



# ClubsHR Terms and Conditions

Provided under licence by ClubsHR Software Solutions Pty Ltd (ACN 652 558 506)

# ClubsHR - Terms and Conditions

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Date                      1 February 2022

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## 1. Introduction

- (a) The ClubsHR software product for rostering and staff management in both online and mobile format and any of our associated products and services (the **Product**) are provided by ClubsHR Software Solutions Pty Ltd (ACN 652 558 506) (**Licensor, us, our or we**).
- (b) To obtain access to and use the Product, you and any entity or firm you are authorised to represent (**you or your**) must create an account and acquire a subscription and agree to be bound by the following terms and conditions (**Terms**).
- (c) The Licensor reserves the right to make changes to the Terms from time to time by providing 90 days' notice to you. Any revised Terms will be notified to you via the email address associated with your account and when accessing the Product. Continuing to use the Product after 90 days notification of any such changes shall constitute your acceptance of these changes.
- (d) The Licensor may, but is not required to, provide updates or new features to the current Product and these updates or new features shall be subject to these Terms and any additional terms as determined by the Licensor and notified to you with 90 days' notice.
- (e) You also understand and agree that the Licensor is not responsible for any of your content and information provided to or accessed via the Product and contained in your subscription (**Your Content**).
- (f) **These Terms, which incorporate our Privacy Policy and other documents referred to within these Terms govern your use of the Product. This includes such terms that govern the removal or deletion of Your Content upon termination of your subscription (refer to clause 16).**

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## 2. Subscription

- (a) To create an account and acquire a subscription you must provide your correct name, a valid email address, and any other information requested in order to complete the signup process.
- (b) Failure to provide correct, complete and accurate account or subscription information may result in the Licensor cancelling your account and/or subscription.
- (c) You agree to ensure that your account and subscription details are true and accurate at all times. Specifically, you must notify us of any change to the signup details as originally supplied for your account and subscription.
- (d) Your account login may only be used by one person – a single login shared by multiple people is not permitted. Your account cannot be used or assigned to another person.
- (e) You will be able to create 'invited users'. This is a person you have invited to use the Product through your subscription (**Invited Users**). Invited Users must also accept these Terms.

- (f) You take responsibility for fully controlling how your account and subscription is managed and who can access it. For example:
  - (i) you're responsible for protecting your account login username and password from being stolen or misused;
  - (ii) you control access to your subscription. You decide who's invited to use our Products you've subscribed to and what kind of access the Invited Users have. As a subscriber inviting others into a subscription, you should understand the permissions you're granting to your Invited Users. You can change or stop that access at any time;
  - (iii) you're responsible for resolving any disputes with any Invited Users over access to your subscription; and
  - (iv) you are responsible for all of Your Content posted and activity that occurs under your subscription (even when Your Content is posted by Invited Users who have access to the Product using your subscription or unauthorised users who have obtained access to your account or subscription).
- (g) Any one person or legal entity may apply for only one ClubsHR subscription that offers a promotion for a free trial or introductory offer.

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### 3. Payment and Refunds

- (a) To maintain your subscription and continue your, and your Invited Users', access to the Product, you are required pay the monthly subscription / usage fee. Full details of plans and pricing are available here: <https://www.clubshr.com/pricing>. If the fee is not paid for the months use, we may suspend your subscription and access to the Product until your account balance has been cleared.
- (b) Depending on where you're based and how you use the Product, you may be able to take advantage of additional products and services that the Licensor offers. These might incur an additional fee that we'll let you know about when you sign up for those services.
- (c) The Licensor reserves the right to amend the subscription fee and/or prices from time to time effective at the commencement date of the next subscription period.
- (d) The fees and prices are inclusive of Australian Goods and Services Tax (GST) for Australian businesses. The price is exclusive of all other taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties.
- (e) If for any reason you are not completely satisfied with your purchase, we will give you a 15 day money-back guarantee from the time of your purchase. Please email us at [help@clubshr.com](mailto:help@clubshr.com) within that time if you are not satisfied with your purchase so that we can resolve any problems or issue a refund if appropriate.
- (f) You authorise the Licensor to charge your credit card for the monthly usage each month. The Licensor will continue to charge for your subscription until such time that you opt out of this option in the WebApp or through the ClubsHR support team. To avoid delayed or missed payments, please make sure we have accurate payment information with sufficient funds to cover the months usage.
- (g) As per our pricing model detailed here: <https://www.clubshr.com/pricing> there is a minimum monthly fee for use of the ClubsHR system. If the number of staff rostered on the ClubsHR system per month exceeds the amount required to meet the minimum monthly fee specified in our pricing model, then the minimum monthly fee is waived. If staff have been rostered on the ClubsHR system but to a value less

than the minimum monthly fee, then the amount payable will be the minimum monthly fee amount. If no staff have been rostered or you have not been active on the ClubsHR system in a month, the minimum monthly fee will be charged.

- (h) Commencement: upon setting up your payment details in ClubsHR and selecting a plan you will be charged an authorisation fee to confirm the credit card used. An amount equal to the authorisation fee will be added back as an account credit on your first monthly invoice.
- (i) Pro-Rata Commencement: if you join ClubsHR during any part-month period you will be billed pro-rata from the commencement date of your subscription to the end of month billing date. From there forward you will be billed monthly at the end of the month.
- (j) Subscription Changes: if you would like to change your subscription you may do so at any point via the WebApp or through the ClubsHR support team. The plan change will occur at the start of the next calendar month from the date of the change.

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## 4. Modifications to the Product

The Licensor reserves the right at any time and from time to time to modify the Product (or any part thereof) with or without notice to you.

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## 5. Use of Data

The Licensor does not claim ownership of any of Your Content or the data you (or your Invited Users) enter or upload into our Product, but you grant us a licence to use, copy, transmit, store, analyse, and back up all of Your Content and data you (or our Invited Users) submit to us through our Product, including personal information of yourself and others, to:

- (a) enable you to use our Product;
- (b) allow us to improve, develop and protect our Product;
- (c) create new products and services; and
- (d) communicate with you about your subscription; and send you information we think may be of interest to you based on your marketing preferences.

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## 6. Confidential Information

While using our products, you may share confidential information with us, and you may become aware of confidential information about us. You and we both agree to take reasonable steps to protect the other party's confidential information from being accessed by unauthorised individuals. You or we may share each other's confidential information with legal or regulatory authorities if required to do so.

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## 7. Security

- (a) The Licensor may use technical, physical and administrative security features to protect our and your data and systems, but the Licensor does not guarantee that unauthorised access will not occur. The Licensor may restrict certain parts of our Product from access until you verify that access was by an authorised user.
- (b) We may introduce security features to make your subscription more secure, such as two-step authentication. Depending on where you are in the world or what products or services you're using, we may require you to adopt some of these features. Where we make the use of security features optional, you're responsible

for any consequences of not using those features. We strongly encourage you to use all optional security features.

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## 8. Website Terms and Privacy Policy

- (a) When using the Licensor's website or the ClubsHR website, you must also comply with the terms of those websites.
- (b) The Licensor believes privacy is an important right of individuals. The Licensor takes steps to protect your personal information and any personal information in Your Content from misuse and to use that information only in the ways described in its Privacy Policy and in accordance with any applicable privacy laws. Personal information (such as your contact details) provided to the Licensor during your use of the Product will be kept and used by the Licensor in accordance with the ClubsHR Privacy Policy.
- (c) The terms of the Licensor's website and the ClubsHR Privacy Policy can be found here <https://clubshr.com/privacy/clubshr-privacy-policy-V522AS.pdf>.

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## 9. Support

If you have any issues or problems with your subscription or the Product you can consult our support articles at this location <https://clubshr.com/support>. If your problem or issue was not resolved then you can contact our support team via 1300 353 000 or via the contact details available at: <https://www.clubshr.com/contact>

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## 10. Terms of Use

- (a) You may not use the Product or any of the data and information provided by the Licensor in the Product (**Licensor Content**):
  - (i) for any illegal or unauthorised purpose;
  - (ii) to solicit others to perform or participate in any unlawful acts;
  - (iii) to violate any international, federal, state or territory regulations, rules, laws, or local ordinances;
  - (iv) to infringe upon or violate our intellectual property rights or the intellectual property rights of others;
  - (v) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability;
  - (vi) to submit false or misleading information;
  - (vii) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Product or of any related website, other websites, or the Internet;
  - (viii) to collect or track the personal information of others (save to the extent that doing so represents a function of the Product);
  - (ix) to spam, phish, pharm, pretext, spider, crawl, or scrape;
  - (x) for any obscene or immoral purpose; or
  - (xi) to interfere with or circumvent the security features of the Product or any related website, other websites, or the internet.

- (b) The Licensor does not pre-screen Your Content, but we retain the right (but not the obligation) in our sole discretion to refuse or remove any of Your Content that is available via the Product.
- (c) You must not modify, adapt or hack the Product or modify another website or software so as to falsely imply that it is associated with the Product, or the Licensor.
- (d) Without limiting any other Terms, you must not provide any data or information that:
  - (i) will subject us to an action for defamation, breach of copyright, infringement of any other intellectual property rights, or any law whatsoever; or
  - (ii) is fraudulent, defamatory or infringes the confidentiality rights, or privacy rights of any person; or
  - (iii) is not in conformity with accepted standards of public decency and good taste including material which contains pornography, depiction of acts of violence and sexual acts, and material or information which may racially vilify any person or group.

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## 11. Intellectual Property Ownership

- (a) The Product, and the Licensor Content, including the design, compilations and look and feel accessed via the Product are subject to copyright, designs, inventions, trademark, and other intellectual property rights. These rights are owned by, or licensed to, the Licensor.
- (b) You agree not to reproduce, duplicate, copy, sell, resell, or exploit any portion of the Product or the Licensor Content without express written permission by us. Unless we agree otherwise in writing, you are provided with access to the Product only for your personal use. Without limiting the foregoing, you may not without our written permission on-sell information obtained from the Product.
- (c) 'ClubsHR' is an Australian registered trademark, and you should not duplicate, copy or use any portion of this trademark.

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## 12. Apps, Third Party Content and Third-Party Websites

- (a) You understand that the Licensor uses third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the Product.
- (b) The Product and any other products or services we offer, such as our mobile apps, are available through other companies' services, such as The Apple App Store. These companies may have additional terms that apply to you.
- (c) We may provide access to the content of third parties (**Third Party Content**) and links to third-party websites (**Third Party Websites**). We do not monitor, approve or have any control over any Third Party Websites and the inclusion of Third Party Content (including links to the Third Party Websites) does not imply any association or relationship between us and the third party.
- (d) You acknowledge and agree that we provide access to such Third Party Websites and Third Party Content "as is" and "as available" without any warranties, representations or conditions of any kind and without any endorsement. We shall have no liability whatsoever arising from or relating to your use of Third Party Websites or Third Party Content.

- (e) Complaints, claims, concerns, or questions regarding Third Party Content, including Third Party Websites, should be directed to the relevant third party.

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## 13. Warranties

- (a) In this clause, **Minimum Service Levels** means:
  - (i) the Product will be provided with all reasonable professional due care and skill;
  - (ii) the Licensor will use all reasonable endeavours to ensure that you will have continuous access to the Product, but the Licensor will not be responsible in the event that the Product is unavailable to you due to downtime attributable to malfunction not attributable to the Licensor's fault, upgrade or preventative or remedial maintenance activities;
  - (iii) the Licensor will provide 24/7 technical support and respond to requests for support within a reasonable time period; and
  - (iv) the Product, including the Licensor's security, data backup and data protection systems, will be provided in accordance with industry best practice and all applicable Australian laws and regulations.
- (b) To the maximum extent permitted by law, the Product and the Licensor Content is provided 'as is' and 'as available' for your use, and except where otherwise specified in these Terms, are provided without any representation, warranties or conditions of any kind, either express or implied, including all implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, durability, title, and non-infringement.
- (c) The Licensor makes no representations or warranties that the Licensor Content or the Product complies with the laws (including intellectual property laws) of any country outside Australia.
- (d) To the maximum extent permitted by law, we do not accept responsibility for any loss, damage, cost, expense or injury you or a third party suffers as a result of reliance by you upon the accuracy or currency of the Product and the Licensor Content.
- (e) Data loss may be an unavoidable risk when using any technology. You're responsible for maintaining copies of your data entered into our Product.
- (f) The Licensor warrants that the Product will meet or exceed the Minimum Service Levels specified in these Terms. The obligation of the Licensor and your exclusive remedy for any non-conformance with the warranty in this clause shall be for the Licensor to be given the opportunity to correct the non-conformance at its own cost as soon as reasonably practicable, subject to you notifying the Licensor of such non-conformance in writing within ten (10) days of discovery of the non-conformance.
- (g) On occasion, we may need to perform maintenance on our products and services, and this may require a period of downtime. We try to minimise any such downtime. Where planned maintenance is being undertaken, we'll attempt to notify you in advance but can't guarantee it.

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## 14. Limitation of Liability

- (a) In no case shall we, our directors, officers, employees, affiliates, agents, contractors, suppliers, service providers or licensors be liable for any injury, loss, claim, or any direct, indirect, incidental, punitive, special, or consequential damages

of any kind, including, without limitation lost profits, lost revenue, lost savings, loss of data, replacement costs, or any similar damages, whether based in contract, tort (including negligence), strict liability or otherwise, arising from your use of the Product or the Licensor Content, or for any other claim related in any way to your use of the Product or the Licensor Content, including, but not limited to, any errors or omissions in any content, or any loss or damage of any kind incurred as a result of the use of the Product, and product or service procured as a result of using the Product, or any content posted, transmitted, or otherwise made available via the Product, even if advised of their possibility.

- (b) Some jurisdictions do not allow, or place limits on, the exclusion or the limitation of liability in certain circumstances. In such jurisdictions, the provisions of this clause 14 apply to the maximum extent permitted by law.
- (c) You acknowledge that:
  - (i) prior to entering into these Terms you have been given a reasonable opportunity to examine and satisfy yourself regarding all products and services which are the subject of these Terms and that prior to entering into these Terms you have availed itself of that opportunity; and
  - (ii) at no time prior to entering into these Terms have you relied on our skill or judgment and that it would be unreasonable for you to do so.
- (d) The application of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention) to these Terms (by virtue of any law relevant to these Terms) is excluded.
- (e) Pursuant to s 64A of the Australian Consumer Law (under the *Competition and Consumer Act 2010 (Cth)*), liability for breach of a guarantee conferred by the Australian Consumer Law (under the *Competition and Consumer Act 2010 (Cth)*), other than those conferred by ss 51–53 of that law, is limited:
  - (i) in the case of goods, to any one of the following as determined by us:
    - A. the replacement of the goods or the supply of equivalent goods; or
    - B. the repair of the goods; or
    - C. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - D. the payment of the cost of having the goods repaired;
  - (ii) in the case of services, to any one of the following as determined by us:
    - A. the supplying of the services again; or
    - B. the payment of the cost of having the services supplied again.
- (f) Subject to any of the rights you may have under Australian consumer protection law, the Licensor excludes to the fullest extent possible all implied terms and warranties, whether statutory or otherwise, relating to the Product or any other matter under these Terms.

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## 15. Indemnity

You agree to indemnify, defend and hold harmless us, our directors, officers, employees, affiliates, agents, contractors, suppliers, service providers or licensors, from any claim or demand, including reasonable solicitors' fees, made by any third party due to or arising out of

your breach of these Terms or the documents they incorporate by reference, or your violation of any law or the rights of a third party.

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## 16. Cancellation and Termination

- (a) The Licensor may suspend or terminate your subscription and refuse any and all current or future use of the Product, if you violate these Terms or fail to pay any fees associated with the Product or your account. If the Licensor terminates your subscription under this clause, it will result in you losing access to the Product and destruction of Your Content in accordance with clause 16(c).
- (b) The Licensor may also terminate your subscription if you do not access or use the Product at all in any 90-day period.
- (c) You can cancel your subscription at any time via the WebApp or by emailing [help@clubshr.com](mailto:help@clubshr.com). In the case of cancellation, you will be billed as per your current subscription at the end of the cancellation month and will no longer be able to use the software. Please ensure you have retained any critical data prior to cancelling your account.
- (d) Without limiting any contractual obligations, the Licensor has to any third party, if the Licensor decides to discontinue providing the Product, it may, after giving you reasonable written notice terminate your subscription and the agreement created by these Terms (**Product End Date**). For the avoidance of doubt, the Licensor must continue to provide the Product in accordance with these Terms until the Product End Date.
- (e) All of Your Content contained in your subscription will be deleted from the Product after:
  - (i) in the case of cancellation or termination under clause 16(a), 90 days from the date upon which notice of cancellation or termination is provided to you; or
  - (ii) in the case of termination under clause 16(d), 90 days from the Product End Date.

This information cannot be recovered once deleted.
- (f) Termination of these Terms:
  - (i) does not affect any rights or liabilities which have accrued to any party before termination, nor any liabilities which may arise from damages deriving from a breach of these Terms before termination; and
  - (ii) does not affect the operation of clauses 6, 8, 10, 11, 13, 14 and 15 of these Terms, which clauses shall remain in full force and effect.

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## 17. General

- (a) Verbal, physical, written or other abuse (including threats of abuse or retribution) of any customer, employee, member, representative, or officer of the Licensor will result in immediate subscription termination.
- (b) You understand that the technical processing and transmission of the Product, including Your Content, may be transferred unencrypted and involve:
  - (i) transmissions over various networks; and

- (ii) changes to conform and adapt to technical requirements of connecting networks or devices.
- (c) Nothing in these Terms is to be construed as constituting a partnership, joint venture, employment or agency relationship between you and us, or between you and any other subscriber or Invited User.
- (d) The failure of the Licensor to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. These Terms constitutes the entire agreement between you and the Licensor and govern your use of the Product, superseding any prior agreements between you and the Licensor (including, but not limited to, any prior versions of the Terms).
- (e) In the event that any provision of these Terms is determined to be unlawful, void or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms. Such determination shall not affect the validity and enforceability of any other remaining provisions.
- (f) These Terms and any separate agreements shall be governed by and construed in accordance with the laws of Western Australia.
- (g) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to these Terms and waives any objection they may now or in the future have to the venue of any proceedings, and claim if it may now or in the future have that any proceedings have been brought in an convenient forum, if that venue falls within this clause.
- (h) Any queries about these Terms should be sent to [help@clubshr.com](mailto:help@clubshr.com). Any notices we send you will be sent to the email address you've provided us through your account.