

The following articles form part of the agreement

Article 1 Applicability

- 1.1 The Articles below apply if HumanCapitalCare makes Software available to Client, and the Parties have not entered into a separate user right or licence agreement for this.
- 1.2 For the purposes of these Articles, the following definitions apply:
 - GDPR: General Data Protection Regulation (EU) 2016/679.
 - HumanCapitalCare: the private limited liability company incorporated under Dutch law HumanCapitalCare B.V., having its registered office in Eindhoven.
 - Documentation: user information made available to Client by HumanCapitalCare.
 - Client: the natural person or legal entity with whom HumanCapitalCare has entered into an Agreement.
 - Agreement: the agreement between HumanCapitalCare and Client in respect of the Services, as set out in a document(s) with appendices agreed by the Parties.
 - Parties: HumanCapitalCare and/or Client.
 - Third Parties: all persons other than those mentioned in the Agreement, unless a different meaning follows directly from an article.
 - Software: the software application(s) that may, alone or together, form part of the Services or comprise the entire Services.
 - Written: (registered) letter, fax, e-mail or – to the extent agreed by the Parties – by other electronic means.
 - Access media: the means, such as a token or combination of access code with a user name, by which access can be obtained to the Software.

Article 2 Subject matter

- 2.1 Client may use the Software and Documentation as described in the Agreement for the duration of the Agreement. Client is not allowed to transfer the Software and Documentation to Third Parties, grant a licence to Third Parties or make them available to Third Parties.
- 2.2 HumanCapitalCare will only make the Software and Documentation available to Client. Client will not have access to the source code of the Software.
- 2.3 HumanCapitalCare will at all times be entitled to (temporarily) replace the Software by a comparable software application, provided that the specifications thereof correspond with those of the Software. HumanCapitalCare will inform Client in a timely manner. In this case, HumanCapitalCare may require Client to agree additional arrangements for the use of the replacement software application and to pay a further fee.

Article 3 Use restrictions

- 3.1 Use restrictions that apply with respect to the Software and about which HumanCapitalCare has informed Client will be strictly observed by Client. Use restrictions may include:
 - a. the kind or type of equipment used to access the Software;
 - b. the maximum number of processing units for which the Software is intended;
 - c. certain persons - whether or not designated by name or position - who may use the Software within Client's organisation;
 - d. the maximum number of users allowed to use the Software - simultaneously or not - within Client's organisation;
 - e. certain forms and purposes of use (e.g. exclusively business use);
 - f. any other quantitative or qualitative limitation.
- 3.2 When using the Software, Client will comply with the (technical) regulations, conditions and procedures provided by HumanCapitalCare with respect to the use of

- the Software. If possible, HumanCapitalCare will inform Client of any changes in advance and in a timely manner.
- 3.3 Client is not permitted to remove or circumvent technical provisions made to protect the Software.
 - 3.4 The Software may only be used for the purpose for which it is provided as set out in the Agreement. The Software may only be used by Client's own employees, including self-employed professionals and temporary staff. Unless otherwise agreed in writing, Client may not use the Software to process data for the benefit of Third Parties.
 - 3.5 Client will not be permitted to rent out, alienate, grant or establish (limited) rights with respect to the Software, or make the Software available to Third Parties in any way or for any purpose.
 - 3.6 Client is not allowed to modify the Software in whole or in part without prior Written consent of HumanCapitalCare.
 - 3.7 At HumanCapitalCare's request, Client will cooperate in an audit to be performed by or on behalf of HumanCapitalCare in compliance with the agreed restrictions on use. The audit will be carried out by an authorised, independent and competent auditor. The day and time of the audit will be mutually agreed between the Parties. Client will grant the auditor access to its premises and systems to the extent necessary to conduct the audit. The right to audit may be used a maximum of once per calendar year. Each Party will bear its own costs for the audit. If the audit reveals that Client has failed imputably in complying with its obligations, Client will also bear the costs incurred by HumanCapitalCare for the audit.

Article 4 Obligations of HumanCapitalCare with regard to the Software

- 4.1 HumanCapitalCare will endeavour to ensure optimal availability and accessibility of the Software.
- 4.2 If the Software is not available to Client, HumanCapitalCare will make every effort to resolve the problem as soon as possible.
- 4.3 HumanCapitalCare will, to the best of its ability, repair (or have repaired) any defects in the Software if the Software does not meet the Written specifications as set out in the Agreement and/or Documentation. HumanCapitalCare is entitled to implement temporary solutions, or program workarounds or problem-avoiding restrictions in the Software. HumanCapitalCare does not guarantee that the Software will operate without interruption, errors or defects.

Article 5 Availability and access to the Software

- 5.1 HumanCapitalCare will make the Software and Documentation available to Client. HumanCapitalCare is not responsible for the procurement and/or proper functioning of the infrastructure, internet or network connection of Client or Third Parties.
- 5.2 Client is responsible for its use of the Software, Documentation and Access Media. HumanCapitalCare is not liable for damage suffered by Client and/or Third Parties resulting from the use of the Software, Documentation or Access Media, unless such damage can be attributed to HumanCapitalCare.
- 5.3 The Access Media provided are non-transferable, strictly personal and exclusively intended for use within Client's organisation. Client will exercise due diligence regarding the use of the Access Media and will keep them secret from Third Parties.
- 5.4 HumanCapitalCare may always change the Access Media at its discretion and will inform Client of any changes in advance and in a timely manner.
- 5.5 Client will immediately inform HumanCapitalCare if there is or has been unauthorised use of Access Media, or if Client suspects that this is the case.
- 5.6 HumanCapitalCare is at all times entitled to block Access Media if HumanCapitalCare is aware of unauthorised use thereof.

Article 6 Use of the Software

- 6.1 Client is prohibited from performing actions of which it knows or can reasonably suspect that this may hinder or damage the infrastructure, the Software, the data stored in the Software, HumanCapitalCare, clients of HumanCapitalCare and/or other internet users. Client will not use the Software for actions and/or conduct that violate applicable statutory provisions or the Agreement.
- 6.2 Client and its employees will observe the following conditions when using the Software:
- a. Client will protect its (peripheral) equipment, software, infrastructure and internet connection against viruses, computer crime and (other) unlawful use by its employees and Third Parties;
 - b. Client and its employees, when using the Software, will not spread (computer) viruses or other files that may damage the (proper functioning of the) Software or HumanCapitalCare;
 - c. Client and its employees will not perform or cause to be performed any acts which may cause disruptions in the Software, (computer) networks or infrastructures or which may cause nuisance, limited use or unforeseen use in respect thereof;
 - d. Client and its employees shall not, without prior request, send large quantities of messages with the same or similar content ('spam') through the Software;
 - e. Client and its employees will not misuse any Access Media or breach or bypass or attempt to do so the security of the Software;
 - f. Client and its employees will not perform or omit to perform any acts which they know or should reasonably have known could lead to use of the Software that is punishable or may cause damage to HumanCapitalCare and/or Third Parties;
 - g. Client and its employees will not disclose or distribute racist or discriminatory material and/or (child) pornography. Distributing also means posting or distributing through the infrastructure of the Software;
 - h. Client and its employees will not intentionally and without permission intrude into any computer system or part thereof of HumanCapitalCare, its affiliates or suppliers ('hacking');
 - i. Client and its employees will in no way infringe any intellectual property rights of HumanCapitalCare, its affiliates, its suppliers and/or Third Parties, and;
 - j. Client and its employees will not disclose, duplicate or otherwise apply information and data provided by HumanCapitalCare in the context of the Software, other than for use in Client's internal business operations, without HumanCapitalCare's express prior Written consent.
- 6.3 If Client acts in violation of one or more of the provisions contained in this Article, Client will be obliged to follow the reasonable instructions to be given by HumanCapitalCare in connection therewith. In that case, HumanCapitalCare is also entitled to close or suspend access to the Software. If the violation of the aforementioned provisions can be attributed to Client, Client will compensate HumanCapitalCare for the damage suffered by HumanCapitalCare due to Client's shortcoming. Access to the Software will not be restored until Client has fulfilled its obligations within a period set by HumanCapitalCare.

Article 7 Intellectual property

- 7.1 The copyrights and all other intellectual property rights with respect to the Software will exclusively be vested in HumanCapitalCare, or an affiliate of HumanCapitalCare, or HumanCapitalCare has obtained permission from the holder of the intellectual property rights to make the Software available to Client.

- 7.2 Client acknowledges the intellectual property rights to the Software and will refrain from any infringement of these rights.
- 7.3 If Client discovers an infringement of any kind of the rights mentioned in this Article, it will immediately report this to HumanCapitalCare.
- 7.4 HumanCapitalCare will indemnify Client against damage and costs resulting from a claim by (a) third party or parties that the Software infringes on intellectual property rights of such third party or parties. If there is such a breach, HumanCapitalCare will determine whether it will do so for its own account and at its own expense:
- a) acquires the rights from the relevant third party or parties for Client's continued use of the Software; or
 - b) will modify the Software, while maintaining substantially similar functionality, such that it is no longer infringing.
- If in HumanCapitalCare's opinion the foregoing is not possible under reasonable conditions, Client agrees to cease its use of the Software upon HumanCapitalCare's Written request. HumanCapitalCare will in that case credit Client for an amount equal to the fees paid by it for the use of the Software from the moment Client is unable to use the Software as a result of the alleged infringement.
- The aforementioned claims are the only remedies Client has in case of a breach as mentioned in this Article.
- 7.5 The indemnification included in Article 7.4 lapses if Client uses or has used the Software in any way that does not correspond with the intended use of the Software and/or is contrary to the Documentation or instructions of HumanCapitalCare.

Article 8 Fees and payment

- 8.1 Client will pay HumanCapitalCare an annual rate as included in the Agreement agreed between the Parties for the use of the Software.

Article 9 Processing of data in the Software

- 9.1 Insofar as the Parties process data in the context of using the Software that can be designated as personal data within the meaning of Article 4(1) of the AVG, the provisions of this Article will apply.
- 9.2 The parties will comply with the privacy and information security requirements set out in the GDPR as well as all other applicable laws and regulations regarding the protection of personal data.
- 9.3 If employee records are kept in the Software by Client, Client qualifies as the controller of the personal data involved. The data in the Software are managed by IT&Care B.V. IT&Care qualifies as a processor of the personal data processed by Client in the Software. IT&Care and Client will enter into a processing agreement in this context. The processor agreement specifies how the careful processing of personal data in the Software is ensured.
- 9.4 In the situation referred to in the previous paragraph, HumanCapitalCare will not have access to the personal data entered in the Software by the Client. Only if there is a legal basis for doing so, HumanCapitalCare may obtain access to Personal Data from the Software. A legal basis exists from the moment when the provision of care by HumanCapitalCare to Client's employees starts. If HumanCapitalCare may receive personal data on the basis of this legal basis, the relevant personal data will be made available to HumanCapitalCare by IT&Care. This is subject to strict conditions which have been elaborated in a processor agreement between HumanCapitalCare and IT&Care, as well as the HumanCapitalCare and IT&Care privacy regulations, available at www.humancapitalcare.nl and www.itandcare.nl.

Article 10 Maintenance and new versions

- 10.1 Maintenance work may cause the Software to be temporarily unavailable. Planned maintenance will take place outside office hours whenever possible. Where possible, HumanCapitalCare will inform Client in advance of planned maintenance activities.

- 10.2 At the request of HumanCapitalCare, Client will render its reasonable cooperation in maintenance activities, including temporary discontinuation of the use of the Software if this is necessary in the opinion of HumanCapitalCare.
- 10.3 Software maintenance will not affect Client's own responsibility for the use of the Software, including control of settings and the manner in which the results of Software use are deployed.
- 10.4 Maintenance also includes making available new versions of the Software. HumanCapitalCare will determine whether and, if so, when new versions of the Software and the Documentation are released or adaptations and/or changes of functionality of the Software and the Documentation are implemented. Client may only use the most recent version and functionalities of the Software and Documentation.
- 10.5 Unless agreed otherwise in Writing, after the latest version has been made available, HumanCapitalCare will only provide support and maintenance with respect to the latest and any preceding version.
- 10.6 HumanCapitalCare may copy the functionality from a previous version of the Software unchanged, but does not guarantee that each new version contains the same functionalities as the previous version, subject to specific agreements made about this with Client. HumanCapitalCare may cease to maintain or modify certain features or functionalities of the Software if
 - (i) this is necessary for the Software to comply with applicable laws and regulations, (ii) this functionality is replaced by another functionality, (iii) this functionality is not used, or only used to a limited extent, by its clients.
- 10.7 HumanCapitalCare may require Client to adapt its system (equipment, software etc.) if necessary for the proper functioning of a new version of the Software, but will always discuss this with Client in advance.

Article 11 Liability

- 11.1. Any liability of HumanCapitalCare for damage suffered by Client as a result of using the Software is explicitly excluded, except in case of intent or conscious recklessness.
- 11.2. Under no circumstances is correct and undamaged data transmission and the absence of viruses or malware in the Software guaranteed. HumanCapitalCare excludes any liability in this respect.
- 11.3. Insofar as HumanCapitalCare, with due observance of the provisions in Article 11.1 and 11.2, is nevertheless liable for damage suffered by Client, HumanCapitalCare's liability will be limited to a maximum of EUR 50,000 per calendar year, whereby a series of connected events qualifies as one event.
- 11.4. If HumanCapitalCare is liable in accordance with the provisions of Article 11.3, only the following damage items will be eligible for compensation:
 - a. the reasonable costs to determine the cause and extent of the direct damage;
 - b. any reasonable costs incurred to ensure the deficient performance of HumanCapitalCare complies with the Agreement, unless these costs cannot be attributed to it;
 - c. reasonable costs incurred to prevent or limit damage, insofar as Client demonstrates that these costs have led to a limitation of direct damage.
- 11.5. HumanCapitalCare will never be liable for damage such as consequential damage, loss of profit, missed savings and damage due to business stagnation.
- 11.6. Client will indemnify HumanCapitalCare against any liability (including claims of Third Parties) arising from the processing of personal data as in the Software, for which Client is responsible under the GDPR.
- 11.7. The responsibility for the data stored and processed by Client using the Software lies solely with Client. Client guarantees to HumanCapitalCare that the content, use and/or processing of data, including personal data, is not unlawful and does not infringe any right of a third party. Client will indemnify HumanCapitalCare against any legal claim by Third Parties, on whatever basis, in connection with such data or the performance of the Agreement.

Article 12 Obligations at end of Agreement

- 12.1 Upon termination of the Agreement, Client's access to the Software will be closed immediately.
- 12.2 Client may submit a Written request for transfer of the data up to a maximum of three months after termination of the Agreement. If Client does not make such a request or does not do so in a timely manner, the data will be deleted.
- 12.3 Upon receipt of a request from Client to transfer the data in accordance with the provisions of Article 12.2, the data will be transferred to Client in a format chosen by HumanCapitalCare. If Client wishes to receive the data in a different format, Client will owe HumanCapitalCare a fee for this. After transfer, the data will be deleted.