



# Flare HR

## Platform Terms of Use

Last updated 24 May 2016

Thank you for using the Flare HR management platform (the **Flare Platform**). The Flare Platform is owned and operated by Flare HR Pty Ltd (ABN 46 607 120 892) (**Flare HR, we, us or our**) and/or the Flare Affiliates. These Platform Terms of Use set out the terms and conditions under which you (**you or your**) may use and access the Flare Platform and related services (**Terms**). These Terms include our Privacy Policy (available at [www.flarehr.com/legal](http://www.flarehr.com/legal)), which is incorporated into these Terms by reference.

### 1 General

- 1.1 **Please read these Terms carefully.** These Terms, if accepted by you in accordance with clause 1.3, will constitute a binding agreement between you and Flare HR and the Flare Affiliates.
- 1.2 By agreeing to these Terms, you acknowledge and agree that, in addition to entering into these Terms in its own right, Flare HR also enters into these Terms as agent for Flare Affiliates for the sole purpose of: (A) each Flare Affiliate obtaining (and being able to enforce through Flare HR) any rights expressed to be granted to Flare Affiliates; and (B) each Flare Affiliate obtaining (and being able to enforce through Flare HR) the benefit of your obligations that are expressed to be owed to Flare Affiliates and the benefit of the warranties in clause 13 and the indemnities in clause 14. You also acknowledge and agree that any obligation of Flare HR under these Terms may be performed by Flare HR or any Flare Affiliate.
- 1.3 **By clicking "I agree" or by accessing and/or using the Flare Platform and related services, you agree to be bound by these Terms (which include our Privacy Policy).** If you do not agree to these Terms, you may not access or use the Flare Platform or any content, data or materials (including any text, graphics, logos, audio and software) made available to you on or via the Flare Platform (**Flare Platform Content**) or any related services and you must immediately cease accessing and using the Flare Platform, Flare Platform Content and related services. We recommend that you save a local copy of these Terms for your own records.
- 1.4 We may, in our sole discretion, update, modify or replace any or all of these Terms from time to time by posting an updated version at this URL. You are responsible for checking the Flare Platform for changes to these Terms. Your continued use of, or access to, the Flare Platform following the posting of any changes to these Terms constitutes acceptance of those changes. If you do not agree to any update to these Terms you must immediately cease using and accessing the Flare Platform, Flare Platform Content and related services.
- 1.5 You may access and use the Flare Platform and the Flare Platform Content only as permitted by these Terms.
- 1.6 In order to access and use the Flare Platform and Flare Platform Content, you must:
  - (a) be at least 18 years of age;
  - (b) possess the legal right and ability to enter into a legally binding agreement with us;
  - (c) agree and warrant to use the Flare Platform and Flare Platform Content in accordance with these Terms; and
  - (d) be a registered User.

### 2 Grant of licence

- 2.1 Flare HR grants to you for the Term a non-exclusive, non-transferable, non-sub-licensable licence to:
  - (a) use and access the Flare Platform and the Flare Platform Content; and
  - (b) download and/or print one copy of any Flare Platform Content to which you have properly gained access, in accordance with these Terms and solely for your legitimate personal purposes (which excludes seeking to commercialise the Flare Platform or Flare Platform Content, or distributing them other than in accordance with these Terms). If you wish to use the Flare Platform or Flare Platform Content for any other purpose, you will seek the consent of Flare HR. If such consent is granted, you may be required to enter into a separate agreement.

### 3 Term and termination

- 3.1 These Terms commence when you agree to them (either by clicking 'I agree' or when you first access and/or use the Flare Platform and related services) and will continue in full force and effect until terminated in accordance with the remainder of this clause 3 (**Term**).
- 3.2 You can terminate these Terms at any time by notifying us of your intention to terminate by emailing us at [info@flarehr.com](mailto:info@flarehr.com).
- 3.3 Flare HR may terminate these Terms at any time by providing 30 days prior written notice of our intention to terminate to the email address provided to us by your Employer or updated by you, or by any other suitable means which ensures that you will be able to take notice of the cancellation.



- 3.4 If:
- (a) you breach any term of these Terms; or
  - (b) you have clearly demonstrated (regardless of whether directly or through your actions or statements or otherwise) that you do not intend to comply with these Terms,
- Flare HR may immediately (without notice to you):
- (c) terminate these Terms or suspend your access to the Flare Platform; and
  - (d) prevent your further access to the Flare Platform.
- 3.5 Flare HR may terminate these Terms upon reasonable notice if practicable, if:
- (a) Flare HR or any Flare Affiliate is required by any applicable Law or Governmental Agency to terminate access to all or any part of the Flare Platform or Flare Platform Content; or
  - (b) Flare HR, or any Flare Affiliate or any supplier or business partner of Flare HR providing any related services or any Flare Platform Content decide to terminate access to all or any part of the related services, Flare Platform or Flare Platform Content, including where Flare HR, any Flare Affiliate or any supplier or business partner of Flare HR are of the opinion that the provision of any such services or Flare Platform Content or parts thereof are no longer commercially feasible.
- 3.6 Upon termination, you shall cease all use of the Flare Platform and Flare Platform Content, and Flare HR reserves the right to delete your account and all data provided by or about you.
- 3.7 If you choose not to accept any revised Terms or if these Terms are terminated pursuant to this clause 3, Flare HR may (but is not required to) allow you to back up data stored with Flare HR through the use of the Flare Platform and related services in order to make it easier for you to access your account details if and when you subsequently decide to agree to the Terms in the future. If Flare HR does permit you to back up your data, you understand that Flare HR (or the Flare Affiliates) may delete or de-identify such data after a reasonable period has elapsed.
- 3.8 Without limiting any other provision of these Terms, clauses 3.6, 3.7, 3.8, 7 (Intellectual Property Rights), 5 (Commissions received from third parties), 8 (Registration and Login Credentials), 9 (Your data and privacy), 10 (Confidentiality), 11 (Updates and enhancements), 14 (Indemnity and liability), 19 (Definitions), and 20 (Interpretation) and any other clauses which should by their nature survive termination of these Terms, survive termination or expiration of these Terms for any reason whatsoever.
- 4 Conditions of access and acceptable use**
- 4.1 The Flare Platform is for your personal, non-commercial use only. You must not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, commercially exploit, create derivative works from, transfer, or sell any content, software, products or services contained within the Flare Platform or Flare Platform Content. You must not use this Flare Platform, or any Flare Platform Content, to further any commercial purpose, including any advertising or advertising revenue generation activity.
- 4.2 You must not:
- (a) access or use the whole or any part of the Flare Platform or Flare Platform Content, except as expressly authorised by these Terms, or otherwise with the prior written consent of Flare HR;
  - (b) subject to clause 2.1(b), copy or replicate, or directly or indirectly allow or cause a third party to copy or replicate, the whole or part of any of the Flare Platform or Flare Platform Content;
  - (c) remove or obscure any proprietary notice (including any copyright, trade mark, service mark, tagline) or other notices contained in the Flare Platform or Flare Platform Content;
  - (d) circumvent any mechanisms in the Flare Platform intended to limit your or your Employer's use of or access to areas within or components of the Flare Platform;
  - (e) vary, alter, modify, merge, interfere with, reverse disassemble, decompile or reverse engineer, or otherwise seek to obtain or derive the source code from, or directly or indirectly allow or cause a third party to vary, alter, modify, merge, interfere with, reverse disassemble, decompile or reverse engineer or obtain or derive the source code from, the whole or any part of the Flare Platform, except as permitted by Law;
  - (f) publicly disseminate information regarding the performance of the Flare Platform or Flare Platform Content; or
  - (g) use any data mining, gathering or extraction tools in connection with the Flare Platform or Flare Platform Content, without Flare HR's prior written consent.
- 4.3 You must not access or use the Flare Platform or Flare Platform Content, or post, provide or transmit any data or content in any way that:
- (a) violates or infringes the rights of Flare HR, any Flare Affiliate, or others including, without limitation, any Intellectual Property Rights;



- (b) is unlawful, offensive, indecent, objectionable, harassing, obscene, pornographic, threatening, abusive, defamatory, libellous, fraudulent, tortious, or invasive of another's privacy or constitutes a breach of any other of the legal rights of individuals;
- (c) impersonates any person, business or entity, including Flare HR or any Flare Affiliate, or the employees or agents of Flare HR or any Flare Affiliate;
- (d) includes personal or identifying information about another person without that person's consent;
- (e) is false, misleading, or deceptive;
- (f) violates these Terms or any policy posted on the Flare Platform or as part of the Flare Platform Content;
- (g) contains viruses or any other computer code, files or programs that interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or other property, or otherwise permit the unauthorised use of a computer or computer network;
- (h) is detrimental to or in violation of Flare HR's, Flare Affiliates' or your Employer's systems, or a third party's systems or network security;
- (i) interferes with the use of the Flare Platform or Flare Platform Content by others;
- (j) could damage, disable or impair the servers or networks used by the Flare Platform or its users; or
- (k) advertises products or services.

4.4 If we allow you to post any information to our Flare Platform, we have the right to take down this information at our sole discretion and without notice.

## **5 Commissions received from third parties**

- 5.1 If your Employer has a default superannuation plan, your Employer may have appointed Flare HR or a Flare Affiliate (as directed by Flare HR) as its nominated adviser. Where this has occurred, this means that Flare HR or the relevant Flare Affiliate (as applicable) has been appointed by your Employer as the advisor in relation to your Employer's default superannuation fund. This means Flare HR or the relevant Flare Affiliate (as applicable) may provide education in your workplace and general superannuation support to you and your Employer in relation to your Employer's default superannuation fund.
- 5.2 You acknowledge and agree that Flare HR and the Flare Affiliates receive payments from the trustees of superannuation funds and other third parties that you may apply to or interact with via the Flare Platform. Further details regarding such payments are set out in the Financial Services Guide available on the Flare Platform and at [www.flarehr.com/legal](http://www.flarehr.com/legal).

## **6 Advice provided by Flare HR**

- 6.1 If you expressly request personal advice from us, Flare HR or Flare Affiliates (as applicable) will give you additional information and agree the scope of the advice with you before providing you with that advice. Any other advice provided by Flare HR or any Flare Affiliate about financial products (including superannuation) through or in connection with the Flare Platform is general advice only and has been prepared without taking account of your objectives, financial situation or needs. Before acting on the advice, you should consider whether it is appropriate having regard to your circumstances, and consider the applicable Product Disclosure Statement. You may also want to obtain personal financial advice from a qualified and licensed financial adviser.

## **7 Intellectual Property Rights**

- 7.1 Unless otherwise indicated, Flare HR or the Flare Affiliates own or license from third parties all rights, title and interest (including Intellectual Property Rights) in the Flare Platform and Flare Platform Content, including in any improvements to the Flare Platform or the Flare Platform Content, and including as they may incorporate any suggestions, ideas, information, comments, process descriptions or other information that you provide to us from time to time (**Feedback**).
- 7.2 Your use of and access to the Flare Platform and Flare Platform Content does not grant or transfer any rights, title or interest to you in relation to the Flare Platform or the Flare Platform Content. However we do grant you a licence to access the Flare Platform and view the Flare Platform Content in accordance with these Terms and, where applicable, as expressly authorised by us and/or our third party licensors.
- 7.3 You may from time to time provide us or the Flare Affiliates with Feedback. You absolutely and unconditionally assign to Flare HR all rights, title and interests (including all Intellectual Property Rights) in and to any Feedback immediately upon creation, free of all encumbrances and third party rights and you must at your own cost do all things necessary to give effect to such assignment, including executing any required documents or effecting any required registrations.
- 7.4 You acknowledge and agree that without limiting clause 9, Flare HR and the Flare Affiliates will have the right to use, create derivative works of, distribute and otherwise commercially exploit anonymous, aggregate usage data derived from any data about you or that you disclose to us in connection with the Flare Platform.



## 8 Registration and Login Credentials

- 8.1 Once your Employer has registered you as a User by providing us with your contact details, we will provide you with login credentials in order for you to access the Flare Platform.
- 8.2 When you login to the Flare Platform, you may be prompted to update or select your own login credentials for use in accessing the Flare Platform. You must keep your login credentials (including your username and password) secure and you must not share them with any other person or allow any third party to use your login credentials to log in to the Flare Platform. Flare HR and the Flare Affiliates will not be liable for any Loss arising out of or in connection with your failure to maintain the security of your login credentials. You are fully responsible for all activities carried out under or using your login credentials (whether or not authorised by you). You must immediately notify Flare HR of any unauthorised use of your login credentials or any other breaches of security. To the extent permitted by Law, including the Australian Consumer Law, Flare HR, the Flare Affiliates and their contractors, suppliers, licensors and other employees will not be liable for any acts and omissions undertaken by or on behalf of you, including any damages of any kind arising from such acts of omissions.
- 8.3 Your Employer will, from time to time, nominate certain of its personnel to administer your Employer's human resources functions in relation to the Flare Platform (**Administrators**). If you are nominated as an Administrator, Flare HR will grant you Administrator Access. This means that you may login with your username and password and use the Flare Platform either as a user or, acting on behalf of your Employer, as an Administrator. It also means that as an Administrator, you must comply with, and must not circumvent, any restrictions imposed on your Administrator Access, or notified to you, by Flare HR and/or your Employer from time to time. Flare HR may suspend or remove your Administrator Access at any time without notice for any reason whatsoever.

## 9 Your data and privacy

- 9.1 Flare HR will (and will procure that the Flare Affiliates will) handle your personal information in accordance with these Terms and our Privacy Policy available at [www.flarehr.com/legal](http://www.flarehr.com/legal). By providing your personal information to us (including through your use of the Flare Platform), you consent to the collection, use, storage and disclosure of that information as described in our Privacy Policy and these Terms.
- 9.2 Flare HR and the Flare Affiliates collect personal information about you in order to: enable you to use the Flare Platform, to provide you with information about our products and services and the products and services of our carefully selected and trusted business partners, to apply to acquire certain products and services made available via the Flare Platform on your behalf, and for purposes otherwise set out in our Privacy Policy at [www.flarehr.com/legal](http://www.flarehr.com/legal). Flare HR and the Flare Affiliates may collect this information directly from you or from third parties, including your Employer.
- 9.3 You acknowledge and agree that Flare HR and the Flare Affiliates may collect your sensitive personal information, including without limitation certain health information and, where applicable, information relation to union fees, where it relates to the products and services made available on or via the Flare Platform.
- 9.4 Notwithstanding any other provision of these Terms, where your Employer discloses Government Related Identifiers (which includes your Tax File Number) to Flare HR or any Flare Affiliate, you acknowledge and agree that Flare HR or the relevant Flare Affiliate (as applicable) is holding such Government Related Identifiers as agent for your Employer. Flare HR or the relevant Flare Affiliate (as applicable) will not use or disclose any Government Related Identifier other than at the direction of your Employer or as required or permitted by Law.
- 9.5 Flare HR and the Flare Affiliates may disclose your personal information to third parties that help to deliver our services (including information technology suppliers, communication suppliers and to our carefully selected and trusted business partners which may include superannuation funds and health funds), or as required by Law or a Governmental Agency. Flare HR and the Flare Affiliates may also disclose certain personal information relating to your employment (including payment of your remuneration) to your Employer. If you do not provide this information, we may not be able to provide some or all of our services to you and you may not be able to access the Flare Platform, Flare Platform Content or our related services.
- 9.6 Flare HR and the Flare Affiliates may use or disclose information about you in order to combine the information that we hold about you with information about you collected from or held by other trusted partners or from public sources. Flare HR and the Flare Affiliates do this in order to enable the development of consumer insights about you so that we and those other trusted companies can serve you better. This includes being able to better understand your preferences and interests, personalise your experience, enhance the products and services you receive, and to tell you about products and services. Flare HR and the Flare Affiliates may also use trusted service providers to undertake the process of creating these consumer insights.
- 9.7 You acknowledge that making available carefully selected products and services on or via the Flare Platform for you to view and potentially acquire is an integral part of our service and the Flare Platform. You consent to Flare HR and the Flare Affiliates making such products and services available to you in this way and you acknowledge that Flare HR and the Flare Affiliates may use and disclose your personal information to offer you products and services (including those made available on or via the Flare Platform) that Flare HR and the Flare Affiliates believe may interest you. Flare HR and the Flare Affiliates may also disclose your personal information to Flare HR's and Flare Affiliates' related companies or to



other trusted business partners so that they can tell you about their products and services, and to other companies who assist us to market our products and services. If you do not want to receive marketing offers by email or in hard copy, please adjust your account settings accordingly to opt-out.

- 9.8 The Flare Platform may contain links to websites operated by third parties. Those links are provided for convenience and may not remain current or be maintained. Unless expressly stated otherwise, we are not responsible for the privacy practices of, or any content on, those linked websites, and have no control over or rights in those linked websites. The privacy policies that apply to those other websites may differ substantially from our Privacy Policy, so we encourage you to read them before using those websites.
- 9.9 In order to improve our products and services, Flare HR and the Flare Affiliates collect data about how users interact with our Flare Platform and related services, the characteristics of our user base and other data derived from the data we collect from or about our users. You acknowledge and agree that Flare HR and the Flare Affiliates may use, or disclose such data to any third party, in its sole discretion, provided that it is processed into a format such that you will not be able to be identified.
- 9.10 Our Privacy Policy explains: (i) how we store and use, and how you may access and correct your personal information; (ii) how you can lodge a complaint regarding the handling of your personal information; and (iii) how we will handle any complaint. If you would like any further information about our privacy policies or practices, please contact us at:

Flare HR  
c/- UHY Haines Norton  
Level 11  
1 York Street  
Sydney NSW 2000  
[infor@FlareHR.com](mailto:infor@FlareHR.com)  
(02) 9114 9907

- 9.11 During the Term, Flare HR and the Flare Affiliates may, at their absolute discretion, continue to provide you with access to:
- (a) the Flare Platform;
  - (b) data provided by you and, where permitted by your Employer, to certain data about you that has been provided to us by your Employer (together, **User Data**),
- even following cessation of your contract of employment or services with that Employer.
- 9.12 During the Term, Flare HR and the Flare Affiliates may disclose User Data to a third party nominated by you as requested by you from time to time, including following cessation of your contract of employment or services with your Employer.
- 9.13 You acknowledge that following the cessation of your contract of employment or services with your Employer, Flare HR and the Flare Affiliates will not have control over any data that has been provided by your ex-Employer about you that is not User Data and you agree that any request made by or on behalf of you to access such data (including, without limitation, under APP 12) should be made to that ex-Employer directly and not to Flare HR or any Flare Affiliate.

## 10 Confidentiality

### 10.1 Confidential Information

Subject to clause 10.2, you must not disclose, or use for a purpose other than as contemplated by these Terms, any Confidential Information of Flare HR or any Flare Affiliate.

### 10.2 Permitted disclosure

You may disclose any Confidential Information of Flare HR or the Flare Affiliates:

- (a) to Flare HR and/or Flare Affiliates;
- (b) to persons which control or are controlled by you, Flare HR or the Flare Affiliates within the meaning of the Corporations Act, and the employees, legal advisors or consultants of such persons, in each case under corresponding obligations of confidence as imposed by this clause and only where such persons, employees, legal advisors or consultants of such persons have a need to know such information in connection with these Terms;
- (c) which is at the time lawfully in the possession of the proposed recipient of the Confidential Information through sources other than you, Flare HR, or the Flare Affiliates or a related body corporate of you, Flare HR, or the Flare Affiliates;
- (d) in enforcing these Terms or in a proceeding arising out of or in connection with these Terms;
- (e) if required under a binding order of a Governmental Agency or under a procedure for discovery in any proceedings;



- (f) if required under any Law or any administrative guideline, directive, request or policy whether or not having the force of Law;
- (g) as required or permitted by these Terms;
- (h) to your legal advisers, insurers and consultants; or
- (i) with the prior written consent of Flare HR.

## **11 Updates and enhancements**

11.1 Flare HR may (but is not required to):

- (a) provide standard or progressive updates, changes or amendments to the Flare Platform as Flare HR sees fit to ensure proper operation and interaction of all parts of the Flare Platform and any general enhancements that may be introduced; and
  - (b) offer new services and features for the Flare Platform,
- which will be subject to these Terms.

## **12 Third parties**

12.1 Your use of the Flare Platform may or may not require the installation of third party software or products. You agree that:

- (a) this is entirely your responsibility; and
- (b) Flare HR is not responsible in any way to make recommendations in that regard nor to supply or install such software or products.

12.2 Third party content (including links to third party websites) may be accessible via the Flare Platform. You acknowledge that Flare HR and the Flare Affiliates have no control over any such third party content, and to the extent permitted by law, including the Australian Consumer Law if applicable) are not responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on such third party applications and content. Flare HR does not have control over all other users of the Flare Platform and is not liable for their opinions or behaviour, including any information and/or advice and any defamatory statements or offensive conduct.

## **13 Warranties and disclaimers**

13.1 Flare HR represents and warrants that the Flare Platform is fit for the purpose for which it is supplied.

13.2 Subject to clause 13.1, you acknowledge and agree that to the maximum extent permitted by Law, including the Australian Consumer Law:

- (a) the Flare Platform and the Flare Platform Content are made available "as is" and Flare HR and the Flare Affiliates make no warranties or representations about the Flare Platform or the Flare Platform Content, including but not limited to warranties or representations that they will be accurate, current, reliable, timely, available, complete or of a certain quality, or that any data submitted, uploaded, input into, or otherwise displayed on the Flare Platform will not be lost or corrupted, or that the Flare Platform is free from defects, bugs, viruses, errors or omissions, or other harmful components, or that the Flare Platform will operate in combination with any other hardware, software, system or data;
- (b) except to the extent that Flare HR or the Flare Affiliates are directly and solely responsible for such Loss, Flare HR and the Flare Affiliates will not be liable for any direct and indirect Loss – irrespective of the manner in which it occurs – which may be suffered due to: (i) your use of the Flare Platform and/or the Flare Platform Content; (ii) any inaccessibility or unavailability of the Flare Platform or Flare Platform Content; (iii) the fact that certain information or materials contained on it (including any Flare Platform Content) are incorrect, incomplete or not up-to-date; (iv) any loss or corruption of any data submitted, uploaded, input, or otherwise displayed on the Flare Platform by or about you; or (v) the inability of the Flare Platform to operate in combination with any other hardware, software, system or data;
- (c) Flare HR and the Flare Affiliates do not accept any liability for delays, interruptions, service failures and other problems relating to the Flare Platform and the Flare Platform Content outside the reasonable control of Flare HR or any Flare Affiliate;
- (d) Flare HR and the Flare Affiliates do not accept any liability in relation to any third party content or materials available through the Flare Platform; and
- (e) all warranties, representations or endorsements, express or implied, with regard to the Flare Platform and Flare Platform Content, including all implied warranties of merchantability, fitness for a particular purpose, or non-infringement are excluded from these Terms.

13.3 Although Flare HR and, where applicable, the Flare Affiliates implement security measures to help protect the Flare Platform, you acknowledge that use of the Flare Platform involves transmission of data over networks that are not owned, operated or controlled by Flare HR or the Flare Affiliates. Flare HR and the Flare Affiliates are not responsible for any data



that is lost, corrupted, intercepted, modified or stored across such networks. You acknowledge and agree that, to the extent permitted by Law (including the Australian Consumer Law, if applicable), Flare HR and the Flare Affiliates cannot guarantee that their security measures will be error-free, that transmissions of data will always be secure or that our security measures (or those of our third party service providers) will always be incapable of being hacked or circumvented by unauthorised third parties.

- 13.4 Subject to these Terms, Flare HR will use commercially reasonable efforts to make the Flare Platform available, subject to the need to conduct scheduled and emergency maintenance from time to time.
- 13.5 You acknowledge and agree that Flare HR and the Flare Affiliates will exercise due care and skill in providing the Flare Platform, however it cannot guarantee and do not promise any specific results from use of the Flare Platform.

#### **14 Indemnity and liability**

14.1 You will defend, hold harmless and indemnify Flare HR and the Flare Affiliates and their personnel (**Indemnified Parties**) from and against any and all Loss suffered or incurred by them arising out of or in connection with:

- (a) any data (including personal information) disclosed by you in connection with these Terms; or
- (b) a breach by you of these Terms.

14.2 You acknowledge and agree that Flare HR has been irrevocably appointed to act as sole and exclusive agent of these Indemnified Parties for the purpose of recovering (whether through court proceedings or otherwise) the Losses of the Indemnified Parties and enforcing the indemnities.

14.3 To the maximum extent permitted by Law, including the Australian Consumer Law:

- (a) Flare HR and the Flare Affiliates will not be liable for any Consequential Loss; and
- (b) Flare HR's and, where applicable, the Flare Affiliates' maximum liability arising out of or in connection with these Terms, the Flare Platform and the Flare Platform Content, whether in contract, tort, breach of warranty or statutory guarantee or otherwise, will be limited at Flare HR's and, where applicable, the Flare Affiliates' sole discretion, to:
  - (i) the resupply of the services to you; or
  - (ii) the payment of the cost of having the services supplied again.

#### **15 Severability**

Any provision of these Terms that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of these Terms nor affect the validity or enforceability of that provision in any other jurisdiction.

#### **16 No waiver**

A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

#### **17 Entire agreement**

These Terms (including our Privacy Policy) contains the entire agreement between you and Flare HR and the Flare Affiliates with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter. Neither party has relied on or is relying on any other Conduct in entering into these Terms and completing the transactions contemplated by it.

#### **18 Jurisdiction and governing law**

These Terms and your use of the Flare Platform and Flare Platform Content is governed by the laws of New South Wales, Australia and you submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

#### **19 Definitions**

The following definitions apply unless the context requires otherwise.

**Australian Consumer Law** means the law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Conduct** means conduct, representations, warranties, covenants, conditions, agreements or understandings.

**Confidential Information** means all information of a confidential nature, in any form whether tangible or not and whether visible or not, disclosed or communicated by you or Flare HR or the Flare Affiliates, or learnt or accessed by, or to which you or Flare HR or the Flare Affiliates are exposed as a result of entering into these Terms and includes, without limitation, any information and material concerning the contractual or commercial dealings, financial details, products or services (current or proposed), customers, employees, internal policy, the Intellectual Property Rights of you or Flare HR or the Flare Affiliates or dealings under these Terms.



**Consequential Loss** means:

- (a) loss of profits, loss of revenue, loss of data, loss of or damage to reputation, loss of or damage to goodwill, loss of business opportunities (including opportunities to enter into or complete arrangements with third parties), loss of management time, damage to credit rating, or loss of business; and
- (b) any loss, not arising naturally (that is according to the usual course of things), from the relevant breach, whether or not such loss is reasonably supposed to have been in the contemplation of both parties, at the time they made these Terms, as the probable result of the relevant breach.

**Employer** means the entity which has engaged Flare HR to provide you with access to the Flare Platform.

**Feedback** means any suggestions, ideas, information, comments, process descriptions or other information that you provide to Flare HR from time to time.

**Flare Affiliate** means any legal entity, company, corporation, firm, partnership or other entity that is controlled by Flare HR or is under common control with Flare HR. The term 'controlled' means the ability to direct the management of the relevant entity.

**Flare Platform** means the Flare HR management platform.

**Flare Platform Content** means any content, data or materials (including all text, graphics, logos, audio and software) made available to you on or via the Flare Platform

**Government Related Identifiers** means "government related identifiers" as defined in the *Privacy Act 1988* (Cth), and includes tax file numbers.

**Governmental Agency** means any government or any governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any stock exchange.

**Intellectual Property Rights** means all industrial and intellectual property rights of any kind including but not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semi-conductor or circuit layout rights, trade, business, domain or company names, moral rights, rights in Confidential Information, know how or other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

**Law** means all laws including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles, requirements and determinations, mandatory codes of conduct, writs, orders, injunctions and judgments.

**Loss** means any claim, loss liability, cost or expense (including legal expenses on a full indemnity basis).

**Privacy Policy** means the policy that is available at [www.flarehr.com/legal](http://www.flarehr.com/legal).

**User** means a person whose details have been imported by an Employer into the Flare Platform, or who have been sent a link by an Employer prompting them to use and input their details into the Flare Platform.

## 20 Interpretation

The following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural, and the converse also applies;
- (c) nothing in these Terms is to be interpreted against a party solely on the ground that the party put forward these Terms or a relevant part of it;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (f) a reference to a clause is a reference to a clause of these Terms;
- (g) a reference to an agreement or document (including a reference to these Terms) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by these Terms or that other agreement or document;
- (h) a reference to a party to these Terms or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (i) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (j) a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in visible or tangible form;
- (k) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;



- (l) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind; and
- (m) mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.