Agreement; and
- (d) the Client shall immediately destroy or return to CiviHR (at CiviHR's option) all copies of the Documentation then in its possession, custody or control and, in the case of destruction, certify to CiviHR that it has done so.

7.6 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

## **8 WAIVER**

The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.

## **9 REMEDIES**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **10 ASSIGNMENT**

10.1 Neither party shall assign, delegate, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement without the prior agreement of the other party except that CiviHR may:

- (a) transfer all of its rights and obligations to:
  - (i) a group company; or
  - (ii) a third party in connection with the sale of all or substantially all of its business and assets that relate to the Service;

and

- (b) use subcontractors, provided that CiviHR shall remain liable for all acts and omissions of its subcontractors.

**11 ENTIRE AGREEMENT**

11.1 This Agreement and all documents referred to in it contain all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. Each of the parties acknowledges and agrees that:

- (a) in entering into this Agreement it has not relied on, and shall have no remedy in respect of, any statement, representation, warranty or understanding other than the statements, representations, warranties and understandings expressly set out in this Agreement; and
- (b) its only remedies in connection with any statements, representations, warranties and understandings expressly set out in this Agreement shall be for breach of contract as provided in this Agreement.

11.2 Nothing in this clause 11 shall operate to limit or exclude either party's liability for fraud.

**12 VARIATION**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their duly authorised representatives).

**13 SEVERANCE**

If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.

**14 THIRD-PARTY RIGHTS**

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

**15 NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to establish any partnership or joint venture between the parties, constitute a party the agent of another party, nor authorise a party to make or enter into any commitments for or on behalf of the other party. The relationship of the parties is that of independent contractors dealing at arm's length.

**16 FORCE MAJEURE**

16.1 The performing party shall not be in breach of this Agreement, or liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control (an "**Event of Force Majeure**"). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

16.2 If the period of delay or non-performance continues for more than 28 consecutive days, either party may, without liability, terminate this Agreement by giving seven (7) days' written notice to the other party.

## **17 DATA PROTECTION**

- 17.1 As between the parties, all Client's Personal Data processed under or in connection with this Agreement shall be and shall remain the property of Client.
- 17.2 CiviHR acknowledges that in respect of any processing of Client's Personal Data by CiviHR under or in connection with this Agreement, CiviHR shall be acting as data processor and Client shall be acting as data controller (as those terms are defined in the GDPR). It is envisaged that CiviHR shall store for the Client its Client's Personal Data (likely to be name, address, date of birth, employment records, salary, benefit entitlements, pension details, phone number and information on identity documents).
- 17.3 CiviHR shall, at its own cost:
- (a) only use the Client's Personal Data for the legitimate purposes of performing the Services and for no other purposes unless instructed to do so by Client;
  - (b) act only on instructions from Client given from time to time in relation to the Client's Personal Data;
  - (c) comply with all the relevant requirements of the Privacy Laws;
  - (d) not sub-contract the processing of any of the Client's Personal Data to any third party without the prior consent of Client. Client agrees that CiviHR may use Amazon Web Services (or a replacement data centre provider) as sub-processors. Any consent granted shall be conditional on CiviHR obtaining the third party's written agreement to comply with equivalent provisions to this Clause 17;
  - (e) ensure that appropriate technical and organisational security measures are in place against unauthorised or unlawful processing of the Client's Personal Data and against accidental loss or destruction of, or damage to, the Client's Personal Data in accordance with the Privacy Laws;
  - (f) take reasonable steps to ensure the reliability of any of its Staff who have access to the Client's Personal Data;
  - (g) only transfer Client's Personal Data outside of the European Economic Area in compliance with the GDPR;
  - (h) reasonably demonstrate compliance with this Clause 17 on request by Client and allow Client and/or its representatives access to CiviHR's premises during normal business hours to audit compliance; and
  - (i) inform Client promptly on becoming aware of a breach of security in relation to Client's Personal Data.
- 17.4 CiviHR shall use its reasonable endeavours to assist, as needed and at Client's cost, Client's compliance with its obligations under Privacy Laws relating to: security; breach notifications; data protection impact assessments; and prior consultation.

## **18 NOTICES**

- 18.1 Unless otherwise expressly stated in this Agreement, all notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed duly served if delivered by hand or sent by email, or pre-paid registered post to each party's designated recipient as identified on the Sign Up Form at the registered office address of either party (or such other address as is stated on the Sign Up Form or as either party may notify to the other for this purpose from time to time).
- 18.2 Any notice shall be deemed to have been duly served:

- (a) if delivered by hand or email, on delivery; or
  - (b) if sent by pre-paid registered post, two business days after posting.
- 18.3 For the purpose of clause 18.2, “business day” means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent, and the phrase “normal business hours” refers to normal business hours in that place.
- 18.4 In proving the service of any notice it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post.

## **19 DISPUTES**

- 19.1 Subject to clause 19.5, if a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a “**Dispute**”) then, except as expressly provided in this Agreement, the parties will attempt to settle such Dispute by negotiation.
- 19.2 Where any Dispute cannot be settled by negotiation within 21 days after either party has made a written offer to the other party to negotiate a settlement to such Dispute, the parties shall, before resorting to court proceedings, attempt to resolve the Dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 19.3 Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To start the mediation, a party shall serve notice in writing (the “**ADR Notice**”) to the other party requesting a mediation (a copy of the ADR Notice shall also be sent to CEDR Solve). The mediation will start no later than 14 days after the date of the ADR Notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.
- 19.4 If the parties have not settled any Dispute by mediation within 42 days from the initiation of the mediation, the Dispute shall be referred to and finally be resolved by the courts of England and Wales which shall have exclusive jurisdiction.
- 19.5 For the avoidance of any doubt, this clause 19 shall not operate to prevent either party from seeking injunctive relief from the courts of England and Wales, which shall have exclusive jurisdiction in respect of any Dispute.

## **20 GOVERNING LAW**

The validity, construction and performance of this Agreement shall be governed by the laws of England and Wales.

## **21 DEFINITIONS AND INTERPRETATION**

- 21.1 Defined terms and expression shall have the following meaning unless the context otherwise requires.

“**Agreement**” means this agreement (including the Schedule);

“**Authorised Users**” means Staff of the Client who are authorised by the Client to use the Services and the Documentation;

“**Business Day**” means any day which is not Saturday, Sunday or a public holiday in England;

“**Business Hours**” means 9.00 am to 5.00 pm UK on Business Days;

“**CiviHR**” means CiviHR Hosting Limited a company registered in England and Wales under company number 11285420 and with its address at 130 Fenchurch St, London, EC3M 5DJ;

“**Client**” means the entity which has entered into the Sign Up Form for the Services;

“**Client Materials**” means the trading name and logo of the Client;

“**Client Site**” means [www.civihhr.org](http://www.civihhr.org);

“**Commencement Date**” means the commencement date of this Agreement, as stated on the Sign Up Form;

“**Documentation**” means the operating manual and user instructions in eye-readable form, made available to the Client for aiding the use of the Service;

“**Event of Force Majeure**” has the meaning given in Clause 16.1;

“**Fault**” means a material defect or fault in the Service which has a material impact on the Service functionality;

“**Fee**” means the fee on either the Sign Up Form or as otherwise agreed between the parties prior to the date of this Agreement;

“**Intellectual Property Rights**” means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;

“**Personal Data**” means has the meaning given to it in the GDPR;

“**Privacy Laws**” means the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the General Data Protection Regulation 2016;

“**Service**” means access to and use of the Client Site (and the Software hosted on the Client Site) by Authorised Users, hosting of the Client Site, support and maintenance of the Client Site;

“**Service Level Agreement**” or “**SLA**” means the service level agreement in Schedule 1;

“**Sign Up Form**” means the online form at [civihhr.org/signup](http://civihhr.org/signup);

“**Software**” means the CiviHR software, as may be updated by CiviHR during the Term;

“**Staff**” means employees, contractors, directors and officers;

“**Term**” has the meaning given in clause 7.1; and

“**Year**” means the period of one year commencing on the Commencement Date and on each anniversary of such date.

- 21.2 The headings in this Agreement do not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.
- 21.3 Unless the context otherwise requires, references in this Agreement to:
- (a) CiviHR and the Client include their respective permitted successors and assignees;
  - (b) statutory provisions include those statutory provisions as amended or re-enacted;
  - (c) one gender includes a reference to the other genders; and
  - (d) “including” or “includes” shall be deemed to have the words “without limitation” inserted after them.
- 21.4 Words in the singular include the plural and those in the plural include the singular.
- 21.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 21.6 In the case of conflict or ambiguity between any provision in the main body of this Agreement and the Sign Up Form, they shall prevail in that order.

**SCHEDULE 1**  
**Service Level Agreement (SLA)**

**1 SERVICE AVAILABILITY**

- 1.1 CiviHR monitors the service 24/7 using third party monitoring alerts.
- 1.2 CiviHR uses industry leading data centre providers (such as AWS) to ensure a high level of uptime for Clients. If there is downtime of the Service due to an issue with the data centre providers and CiviHR is able to recover service credits from its data centre providers, then CiviHR will pass on the service credits to the Client pro rata to the number of Authorised Users of the Service.
- 1.3 Scheduled maintenance – CiviHR shall provide Client a minimum of 72 hours' notice in the event of Service unavailability due to maintenance and shall make reasonable efforts to schedule maintenance between the hours of 12:01am and 6am UK time and shall limit scheduled maintenance to 8 hours per month.

**2 RESPONSE AND RESOLUTION**

- 2.1 CiviHR will ensure that there is a person available on call to respond to issues with the Service on Business Hours.
- 2.2 If there is an issue with the Service the Client shall contact CiviHR on [support@civih.org](mailto:support@civih.org) indicating which level of severity the issue is in the reasonable opinion of the Client, and CiviHR shall respond within the following time frame:

<b>Issue Classification</b>	<b>Description of issue</b>	<b>Response Times during Business Hours</b>
Urgent (Complete Service Interruption)	Involves situations where one or multiple services are affected and a significant impact to the service is occurring	1 Business Hour
Medium (Service Degradation)	Involves situations where infrastructure is degraded and the situation may lead to a service interruption if not attended to in a timely manner.	4 Business Hours
Low (Information Request or Minor Service Degradation)	Involves situations where infrastructure may be experiencing a minor degradation or the Publisher has a question or request.	2 Business Days

- 2.3 Following response, CiviHR will use all reasonable endeavours to resolve the issue as soon as possible during Business Hours.
- 2.4 CiviHR will not be liable for any downtime or issues with the Service caused by factors outside the reasonable control of CiviHR, including power failures, failures in communication equipment, failures with the internet or any Events of Force Majeure.